

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 24th August, 2011

The House met at 9.00 a.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

Mr. Deputy Speaker: We will now go to Question No.895 by Mr. Odhiambo, MP, for Butula.

Question No.895

CHARGING INTERNATIONAL CALL RATES
BY SAFARICOM LTD IN BUSIA

Mr. Deputy Speaker: Where is Mr. Odhiambo? In line with the direction by the Chair yesterday, any Question that is not answered because the Questioner is not in the House will be dropped!

Therefore, this Question is dropped!

(Question dropped)

Mr. Deputy Speaker: Next Question by hon. Shakila Abdalla!

Mr. K. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. The Question appearing on the Order Paper as Question No.1044 was referred to our Committee. We were asked to report on the matter. The Committee visited Lamu. I am just wondering why it is appearing again on the Order Paper and yet, it is the Committee that is supposed to respond to it.

Mr. Deputy Speaker: No! No! It is not mutually exclusive! You can do what you want to do and the Question can still be answered. In any case, if your report is ready, why can you not table it at the time of tabling reports?

Question No.1044

ISSUANCE OF TITLE DEEDS IN LAMU COUNTY

(Question dropped)

Mr. Deputy Speaker: Next is Question by Mr. Zakayo Cheruiyot!

Question No.1013

NON-PAYMENT OF DUES TO YOUTH UNDER
KKV IN KURESOI/MOLO DISTRICTS

Mr. Deputy Speaker: Mr. Cheruiyot not in? The Question is dropped!

(Question dropped)

Mr. Deputy Speaker: Next Question by Mr. Ochieng!

Question No.1001

MEASURES TO CONTROL SOIL
EROSION IN NYAKACH CONSTITUENCY

Mr. Ochieng asked the Minister for Agriculture:-

(a) whether she is aware of the serious soil erosion which is rampant in Nyakach Constituency; and,

(b) when the Ministry will revive the construction of gabions to control soil erosion and avail funding for it.

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

(a) Yes, I am aware that soil erosion takes place in Nyakach Constituency after the rains and in some places, it can be very severe.

(b) The Ministry of Agriculture has no plans to revive the gabion soil erosion control project. Instead, it is implementing an integrated environmental conservation approach to minimize soil erosion and maintain sustainable land productivity in the area.

Mr. Ochieng: Thank you, Mr. Deputy Speaker, Sir. The brief answer has not addressed the issue. That is a very serious issue. Soil erosion in Nyakach, particularly in one area called Kat Kodeyo, had only one front in 1984. Right now, it has four fronts. That shows that the magnitude is very serious. Could the Assistant Minister tell me when the programme he is talking about will start?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, we have already started a massive programme in Nyakach Constituency. In the year 2009/2010, we had given the constituency more than Kshs100,000. In the year 2010/2011, we have given Kshs680,000 for general soil erosion prevention in the constituency.

Mr. Bahari: Mr. Deputy Speaker, Sir, that is a very important programme. Could the Assistant Minister tell us exactly - apart from Nyakach - where the integrated environmental conservation approach is being applied across the country?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, we are doing that in all the constituencies in the entire country. That is because soil erosion is a critical issue affecting the productivity in our farms. Yes, in all the areas in our country, we are undertaking serious soil erosion conservation processes.

Mr. Mwangi: Mr. Deputy Speaker, Sir, I think the Assistant Minister has given an inadequate response because in other constituencies, particularly in Kiharu and other parts of the country, there is no action by extension officers. Could the Assistant Minister tell us the policy about soil erosion control? Even along the highways, as you drive along the roads during the rains, residue resulting from soil erosion from the highland areas is deposited on the tarmac roads. What is the actual policy? Do you have a policy on soil erosion control?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, the Ministry of Agriculture is currently involved in a massive water harvesting process. The objective of that is to regulate runoff flows whose accumulation causes big gullies in many parts of the country. At the same time, we have intensified farm soil and water conservation. Under that proposal, farmers will be required to undertake biological and physical soil conservation measures such as retention of ditches, culvert drains, terracing and vegetative materials to control runoff. We also have compulsory tree planting exercises where most farms are required to, at least, have 10 per cent of the farms under trees.

Finally, we are encouraging fencing off of gullies and rehabilitated sites. That is because in Nyakach, there are serious gullies all the way from the plateaus. We are encouraging the fencing off of the gullies so that the areas can be rehabilitated.

Mr. Kiuna: Mr. Deputy Speaker, Sir, this is a very serious Question! It does not only affect Nyakach Constituency, but many constituencies, including Molo. I would like the Assistant Minister to state how much funds they have set aside for the rehabilitation of Mau Forest this financial year.

Mr. Mbiuki: Mr. Deputy Speaker, Sir, as of now, I do not have data for each constituency. I have provided statistics for Nyakach Constituency as asked by the hon. Member. However, we have set aside more than Kshs50 million for various soil conservation projects in the entire country.

Mr. Outa: Mr. Deputy Speaker, Sir, it seems that this Assistant Minister is not very serious about this issue. We all know Kenyans are suffering because of lack of food partly attributed to the effects of soil erosion. Could he tell this House whether Kshs100,000 is sufficient to prevent soil erosion in any part of this country?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, I did not say we have allocated Kshs100,00 to Nyakach Constituency. I said we have allocated them Kshs680,000 to mitigate against soil conservation. However, we, in the Ministry of Agriculture, have allocated more than Kshs50 million which will be used in soil conservation in the entire country. We have other related Ministries like the Ministries of Forestry and Wildlife, Environment and Natural Resources which have set aside funds for soil conservation in various parts of the country.

Mr. Ochieng: Mr. Deputy Speaker, Sir, I want to plead with the Assistant Minister to agree to accompany me to my constituency, so that he may see the magnitude of soil erosion in that particular place. As I speak here, one of the police stations is being swept away by soil erosion in Tururibo Location. The amount of Kshs100,000 or Kshs650,000 he is talking about will not be sufficient. He is talking about a budget of Kshs50 million countrywide. Could he consider increasing that amount to some substantial amount that can take care of this problem once and for all?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, I am willing to accompany my friend and colleague to Nyakach Constituency to see how the programme is going on. At the same

time, I will have an opportunity to launch the soil conservation programme in the constituency which will cover the whole country.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. While we appreciate the Assistant Minister visiting the hon. Member in Nyakach, obviously, he needs to eat some fish, but is he in order to mislead this House that he has no officers on the ground who can properly brief him, so that when he comes here he has facts at his fingertips?

Mr. Deputy Speaker: The impression created is that the hon. Member himself would want the Assistant Minister to accompany him. He must have had certain reservations about the capacity or maybe the will of the officers on the ground. Otherwise, he would not demand that the Assistant Minister accompanies him. So, this was a request by the hon. Member.

Mr. Ochieng: On a point of order, Mr. Deputy Speaker, Sir. Could the Assistant Minister confirm when he is likely to have time to come with me to my constituency?

Mr. Deputy Speaker: Mr. Assistant Minister, when can you do so?

Mr. Mbiuki: Mr. Deputy Speaker, Sir, as soon as the hon. Member is ready, I will avail myself. I am willing to go with him even this weekend; to be with him in his constituency.

Mr. Ochieng: Thank you.

Question No.923

COST/CAPACITY OF TURKWELL
GORGE HYDROELECTRIC DAM

Mr. Ethuro asked the Minister for Regional Development Authorities:-

(a) how much it cost to construct the Turkwel Gorge Hydroelectric Dam and Power House in Turkana County and how much water is held by the dam at full capacity as well as the amount of electric power generated by the plant,

(b) how the communities that were displaced by this project were compensated and which projects have been undertaken for the benefit of the communities; and,

(c) how much money is contributed to and shared among the KVDA, KenGen, Turkana and Pokot counties from the project.

Mr. Deputy Speaker: Is the Minister for Regional Development Authorities here?

(Mr. ole Metito sat on the Back Bench)

Hon. Assistant Minister, you do not seem to be very sure as to whether you should be at the Front Bench or the Back Bench!

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Deputy Speaker, Sir, actually I was still getting more information on this Question. It was very important for me to do so.

However, I beg to reply.

(a) The project was constructed---

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. The Assistant Minister has just admitted to us that he was getting more information to answer the Question. So, how does he beg to reply? Either he asks for more time to get the information---

Mr. Deputy Speaker: Yes, he was getting more information on it. He, probably, got the information.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Deputy Speaker, Sir, I got the information I was looking for and my good friend should wait to hear it.

Mr. Deputy Speaker, Sir, I beg to reply.

(a) The project was constructed between 1986 and 1991 at a total cost of Kshs4.5 billion. At full capacity, the dam holds 1,600 million cubic metres. The power station has a capacity of 106 megawatts and the power generated is 360 Gigawatt hours per year.

(b) The communities displaced by the project were awarded monetary compensation for the loss of dwellings, cattle bomas, beehives and ceremonial sites. An amount of Kshs11 million was paid out to 847 households. The County Council of Pokot was given Kshs19 million for loss of trees and grazing land.

The Kerio Valley Development Authority (KVDA) has continued to support the communities around the reservoir by implementing various projects such as construction of dispensaries and support to schools, upper catchment conservation of the Turkwel Dam to reduce siltation of the dam reservoir. Currently, an area of 4,000 square kilometers is being covered through afforestation, soil and water conservation measures.

Youth empowerment programmes through creation of informal jobs is being done and livestock improvement programs and fish farm at Turkwel Dam which have improved livelihood in the region.

(c) The project generates Kshs900 million annually, out of which KVDA receives only Kshs45 million which caters for the dam and the reservoir monitoring as well as catchment conservation. There is no specific amount of money allocated to Pokot and Turkana counties.

Mr. Ethuro: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for that answer. I want also to thank him for the good job they are doing there. This is one project that should really help in more ways than one. The dam is in the Pokot County and the power generation plant is within the Turkana County. We were expecting that this project would actually bring the two communities closer than it is doing now. In fact, it is causing more conflicts among these communities.

He says the plant is generating Kshs900 million per annum, but only Kshs45 million is given to KVDA which is supposed to be doing work in these two areas. If you look at the compensation he talked about of Kshs11 million was paid to 847 households in Pokot County. I appreciate it. However, part of the programme of this project was the cultivation of 100 hectares under irrigation on the lower catchment area of River Turkwel which is yet to be done and which will support a community that is food insecure. When will the Government ensure that the 100 hectares of irrigated land is done in order to help food security in the Turkana County?

Mr. ole Metito: Mr. Deputy Speaker, Sir, I fully agree with the hon. Member that if the water from the Turkwel Dam is utilized to its maximum for irrigation in the area,

the problems of food insecurity in the area would be half solved. The problem as has been put by the hon. Member is that out of the total income generated from this project Kshs900 million, only Kshs45 million goes to my Ministry through KVDA. The reminder about Kshs855 million goes to KenGen and to the Ministry of Energy.

The project has got two sides: power generation is under the Ministry of Energy and the maintenance of the dam reservoir is under my Ministry. So the Kshs45 million given to KVDA is only used for dam preservation and also maintaining of that dam. However, it is true that there is a mismatch because we have always been also trying to talk to the Ministry of Energy and see whether that allocation can be increased, so that the issue of irrigation which is under KVDA can be done to its full potential. It is just the issue of funds.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. While I appreciate the Assistant Minister's response, is he in order to actually evade answering my question in terms of giving support both to the Pokot and Turkana counties on the basis that they are in charge of the dam, which happens to be in one county? I am dealing with the Government. I am not dealing with sectarian issues here.

Mr. ole Metito: Mr. Deputy Speaker, Sir, the little we are getting as Kerio Valley Development Authority (KVDA), we are trying to share it equitably between the two counties. For instance, in the Turkana County, we have done a two-kilometer piped water project to Lorokol Village. We have set aside Kshs2.5 million to build a secondary school in the same village. On the Pokot side, we have built a dispensary in a village called Wakor. We have also built a dormitory in Ritim Primary School and dug five ponds. We have also provided nets and training for the fishermen on both sides. So, to me, the Kshs45 million given to the KVDA is being used properly for the two counties.

Mr. Koech: Mr. Deputy Speaker, Sir, this project is located in a region, and the communities around that place are really challenged in terms of supporting their students to go to secondary schools and universities. Though the Assistant Minister has indicated that they only receive Kshs45 million, could he inform the House what exactly he is doing to ensure that he supports fully as many students as possible from that region to access secondary and university education? Could he consider giving Kshs10 million for scholarships and bursaries, so that that community can be uplifted?

Mr. ole Metito: Mr. Deputy Speaker, Sir, that is a very good question and I agree with the hon. Member. It is a very good suggestion. Our only challenge is the amount of money that we receive. This is because if I tabulate how the Kshs45 million per annum has been utilized by KVDA, you will fully agree with me that they have used it to the maximum. However, we are in constant negotiations with the Ministry of Energy to see whether this Kshs45 million can be increased in terms of percentages instead of being a constant figure every year. If a certain percentage is given to KVDA, I think they can allocate the money, or consider that very good suggestion from hon. Koech.

Mr. Deputy Speaker: Mr. Ethuro, last question on this.

Mr. Ethuro: Mr. Deputy Speaker, Sir, you know my people are starving and I would like more Members to ask supplementary questions on my Question.

Mr. Deputy Speaker: Order, hon. Ethuro! Proceed and prosecute the Question. You have had more time than any other Member.

Mr. Ethuro: Mr. Deputy Speaker, Sir, this is one project we thought was coming to help us, but as we speak now, people are fighting every day over limited resources.

The Minister in charge of internal security is seated next to the Assistant Minister and I hope he will help. The matter that is more fundamental to us is that we expect this Ministry, through KVDA, to be able to allocate a particular amount of money to each of the counties – Pokot County and Turkana County. Could the Assistant Minister inform the House why he has decided not to be giving money on the basis of allocation? Talk of piecemeal projects, whether through the KVDA or KenGen; talk of specific projects like a school, a dormitory, or a classroom. While they are important, to me, those are about corporate social responsibilities. What we are asking for is a programme of action by the Government that they allocate a specific amount every year for particular development to alleviate poverty and help with bursaries as hon. Koech has suggested. Could he inform the House when he will do so? You cannot continue negotiating for a project that was completed in 1991. Are you negotiating until Jesus comes? Invest in negotiation skills!

Mr. ole Metito: Mr. Deputy Speaker, Sir, with the new Constitution where we now have devolved governments, it is my hope that such projects will be restructured to align them with the new Constitution and then they can use resources within the two counties; such negotiations and those good suggestions can actually be considered; and maybe the allocation of revenue will be increased.

Mr. Cheruiyot: On a point of order, Mr. Deputy Speaker, Sir. This is a project which is in a very critical area of Kenya. It affects marginalised communities, who have suffered for a long time. This is a very serious matter. Would I be in order to recommend to you that you refer the matter to the relevant departmental committee in view of the fact that it is a very serious matter?

Mr. Deputy Speaker: Assistant Minister, for the benefit of the Chair, what is the legal underpinning on how that distribution should be done between KenGen and the community in the place or your Ministry? Is it just an understanding between yourselves, or is there a statutory underpinning for it?

Mr. ole Metito: Mr. Deputy Speaker, Sir, there is no statutory arrangement. It was just done under the normal Government realignment of functions. I know that as a Ministry, we have--- In fact, the committee in charge has actually been handling this matter. We have appeared as a Ministry before that committee.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker. In the light of how the Assistant Minister is trying to answer the question that you have put to him, it appears he is not very sure. I would support hon. Cheruiyot's position. I think it is high time we started talking openly about these things. KenGen is receiving over Kshs800 million and it is KVDA which is doing maintenance of the dam and we know the ownership of KenGen. Even though the Government has ownership of it, it is also in private hands. There is a large percentage. Transcentury owns a very large percentage. Why are we, as a country, giving a lot of money and profits to private individuals, yet the poor Pokots and Turkanas cannot get any funding from this body? Of what use is this dam to us?

Mr. Litole: On a point of information, Mr. Deputy Speaker.

Mr. Deputy Speaker: Who do you want to inform?

Mr. Litole: Mr. Deputy Speaker, Sir, I want to inform both parties.

Mr. Deputy Speaker: Is the Assistant Minister ready to be informed?

Mr. ole Metito: Yes, I am ready.

Mr. Deputy Speaker: Proceed!

Mr. Litole: Mr. Deputy Speaker, Sir, I want to inform both sides that, that area is under Pokot County and not under Turkana County. Therefore, the idea of sharing this relief does not arise at all. The area, Lorogon, which the Assistant Minister is talking about, is purely in Kacheliba Constituency.

Mr. Deputy Speaker: Order! Whereas your information would normally be relevant, the matter being discussed is not about who owns it and who does not own it. It is about the distribution of resources between KenGen and the community of the place in any case, if that is in your own constituency, you should be thankful to the Questioner and others who are helping you to get more funds!

Mr. Litole: Mr. Deputy Speaker, Sir, I cannot be happy about the Question because we are getting our share. We need to increase the share for the Pokot and give zero to the Turkana! So, could the Assistant Minister concentrate on giving more to us?

Mr. Deputy Speaker: Order! You are out of order! Hon. Assistant Minister, on the face of it, this clearly looks like a situation in which taxpayers money is used and the taxpayers themselves, who are very marginalized, are not getting benefits. It looks like there is an element of exploitation – super exploitation - of that community. Nonetheless, the Chair has the ability, powers, mandate and the authority to direct the relevant Committee to move with speed so that we deal with the super exploitation of marginalised, starving and poor Kenyans in that part of the world and report back to this House in a maximum of two weeks. I think the House will be able to deal with the matter.

Mr. ole Metito: Mr. Deputy Speaker, Sir, I just want to inform the House that the Departmental Committee on Agriculture, Livestock and Cooperatives and the Departmental Committee on Energy, Communications and Information have been handling this matter. Maybe, we need to know the progress. However, it is not the first time they have been handling the issue between KenGen and KVDA.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I just want to go on record that if the proceeds from KVDA and Turkwel Project, both power and the dam can help any community of Kenya, including the Pokot, I will be happier. However, I want to go on record that this dam is in the Pokot County and the power project is in Turkana County. That is the official record. It is wrong for another Member to mislead the House and persistently so.

(Mr. Litole stood up in his place)

Mr. Deputy Speaker: Order, hon. Litole! You cannot be fighting over poverty! The Chair would add to the same direction that this be handled by a joint Committee on the Departmental Committee on Agriculture, Livestock and Cooperatives and the Departmental Committee on Energy, Communications and Information. Indeed, the process has already been on, but nonetheless, the emphasis is on the joint Committee.

Next Question by Mr. Mwiru!

Question No.1046

POSTING OF OCPD TO
THARAKA NORTH DISTRICT

Mr. Deputy Speaker: Mr. Mwiru not here? The Question is dropped.

(Question dropped)

Mr. Deputy Speaker: Next Question by Mr. Mbadi!

Question No.1139

PAYMENT OF HARDSHIP ALLOWANCE
TO TEACHERS IN SUBA DISTRICT

Mr. Mbadi asked the Minister for Education:-

(a) whether he is aware that Suba District was gazetted by the Government as a hardship area in early 2010; and,

(b) when the Ministry will start paying hardship allowance to teachers in the district.

Mr. Deputy Speaker: Minister for Education! Why is this fascination with the Front Bench going to the Back Bench?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, I beg your pardon.

We had discussions with the hon. Member on this issue. There are negotiations going on between the Ministry of Education and the relevant Ministry, so that teachers of Suba and other areas can get their justifiable allocation of hardship allowance. There has been a confusion of the gazetted areas. We want to get a little time so that a new gazette is put in place and teachers can get their rightful share.

Mr. Deputy Speaker: How much time are you asking for?

The Assistant Minister for Education (Mr. Mwatela): We are asking for about four weeks.

Mr. Deputy Speaker: Hon. Mbadi, are you comfortable with that kind of understanding?

Mr. Mbadi: Mr. Deputy Speaker, Sir, indeed, we have discussed this with the Assistant Minister. You will recall that this issue has been on for a long time. Actually by the time I came to Parliament in 2008, the survey had been done. I have been promised all this time. We have been on this issue together with the hon. Member for Nyatike. Last year, we were told that our districts have been classified as hardship areas. Teachers are supposed to be paid with effect from 1st July, 2010. So, I would only ask if he could make a commitment that after the end of the four weeks, teachers of Suba, together with other areas, which were also classified as hardship areas will get the hardship allowance. They should not be discriminated because teachers and other Government employees in other regions are getting hardship allowance.

Mr. Deputy Speaker: Assistant Minister, could you give that very firm undertaking?

The Assistant Minister for Education (Mr. Mwatela): Mr. Deputy Speaker, Sir, indeed, we have realized that the problem was simply a disagreement between the teachers union and the Teachers Service Commission on the areas. We are committed to make sure that they get their rightful share of hardship allowance.

Mr. Deputy Speaker: It is a commitment. Could you put on your microphone?

The Assistant Minister for Education (Mr. Mwatela): Yes, it is a commitment.

Mr. Deputy Speaker: Fair enough!

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I am just seeking your direction when Question such as this one which is specific in nature comes to the Floor of the House----

Mr. Deputy Speaker, Sir, Suba is one of those pockets of poverty in Nyanza just like the rest of the ASAL areas. The Government gazetted Suba as a hardship area early 2010. We are in August, 2011. Are you satisfied as the Chair that these negotiations that failed for over one and half years, can be finished within four weeks? What undertaking are we taking from the Assistant Minister, so that teachers of Suba cannot continue to suffer more hardship than already the environment has provided to them?

Mr. Deputy Speaker: The undertaking in the opinion and understanding of the Chair, is that the matter will be corrected. In four weeks' time, the Assistant Minister will come here and give good news to the Questioner. So, it is so directed that the Question be listed on the Order Paper four weeks from now.

(Question deferred)

COMMUNICATION FROM THE CHAIR

APPROVAL OF PROF. GITHU MUGAI
AS ATTORNEY-GENERAL

Mr. Deputy Speaker: Hon. Members, I have the following Communication to make.

Pursuant to Section 31(7) of the Sixth Schedule to the Constitution, provision is made that the person holding office as the Attorney-General, immediately before the effective date, that is immediately before 27th August, 2010, shall continue in office for a period of not more than 12 months after the effective date and the subsequent appointment to that office shall be made under the new Constitution. This means that a new Attorney-General is required to be appointed on or before 27th August, 2011.

Hon. Members, by a letter from the Office of the Permanent Secretary, Secretary to the Cabinet and Head of the Public Service, dated 23rd August, 2011, the National Assembly has been advised that His Excellency the President has, after consultation with the Rt. Hon. Prime Minister, nominated Prof. Githu Muigai to be considered by the House for its approval for appointment as the Attorney-General of the Republic of Kenya. I, therefore, direct that the name of this nominee and the accompanying curriculum vitae be forwarded to the Constitutional Implementation Oversight Committee (CIOOC) for consideration prior to approval by the House. The CIOOC is directed to proceed expeditiously and table its report to the House not later than tomorrow, Thursday, 24th August, 2011.

POINTS OF ORDER

Mr. Deputy Speaker: Hon. Members, we will just have only one request for Statement based on the urgency of the matter, which is of security in nature. Hon. Pesa, be brief!

BRUTAL KILLINGS OF SEVERAL RESIDENTS IN MIGORI CONSTITUENCY

Mr. Pesa: Mr. Deputy Speaker, Sir, you will have to excuse me for my voice because of the problem I am trying to state here.

Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for----

(Loud consultations)

Mr. Deputy Speaker, Sir, there is loud consultations and I do not know whether the Minister will get what I am saying.

Mr. Deputy Speaker: Order! Deputy Leader of Government business and other Ministers! Hon. Kabogo, who is now at the Front Bench, could you, please, consult in very low tones!

Mr. Pesa: Mr. Deputy 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 several residents of Migori Constituency from January, 2011.

Mr. Deputy Speaker, Sir, in his statement, the Minister should:-

- (a) state the number of people killed since January this year and the related circumstances under which they were killed;
- (b) state how many among the deceased were business persons;
- (c) state the capacity of the security in Migori to manage insecurity in terms of mobility and capacity; and,
- (d) spell out the immediate measures that the Ministry is putting in place to restore security in Migori Constituency and Migori District.

Mr. Deputy Speaker: Assistant Minister, based on the urgency of the matter, you should be able to have a Ministerial Statement as soon as possible.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, allow me to give the Statement on Wednesday next week in the morning.

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

DEATH OF CHILDREN AT THIKA LEVEL 5 HOSPITAL

Mr. Kabogo: Mr. Deputy Speaker, Sir, four weeks ago, I requested for a Ministerial Statement from the Minister for Medical Services on the circumstances under which children died in Level 5 Hospital in Thika. The Minister promised to bring that Statement two weeks later. It has not come up to now. I seek the indulgence of the Chair.

Mr. Deputy Speaker: Because of the urgency or the need for us to dispose of all these constitutional implementation Bills, except on matters that are so urgent and of security nature, the Chair wants to take as few Statements as possible over the next couple of weeks. Nonetheless, given that this is a matter that also involves the lives of Kenyans, maybe the Deputy Leader of Government Business can tell us when that Ministerial Statement can be available.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I agree with you totally in terms of preference to constitutional matters. We will expedite this Statement and have it in the House on Wednesday next week in the afternoon.

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

UPSURGE OF INSECURITY
IN UASIN GISHU COUNTY

Mr. Kutuny: Kwa hoja ya nidhamu, Bw. Naibu Spika. Mnamo Februari 22, niliuliza Taarifa kutoka kwa Waziri wa Mikoa na Usalama wa Ndani kuhusiana na kuzorota kwa usalama katika sehemu ya kaskazini mwa Bonde la Ufa ambako uvamizi ulifanyika katika mikahawa tofauti tofauti katika Mji wa Eldoret na watu wakauawa na wengine kupatikana kiholelaholela kando ya barabara katika sehemu ya Kitale. Tangu wakati huo hadi sasa, Taarifa hiyo haijaletwa Bungeni. Kuzorota kwa usalama umekita mizizi kwa sasa na uvamizi unafanyika kila wakati. Ningeomba umshurutishe Waziri mhusika atupatie Taarifa hiyo ambayo inaweza kuleta afueni kwa watu wengi ambao wanahofia maisha yao kutokana na uvamizi huo ambao unafanywa na makachero tofauti.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Bw. Naibu Spika, nitaleta Taarifa hiyo by next Wednesday---

Mr. Deputy Speaker: Bw. Waziri Msaidizi, kulingana na kanuni za Bunge, hawezi kuchanganya lugha mbili kwa wakati mmoja. Kwa hivyo, useme kwa Kiswahili na utueleze ndio tuelewe!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Bw. Naibu Spika---

Mr. Deputy Speaker: Sema utalete taarifa hiyo Jumatano ijayo!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Bw. Naibu Spika, nitaleta Taarifa hiyo Jumatano wiki ijayo!

Mr. Deputy Speaker: Sawa Sawa!

(Laughter)

SALE OF GRAND REGENCY HOTEL

Mr. Ogindo: Mr. Deputy Speaker, Sir, sometime back, I sought a Ministerial Statement from the Deputy Prime Minister and Minister for Finance. He brought the Statement on the sale of Grand Regency Hotel, but the Chair ruled that he comes back

after three weeks, which was yesterday. I was asking for your guidance on how to proceed on this because it was not brought yesterday.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, my calculation was that three weeks were to go up to next week, but if it was yesterday, we will expedite the matter after we finish with all these constitutional matters and bring it next week.

Indeed, I wish to ask for the indulgence of the House that rather than requesting for all the outstanding Statements, we do their comprehensive summary and consider them next week in the order in which they were requested, so that we do not take any more time asking for them now.

Mr. Deputy Speaker: Clearly, I am made to understand that the Speaker had given a very firm direction on that one. So, it is the direction of the Chair now that this Statement should be there on Wednesday morning next week.

PROCEDURAL MOTIONS

EXEMPTION OF BUSINESS FROM PROVISIONS OF S.O.38 (1)

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, the business appearing in today's Order Paper be exempted from the provisions of Standing Order 38(1) being a Wednesday morning, a day allocated for Private Members' business.

Hon. Members, I would like to just alert you that there is a typing error. It is Standing Order 38(1) and not Standing Order 38(2) as indicated in the Order Paper.

As Members will be aware and as per your request, that we give priority to the constitutional Bills, the House Business Committee accepted your request and has not allocated any Private Members' business this morning. In the event, we would like to give preference to constitutional matters. With the concurrence of the House, we can exempt Private Members' business this morning and convert it to constitutional matters. This is a Procedural Motion to convert that, so that we can use this session to do the business that the nation is so eagerly waiting for.

With those remarks, I beg to move.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo) seconded.

(Question proposed)

Mr. Imanyara: Mr. Deputy Speaker, Sir, while I have no objection to this Motion, I nevertheless wish to register my very strong disappointment that we are again being taken for granted. If the purpose was to exempt the Private Members' business, then that business ought to have been on the Order Paper in order for it to be exempted. As it is now, the House Business Committee proceeded on the basis that the House will rubberstamp its decision and the House will, therefore, go straight to the constitutional Bills. This is wrong, unprocedural and except that it is a matter involving the Constitution

and the need to implement the constitutional provisions within the timelines, I would have opposed this.

The message ought to go out to the House Business Committee that this is not a rubberstamp House. We proceed on the basis of the decisions we make when they are made. It is wrong for the Clerks or whoever prepares the Order Paper to go on the basis that the House will exempt the Private Members' business before that business comes to the House.

Mr. Deputy Speaker: Indeed, you have drawn the attention of the Chair to a very relevant matter because there has to be a presumption that in the event this Procedural Motion is not carried by the House; if it is defeated, then what happens? Clearly, what should have been there is that the ordinary business of the House as per the Standing Orders, the normal business should have been listed and then we should have had a Supplementary Order Paper that basically once the Procedural Motion is carried, then we proceed to the Supplementary Order Paper. But nonetheless, given the fact that this is a very important matter that every Kenyan and every Member of this House has a lot of interest in, then we will proceed with the matter as hon. Imanyara has said in line with the overall interest of the country.

(Question put and agreed to)

SPECIAL SITTING ON THURSDAY MORNING

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of Standing Order 20(3), this House resolves to have a sitting on Thursday 25th August, 2011 starting at 9.00 a.m.

As I move this Motion, I would like to recognize the input that has been made on the last Order and I will take the sentiments back to the House Business Committee. I wish to confirm that we are not taking this House for granted. Indeed, we are taking it seriously. We are appealing to the House that tomorrow morning, which is not a normal sitting day be converted into a special session, so that we can use some three hours in the morning to clear some of the Bills that we need to clear.

Mr. Deputy Speaker, Sir, let me also record our thanks to hon. Members for having worked up to midnight yesterday. Some have been working up to late in the morning because of the significance of the Constitution. If hon. Members are willing, depending on the progress that will be made by tomorrow, we may also seek more sessions for Friday. However, if we finish all the business by tomorrow, we will not sit on Friday. That is why we have not combined Friday's session with today's session.

With those remarks, I beg to move and persuade the House that we consider this Motion on the basis of the importance of the constitutional implementation process to this nation.

I ask the Minister for Justice, National Cohesion and Constitutional Affairs to second the Motion.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo) seconded.

(Question proposed)

(Question put and agreed to)

REDUCTION OF PUBLICATION PERIOD OF BILLS

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, pursuant to the provisions of Standing Order 107, this House orders that the publication period of the following Bills be reduced from 14 to 2 days:-

- (i) The Urban Areas and Cities Bill (Bill No. 38 of 2011);
- (ii) The Environment and Land Court Bill (Bill No. 39 of 2011);
- (iii) The Kenya Citizenship and Immigration Bill (Bill No. 40 of 2011); and,
- (iv) The Kenya Citizens and Foreign Nationals Management Service Bill (Bill No.41 of 2011).

Mr. Deputy Speaker, Sir, the essence of this Motion is to facilitate the First Reading of these Bills today, so that debate on them can commence. Hon. Members can make their contributions to the Bills as the relevant Departmental Committees consider them, so that we can have the Report back in time and meet the constitutional deadline. All these are part of the scheduled Bills that need to be passed before the close of 26th August, 2011.

For the same reasons we gave yesterday, and for the same indulgence the House gave yesterday---

(off-record)

Mr. Deputy Speaker, Sir, I was saying that for the same reasons that we gave yesterday, in terms of the need to expedite these Bills, I would like to ask for the indulgence of the House that we allow the reduction of the publication period of these Bills. The relevant Departmental Committees are already seized with the matter. So, we are not losing on the need to have a longer publication period. Members of the public have been involved in the preparation of all these Bills. This House has demonstrated its capacity to appreciate all these Bills and discuss them after the reduction of their publication time.

With those words, I beg to move, and ask the Minister for Justice, National Cohesion and Constitutional Affairs to second.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): seconded.

(Question proposed)

Mr. Njuguna: Mr. Deputy Speaker, Sir, this is, indeed, a critical moment for the Tenth Parliament. Therefore, without any hesitation, I fully support this Motion.

(Question put and agreed to)

BILLS

First Readings

THE URBAN AREAS AND CITIES BILL

THE ENVIRONMENT AND LAND COURT BILL

THE KENYA CITIZENSHIP AND IMMIGRATION BILL

THE KENYA CITIZENS AND FOREIGN NATIONALS

MANAGEMENT SERVICE BILL

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

PROCEDURAL MOTIONS

WAIVER OF REFERRAL PERIOD OF BILLS

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this House orders that the referral period of the following Bills to the relevant Departmental Committees in accordance with Standing Order 111 be waived.

- (i) The Urban Areas and Cities Bill (Bill No. 38 of 2011)
- (ii) The Environment and Land Court Bill (Bill No. 39 of 2011)
- (iii) The Kenya Citizenship and Immigration Bill (Bill No. 40 of 2011)
- (iv) The Kenya Citizens and Foreign Nationals Management Service Bill (Bill No.41 of 2011)

The essence of this is to facilitate the fast-tracking of the Second Reading which will be carried out later today in the afternoon or early tomorrow morning. But the waiver of the referral period does not in any way mean that these Bills should not find themselves into the committees. The committees are already seized with the matter and they will then be bringing their reports before we take these Bills to the Third Reading. We will consider that and basically give us an opportunity to discuss them here as they are being looked into in the committees without having to take more time just to conform with the required time.

I also want to mention that the fourth Bill is not necessarily one of the constitutional Bills, but it will be considered and reassigned. It is interlinked with the third one and hon. Members can have the benefit of looking at the two together. The first

three are the real constitutional ones that we need to bring in the afternoon and, hopefully, tomorrow morning.

With those few remarks, I beg to move.

The Minister of State for Public Service (Mr. Otieno) seconded.

(Question proposed)

(Question put and agreed to)

REDUCTION OF REFERRAL PERIOD OF BILLS

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move:-

THAT, this House orders that the referral period of the following Bills to the relevant Departmental Committees in accordance with Standing Order 111 be reduced from ten (10) to one (1) day.

(i) The Elections Bill (Bill No. 34 of 2011)

(ii) The Power of Mercy Bill (Bill No. 35 of 2011)

(iii) The Employment and Labour Relations Court Bill (Bill No. 37 of 2011)

Again, this is to expedite the commencement of the Second Reading and confirm that, indeed, these Bills are already with the relevant committees. They have been there for one day and the committees are reporting very good progress on that. They will be sharing their views before we get to the Committee Stage and the Third Reading.

With those words, I want to thank the House for the indulgence so far, and I beg to move.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo) seconded.

(Question proposed)

Mr. Chanzu: Mr. Deputy Speaker, Sir, as we support this because of the urgency of this matter, I just wanted to say that I thank the Minister for the assurance that the committees are already seized with the matter. But I hope that there is adequate time being taken both by the committees and the Office of the Clerk. We notice that some of these Bills, sometimes, come up with errors and because of the urgency of the matter, it is good that we are thorough with everything that we are doing, so that we do not come up with errors. That is because of the interest that the public has in the matter.

With those few remarks, I beg to support.

(Question put and agreed to)

MOTION

ADOPTION OF CIOC REPORT ON JUDGES/MAGISTRATES VETTING BOARD

THAT, this House adopts the Report of the Constitution Implementation Oversight Committee (CIOC) on the approval of Mr. Sharad Rao as Chairperson of the Judges and Magistrates Vetting Board, Mr. Justus Maithya Munyiithia, Ms. Roselyn Odhiambo Odede, Prof. Ngogho wa Kariuki, Ms. Meulidi Mabruki and Mr. Abdulrashid Abdulahi as the Kenyan component and Sir. Stephen Sedley, Chief Justice Georgina Wood and Hon. Ms. Luis Ottis for appointment, as members of the Judges and Magistrates Vetting Board laid on the table of the House on Tuesday, 23rd August, 2011.

Mr. Abdikadir: Mr. Deputy Speaker, Sir, I wish to seek your indulgence to defer this Motion to next week.

Mr. Deputy Speaker: Fair enough! The Chair has already been consulted by the Chair of the Constitutional Implementation and Oversight Committee (CIOC) and is satisfied. I consequently direct that this Motion be deferred to next week.

(Motion deferred)

Next Order!

BILLS

Second Reading

THE COMMISSION ON ADMINISTRATIVE JUSTICE BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, thank you very much for giving me this opportunity to move one of the most fundamental laws that this country has been looking forward to, in the spirit of the new Constitution. Therefore, I beg to move that The Commission on Administrative Justice Bill be now read the Second Time.

Mr. Deputy Speaker, Sir, the main purpose of this Bill is to provide for a legislative framework for managing public administration relative to the citizen. In establishing the framework, the Bill seeks to restructure the Kenya National Human Rights and Equality Commission so as to establish a Commission on Administrative Justice with the latter being the successor to the former. In fact, I want to salute and congratulate the House because they have already passed the Kenya Human Rights Commission Bill in which this restructuring was expressly acknowledged.

Mr. Deputy Speaker, Sir, this Commission will not be subject to control or direction by Government and shall only act in accordance with the values and principles set out in the Constitution and laws of Kenya. But we have already provided that at the end of the first five years, Parliament shall have the power to look at the two human rights bodies and consider whether to extend the mandate or whether to collapse them into one.

Membership of the Commission will be limited to five members. My Ministry has continued to listen to the public and this House and, therefore, if you look at the Bill, we

have proposed that the members be only five instead of the nine in other commissions. It has the chair and four other members. The idea here is to ensure that the Commission is not unnecessarily large. You will find that in Clause 9.

Mr. Deputy Speaker, Sir, the Bill further assigns specific functions relating to investigations and inquiry into public administration by State organs and other public institutions. In essence, the Commission will ensure that the Government publicly owned businesses, bodies created under statutes, public office holders and all other organs of the State are responsive to the needs of the people and provide prompt remedy in cases of failure.

We are also proposing very high qualifications for the chairperson and commissioners. You will find that in Clause 10. They will be recruited transparently in the usual manner that this country has now understood since last August. This will ensure that only the most professional persons with proven integrity are appointed. However, all these provisions notwithstanding, I am aware that there has been considerable debate touching on restructuring of the KHREC into two or more in terms of Article 59. I sincerely feel humbled and very much encouraged by the responses that the House has shown towards this matter.

Mr. Deputy Speaker, Sir, the Bill is responsive if I may say so. If you recollect when His Excellency the President addressed this House on 22nd March, he specifically stated that out of his long experience, his Government will be bringing this Bill to the Floor of the House for purposes of enactment. You will also recall that as soon as His Excellency the President got elected, one of the most fundamental things he did was to establish what is otherwise in Kenya called the *Ombudsman* Complaints Committee. This was done through the use of a gazette notice.

Listening to the public who come to Government offices day in, day out, they are gravely mistreated; files are lost and often you find they are being requested for small bribes in situations where, under the new Constitution, they should enjoy open and transparent support of Government officers without any qualification whatsoever. Therefore, the need and the time for this law has come.

With those far too many remarks on an issue that is beyond reproach, I beg to move. My good friend the Deputy Leader of Government Business, Mr. Kimunya, will second the Bill.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to second this important Bill and to recognize the fact that we are basically creating the structure of an existing institution and formalizing it. It was created by a Gazette Notice and it has proved to be useful to the Kenyan people. With the rights that have been put within our new Constitution, it is important that we give the people the legal vehicle where they can go for redress should the need arise, as we move on, so that people can realize the full fruits of the new Constitution.

This Bill has been the subject of discussion. It has also been subjected to discussion inside and outside within the committee framework and outside within the workshops that were held in Mombasa. I believe there is concurrence. I am also aware that some committees have even prepared the necessary amendments. This is a Bill we really do not need to belabor on.

With those few remarks, I beg to second.

(Question proposed)

Mr. Kioni: Thank you Mr. Deputy Speaker, Sir, for giving me an opportunity to contribute to this Bill on the Commission on Administrative Justice.

I want to again thank the Minister for the work that he has done and for bringing this Bill to the House. I want to thank him because this is an issue that has been in the public domain and has occupied the minds of many people for a long time.

Mr. Deputy Speaker, Sir, I also want to concur with the Seconder of the Bill that a lot of debate has gone into this and we expect the committee to come up with the proposed amendments. Even as we say so, I want to thank the Minister because we have reduced the number of commissioners from nine to five. I think we have still not gone to the extent that is now admirable, which I think is three commissioners. We do not need more than three commissioners in these places.

You will realize as we go on, some of the commissions that we have already put in place, the reports that we continue receiving is that a number of the commissioners are a baggage to the commissions. There are those who are contributing nothing. Some of them do not even show up during meetings. There are those who have never said anything since they were appointed to those commissions. In essence, this confirms the fears that, while we thought we were balancing regions, we were just sending names but nothing in terms of content or competence from the persons that we put in those commissions.

So, the continued bloating of these commissions is of no value to Kenyans and is actually an unnecessary cost to the taxpayers. Continuing to reduce them to the minimum of three as stipulated in the Constitution is a desirable thing. We would want to encourage the Minister that the commissions to be appointed hereinafter should be reduced to three so that we are able to save some of these costs.

Mr. Deputy Speaker, Sir, the other thing that I think is important is that we have seen in the appointment into these offices the issue of horse-trading. This may have passed last night but this practice of horse-trading is not producing quality members to the commissions. All we want to do is to send people from our region. I come from Nyandarua County and I can tell you if I was to count the number of people appointed, we have got a raw deal. However, if we are getting people from other areas who can serve well, that is what we want as a country. This issue of horse-trading has given us people who cannot perform and people who are going to give us unnecessary work of trying to redo the legislation in this House. If we have not learnt, then we will not have another opportunity to learn. It is important that people are appointed to commissions for only one reason; that they can perform and deliver services to the country so that all of us can benefit.

Mr. Deputy Speaker, Sir, I have said this before and I would like to say it again; we started with a platform where we thought that there is a community that has the majority. This country is made up of minorities. For you to be the majority you need to have 50+1, and there is no single community that can command 50+1 in this country. So, we are actually a country of minorities and all of us must work together and make sure that we benefit from the spoils that are in this Constitution. When we talk about minorities in the Constitution, we should realise that all communities in this country constitute minorities. There is no single community that is a majority. Some may be more

than others but that does not make them the majority. As we continue appointing members to commissions let us be guided more by the need for merit, and the need to deliver services to Kenyans because every other Bill that we pass has a commission to operationalize it. If we continue like that, we will end up with the case that we have, where we have an anti-corruption body that has become something else rather than what we all sat here to bring

Mr. Deputy Speaker, Sir, I want to thank the Minister and congratulate him for these Bills that have continued to come. This is a very important office and the panel that has been put together to give us the commission needs to understand that in so doing, it is also part of governance and they will be expected to bring in people who can check into governance in this country. This is a very important and serious commission.

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

Mr. Imanyara: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity also to rise in support of this Bill. I do notice that it is a successor commission to the Public Complaints Standing Committee that had been established through the Gazette Notice No.5826 of 29th June, 2007. You will recall that I did seek a Ministerial Statement in this House regarding an advertisement that had been placed by that Complaints Commission in the media seeking to fill certain vacancies whose holders' terms were coming to an end. I pointed out that it was a waste of public funds to proceed that way when we were anticipating that we would be passing this law that we are creating under this Commission. Despite my concerns at the time, the Minister proceeded to act under the Public Complaints Committee to appoint these officers who will now apply afresh if they do wish to serve under this commission. I do hope that it will not be necessary again in future to expend public funds in circumstances such as this where we anticipate that the law will change in three months but still proceed to spend millions of shillings of taxpayers' money for purposes in futility.

Mr. Deputy Speaker, Sir, having said that, I wish to point out that under Clause 29(3) of this proposed Bill regarding the jurisdictions to investigate says:-

“If the matter referred to under subsection (2) cannot be resolved by conciliation, mediation or negotiation and the Commission determines that the administrative action was carried out unjustly or unreasonably, the Commission shall make such recommendations as it deems fit.”

I think this is very big and I hope that when the matter goes to the committee they will look at it so that we do not leave the recommendations completely vague. We should set out what recommendations the commission may actually make as a result of investigations. Otherwise they purport to be carrying out an investigation and then take actions that do not, in fact, reflect the seriousness of the complaint that is made.

Mr. Deputy Speaker, Sir, if you look at Clause 30(c), you will notice that the commission shall not investigate a criminal offence. Most of the complaints regarding these administrative actions also amount to criminal offences. When you clearly take away the jurisdiction to investigate a criminal offence, what are you leaving for the commission to investigate? We need to clarify this so that it is made clear that it is only where there are pending criminal proceedings or where there are pending investigations by one of the investigating agencies--- This can be found from the complainant to the commission who can be asked a simple question as to whether they have referred this matter to the police for investigation or to any other investigative body. However, when

you say that it shall not investigate a criminal offence, you are diluting all its powers because most of these complaints amount to criminal offences. In any case, I notice that one of the recommendations under Clause 41 states:-

“The Commission may, upon inquiry into a complaint under this Act take any of the following steps-

(a) where the inquiry discloses a criminal offence, refer the matter to the Director of Public Prosecutions---”

There appears to be a contradiction there which needs to be addressed. I hope the Minister will look at this when the Bill goes to the committee.

Mr. Deputy Speaker, Sir, Clause 34 says:-

“The Commission may decline to investigate a complaint if the Commission considers that-

(a) there are in existence adequate remedies under any written law or administrative practice---”

Again, this dilutes the purpose for which this commission is being set. There is no action that an administrator can take or that a complainant can bring that cannot be subjected to other existing laws because investigation under criminal law and going to court--- These are remedies which are in existence. So, when you say that the commission may decline to investigate if there are in existence adequate remedies under any written law or administrative practice, what are we really saying? I think there are many areas in this Act that we need to look into more seriously so that we do not create a commission that is just used for public relations but is toothless. I hope these concerns will be taken into account by the Minister when the Bill goes into the committee so that we can give this commission teeth so that it is not a toothless bulldog that we only talk about but cannot take concrete measures to correct administrative malpractices.

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

Mr. Bahari: Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. I beg to oppose this Bill because as we are all aware, we are under a new Constitutional dispensation. The current Constitution is crystal clear on many issues that are related to matters of maladministration which this country has been suffering from for quite a long time. I will give the example of the Bill of Rights which is quite explicit and spells out many issues that have been vague in the past. In the public service, the issue of efficiency and doing the right things is clearly spelt out. We have reorganized the Government and the different arms of the Government are now exclusive of each other and the mode of appointment has also changed. The persons who have been appointed are generally new. It is fresh blood that has come in. With all that my expectation is that there will be less of this work to be done given the fact that in the past, the Complaints Committee has not done much in terms of the responsibilities assigned to it. I strongly feel that the Kenya Human Rights Commission will be able to handle these issues.

Mr. Deputy Speaker, Sir, we are obliged as a Parliament to ensure that we also carry out our responsibilities responsibly as we have done in the past. In this instance, Kenyans are already overburdened. The price of sugar today is over Kshs200 per kilogramme and yet we are using taxpayers' money to create commissions which are unnecessary. We expect the Government to be responsible and the different arms of the Government should also check on each other as is required. Therefore, this is absolutely unnecessary. I do not want to anticipate that the number of commissioners will be

reduced and all the other issues that are likely to come up in the proposed amendments by the committee. The amendments simply say that the committee does not strongly feel that this commission has to be in place. If there are such feelings, then let us put it right and ensure that the right commission, which is the Kenya Human Rights Commission should be able to handle these issues. I expect that commission not to be bogged down by issues which appear to be obvious and must be implemented in the Constitution.

With those few remarks, I beg to oppose.

Mr. Mungatana: Thank you, Mr. Deputy Speaker, Sir. I want to take this opportunity to support the setting up of this Commission on Administrative of Justice.

Initially, I held a very strong opinion, like hon. Bahari, that all these must be collapsed into the Kenya Human Rights Commission. However, looking at the way this Bill has been drafted, it will be unfair for me to oppose it because it really affects the people I represent. The people who have suffered the greatest injustices of administrative action are the ones who are in far-flung areas of this Republic. Chiefs, District Officers (DOs) and District Commissioners (DCs) have been the biggest face of oppressive administrative action against the people. We have come a long way, of course, and many things have changed but forced *Harambee*, forced labour and failure to act on issues that affect *wananchi* directly have been the bane of maladministration from what is called the "Provincial Administration" that used to exist. In fact, this is the reason many people at some point really wanted to do away with the Provincial Administration. It is in the far-flung areas where you will find the face of ugly administrative action. People take long to get their identity cards or birth certificates. If they want to see so-and-so they are told that they cannot see him. In some areas they are told that to see an administrator, they must bring chicken, a black or brown goat and so on. This is what people have been suffering from for many years; ugly administrative action. This is why I was requesting the Minister to pay attention for a few minutes.

Mr. Deputy Speaker, Sir, the people who have suffered maladministration are not from town. Town people here in Nairobi, Mombasa and Kisumu rush to the High Court very quickly and get judicial review remedies. They also go to the police headquarters where they get assistance. They also go to the big offices in the Government and get assistance. However, the people out there in the far-flung counties like Maralal and Tana River--- This is where you will hear that the Kenya Wildlife Service (KWS) officers have gone and beaten up people in a village and tell them that they are the ones who killed a crocodile or hippopotamus when, in fact, these people were not involved. They are forced to carry that meat and are taken to court to be charged falsely. It is our people out there who suffer this. I was asking the Minister: "What sense does it make to have Clause 6?" I do not know why this is being repeated all the time; that the headquarters of the commission shall be in the capital city. Why is it that even commissions that have nothing to do with the Capital City have their headquarters in Nairobi? I thought the sense of this new Constitution was to take the power to the people and try to make the Constitution a reality to the people on the ground. I propose that this should be one of those commissions whose headquarters should not be in Nairobi. If they can come to Tana County to set up the headquarters, I would be most obliged. If they cannot go to Tana County, remove its headquarters from Nairobi. I am damn serious. Bring one commission to the Coast, for example. Why is the Government concentrated here in Nairobi? Why can we not follow the example of South Africa, where Parliament sits far

away and the President sits in another place in Gauteng Province? The seat of justice is in another place. Why are we all focusing on the headquarters of the commissions being in Nairobi? Why can we not take one commission headquarters to Kisumu and another one to Eldoret and Mombasa respectively? Why should the headquarters of these commissions be in the Capital City? I propose that this commission's headquarters should be set up in Mombasa, and maybe another one in Garissa because we need to open up this country. I really think that this must completely change. So, I will propose that the Minister seriously considers that or in the alternative, I move an amendment in the Committee stage, which I hope the Minister will not object.

Mr. Deputy Speaker, Sir, on the functions of this commission, as I have already explained, they require that they be spread in the counties, particularly the county where I come from. This is where the tyre meets the road and the rubber meets the tarmac. I would request that we must have a clause in these important commissions that serve our people to the effect that they must have presence in the counties. We must not leave it the way it is because if we say that the headquarters, for example, shall be in Mombasa which is the second biggest city in this land and then say; "but the commission may establish branches in any place in Kenya," we have left it so vague. The statistics in this country show that 60 per cent of Members of Parliament do not get back. Assuming that those statistics are true, these ones will be even more because many Members of Parliament may not defend their seats because they will go for other seats. So, we will probably have an 80 per cent turnover. This is the opportunity for us to make sure that there is legislation that will help our people in the countryside. If we do not do it now, we will not do it next year. I prophesize that the next generation of Members of Parliament will be *dot.com* and tweeter friendly kind of people. They will be city guys. You will not tell them to set up commissions' headquarters in Tana County. They will probably ask you: "Where the hell is that place?"

We must enact this law now and properly. Let us have a clause that makes it compulsory to make sure that this service will be available in the countryside. It will be compulsory and mandatory to have this commission where those complaints arise. The ordinary people of Kenya do not have these things because all of them are in Nairobi and yet the people of Nairobi do not need them because they have further alternative remedies. I urge the Minister to seriously consider coming up with a clause that will not make it as loose as it is, "may establish branches." At least, for the commissions that will make our people get the services of the new Constitution, let this be a reality. I urge the Minister to consider fixing a nice clause in the Bill that will say: "There must be branches in the counties, and if not any other county, at least, in Tana County." We need to have the headquarters of this commission there.

Mr. Deputy Speaker, Sir, I remember when we were young there was a DO who came to our village -Ngao - and said that the people of that village were very proud. He said that he had been given a brief that they must be disciplined. The guy just rounded up people. I remember a cousin of mine who was a teacher and a leader in the Kenya National Union of Teachers (KNUT) movement resisted and because of that, he was shot by Administration Police. All the men were rounded up in the village. I remember sleeping on top of a tree at night. We were at home for December holidays. Our parents had just come for holidays in the village. These things are real in those places. Of course,

that guy was later arrested. He gave himself to the DO when our politicians got into action later on. That should not happen at all if there is the presence of such a body there.

Finally, in the functions of the commission, we have forgotten to include a clause that says it must make sure that its services are known to people. In other words, it has a duty to educate people. It should tell people that it is there. Most of us who are elected from the countryside know that our people are not aware of many Government services. So, it must be one of their roles. The commission can come out on radios, particularly regional and community radios, and tell people that if they go to a public office and a public officer is not giving them good service, they are entitled to make a complaint on that particular office. The location should also be clearly stated. If that is not done, like the previous speaker said, some of those people have been here in Nairobi and you cannot see what they do. We, therefore, set up a commission, vote in a lot of money for its budget and we do not see anything happening. It is because people in the countryside are not aware of those commissions and how important they are.

I urge the Minister to insert this clause so that our people, who really need that service, can be informed. They will be told that it is because of the new Constitution that such a commission can help them in this or that manner.

With those remarks, I beg to support.

Ms. Leshomo: Ahsante sana, Bw. Naibu Spika. Ningependa kuunga mkono mambo ya kamati hii. Kitu cha muhimu ni mwananchi kupata huduma za Serikali karibu naye. Kamati hii itakuwa muhimu na itasaidia wananchi wote wa Kenya. Saa zingine, unaweza kupata kamati imeundwa lakini haiyajali masilahi ya wale walio mashinani. Kamati kama hizo hazijali watu walio mbali. Zinashughulikia watu wanaoishi sehemu kama vile Nairobi, Mombasa na Kisumu.

Ukiangalia wananchi ambao wako katika sehemu za mashinani, ni watu waliotengwa. Ikiwa itasemekana kupata kazi katika kamati lazima mtu awe na digrii au Masters degree, je, Wakenya wote wamesoma mpaka wakafika viwango hivyo? Sio wote waliosoma. Wale watakaofaidika ni wale wamesoma kwa vile masomo yalifika sehemu wanazotoka zamani.

Mambo ya kuchagua viongozi wa commission lazima yaangaliwe vizuri. Mtu akichaguliwa kama kiongozi, uongozi pia ni kipawa kutoka kwa Mwenyezi Mungu. Mtu anakuwa kiongozi kwa sababu amepewa kipawa hicho na ana bidii katika roho yake. Watu wa mashinani watafungiwa tukisema lazima wawe na digrii, diploma ama Masters. Kuna watu ambao wamepewa vipawa vya uongozi na Mwenyezi Mungu. Kamati itakapoundwa, inafaa iwe na watu wa kutoka mashinani. Kamati hiyo inafaa iwahusishe Wakenya wote. Haifai kuwafungia wengine.

Kusema ukweli, katika kuunda kamati hizo, kuna watu ambao hawahitajiki. Hebu angalia kamati zilizoundwa juzi, Kenya kuna makabila 42 lakini kamati nyingi hubuniwa na watu kutoka makabila matatu ama manne. Katiba hii inalinda Wakenya wote na tunataka iwalinde Wakenya wote. Kamati zisiwe zinamilikiwa na watu wa kabila moja. Tunataka Wakenya wote wajivunie mambo yaliyo Kenya yetu. Hatutaki watu wengine kuwekwa kando. Ni kama wengine hawastahili kupata hizo kazi. Hata wengine wakituma maombi yao, hawawezi kuwa shortlisted ili waweze kujitetea. Tulipitisha Katiba sisi wote. Ningesema kwamba mambo ya digrii yawekwe kando wakati wanachama wa kamati wanapochaguliwa.

Ahsante kwa kunipa nafasi hii.

Mrs. Shebesh: Mr. Deputy Speaker, Sir, I support this Bill not just because of my gender, but because I am also a Member of this house. I think that the Minister did not do justice to this Bill as he was moving it. We were of the opinion, from the very beginning, that the Kenya National Human Rights and Equality Commission that had already been set up should only be split into two commissions. The agreement for us to bring on board the third commission was because of its functions that Kenyans have really never understood.

The first thing I want to say is that--- I believe this commission will be answerable to another Ministry unlike the Kenya Human Rights Commission. I suggest that it be answerable to the Ministry of State for Public Service. The reason is obviously explained, because of the work that the commission will do.

Secondly, in the functions - and that is why I said that the Minister for Justice, National Cohesion and Constitutional Affairs is eloquent when he is passionate about something and he can do a good job. However, on this one, he did not really do it. That is because Kenyans have never really known that even in the previous Kenya Human Rights Commission, there was an opportunity to complain about such issues. Kenyans have always thought that if you are mistreated by the Government, then that is your fate. This is a very important commission. The only problem is that it has never been known and its functions have never been understood. That is why, in my first recommendation, I will suggest that there be proper public awareness on this commission. That is because it can also disappear; with Kenyans just thinking it is another commission for the people. Therefore, public awareness over this commission should be our first priority.

I also believe that because of the formation of the Kenya Human Rights and Equality Commission, which I really stand convinced that we have cut it into pieces--- I really feel that we should be able to put a provision where we can relook into some of these commissions after a few years, and see whether we can go back to having one commission that can do all the work. Once we have what we are looking for, we should go back and have one commission. Therefore, I am thinking that there must be some kind of provision that if it achieves its goals within a certain period of time, let us say ten years, the House can review the necessity of all these commissions.

Let me also speak about the issue of those who are qualified. The issue of 15 years, we have said it and we keep on saying it, I do not know what the people who are drafting these Bills are thinking about and now we are getting irritated. Putting 15 years experience as a requirement is creating jobs for retirees. We are not going to accept that. We want to create jobs for the young people who are not yet employed in this country. The moment we demand for 15 years experience, we are locking them out of job market and creating job opportunities for other people. Please, let us limit these years of experience because I do not even see the need for it here.

In addition to that, again the qualification of ten years in the related field may lock out very good people. I would urge the Minister and the committee that will be looking at these qualifications to consider them carefully because I do not want us to deny some people opportunity to serve this country. I want to give an example of people who I know are heading different organizations who have no training in those fields, but they are doing a very good job. I want to give the example of the CEO of *Nation Media Group*, Mr. Linus Gitahi who is a pharmacist running a media company. He is doing a very good job at it. I am tired of also creating jobs for lawyers. I think lawyers have got enough

jobs. This obsession with lawyers should not limit us in giving other Kenyans opportunities to serve this nation. Public administration means we are looking for people to come from the Government and we give them jobs. Let us open up the parameters because it has been proved that experience at work and a good track record is what is needed. I believe we do not need to limit.

Mr. Deputy Speaker, Sir, the last thing I want to talk about is the issue of the selection panel. Again, I see a selection panel consisting of members from the Office of the President, Office of the Prime Minister, Ministry responsible for matters relating to justice, Public Service Commission, Association of Professional Scientists, Kenya Private Sector and National Council. However, I see no involvement of professionals from outside the Government. We cannot have a selection panel that is made up of Government representatives alone and we want it to investigate the Government. Really, it cannot work. So, that definitely for me must change. We must look for other bodies that are more representative of the general public, especially the civil society. I know most of us do not like hearing about them, but they are part of our system. If we do so, I believe that we will have a selection panel that will be fair.

With those few remarks, I wish to support.

Mr. Baiya: Thank you, Mr. Deputy Speaker, Sir. I also wish to support this Bill, but subject to the following comments: Commissions on administrative justice generally have been misused by the Government. Whenever a scandal or a serious maladministration arises, the Government has the tendency to appoint commissions to investigate even if the matter is in the public domain. As the matter filters out of the public limelight, it is forgotten and the commission's report is shelved to gather dust.

Mr. Deputy Speaker, Sir, the biggest danger with regard to commissions is that they are created by the Government to hoodwink the public that something is being done or they can channel their grievances through them. However, after investigation is done and a report written, that is the end of the matter.

Looking at the functions of this commission as provided in Section 8, we may fall in the same danger. Here the commission is empowered to conduct investigations into State affairs about maladministration and complaints, among other functions. However, at the end of the day, they are only supposed to make a report on those investigations. To me, this amounts to waste of public resources. They must come up with solutions to these maladministrations and complaints.

We do not want to have a powerless commission that cannot even enforce any of its critical finding. Even in cases where they find there is need for compensation, all it can do is to recommend. The Bill does not say recommend to who and why. To many people who have been victims of maladministration or injuries, they are looking for redress. Surely, a recommendation for compensation without reference will not help them. Therefore, a recommendation without further orders or any enforcement is an insult, to say the least.

Mr. Deputy Speaker, Sir, the other powers that have also been donated to this commission include giving advisory opinions or proposals with regard to improvement of public administration. That is all. Again, there is no provision to grant to this commission powers to ensure that its recommendations are acted upon. This is exactly what we have had in this country. We get a lot of reports and advisory opinions, be they from Controller and Auditor-General and wherever else, that gather dust year in, year out. If we create

another commission to be repeating the same thing, certainly, we are doing a great disservice to the people of this country.

Mr. Deputy Speaker, Sir, coupled with that fear about the powers and functions of this commission, is also about what has been alluded to by my colleague regarding the way this commission will be constituted. Under Section 11 of this Act the power to set up the selection panel will be done by the Office of the President, the Prime Minister, the Ministry responsible for matters relating to justice, Public Service Commission and so on and so forth. With due respect, all those offices are basically the Executive. This is the Executive. This commission will be about investigating complaints or challenges regarding the Government itself. If you give the Government the highest leverage in terms of determining who will constitute that commission, then we are also giving it the opportunity to appoint people who will assist it to ensure that they are not exposed.

So, there is need for independence of this commission. We need to bring in people who can demonstrate that they have independence from the Government by the way they will be appointed. This can be achieved first by ensuring that there is diversity in the process through which they are appointed, not simply by the Executive which will be the main culprit to be investigated by this commission.

I would also have expected other than those from the office of the Executive, the other institutions that have been identified such as Association of Professional Societies in East Africa, Kenya Private Sector Alliance, National Council for Persons with Disabilities, among others to be involved in this panel. There is nothing that can really be shown that these three institutions have any unique advantage or link to matters of administration or maladministration or whether they are affected. They do not as such represent the bulk of the victims. They are not people who are likely to be sensitive or responsive to cases of maladministration of human rights violations.

Mr. Deputy Speaker, Sir, so, again, in several other legislations, we have this trend of bills proposing certain selected institutions to be given opportunities to appoint people; the problem with that is that we have ended up using these institutions as avenues for creating opportunities for career seekers. That danger is still there. We would really be seeking that the constitution of this commission should really reflect the genuine people who have genuine interest in proper administration of justice in this country, and who represent the diversity of all the various stakeholders and not just the Office of the President.

Mr. Deputy Speaker, Sir, the other point that needs to be highlighted regards the requirement for qualifications. I also really wish to point out that this setting up of very high qualifications with regard to members of the commission and also restricting them to specific disciplines is also not productive. We need diversity in this commission – diversity even of background in terms of discipline and also experience. We need young people both men and women and also old people, but with this culture of setting up artificially high academic criteria or elitist backgrounds, we will end up actually arriving at people with elitist backgrounds – people who are out of touch and have no ability to appreciate what the ordinary Wanjiku in this country goes through.

With those remarks, I beg to support.

Mr. Oyongo Nyamweya: Mr. Deputy Speaker, Sir, going through this Bill, I have many issues I want to raise. The first point I want to raise is about the composition of the panel of the people who are going to--- The composition of the panel will include

the offices of the President and the Prime Minister. I want us to go back to where we are coming from. If we allow this commission to be constituted the way it is indicated here, this is going to lead to political deals. Just the other day before the Chief Justice and his deputy were appointed, if we had left this thing to the Prime Minister and the President, they would simply have appointed people of their own choice. We know what would have happened if things were going to take that direction. Just as now, if we allow this commission to represent Kenyans, the marginalised groups and the affected people--- The way in which the commission is going to be formed must be changed. If we do not change it, then we are giving people jobs that they do not deserve.

Mr. Deputy Speaker, Sir, when you look at the recommendations that this commission is associated with, there is the complaint about the secretary of the commission. When will somebody in Moyale, or somewhere in a very rural area of Kisii be able to reach Nairobi to read this report? There must be a mechanism by which the commission, if it has to be formed, must have an office at the county level. The commission, if it has to be truly representative, I suggest that the Commission on the Implementation of the Constitution (CIC) be in charge of recruitment. This is because if we allow this Bill to go like this, then it will be like the events of the other day where we had the Attorney-General, Auditor-General and the Controller of Budget selected. These people have been elected as per a political deal which was struck to give them jobs. Can we change from this thinking if we want Kenyans to enjoy the new Constitution that this country fought for and all of us voted for?

If we allow the composition to remain the way it is proposed, why should we involve the Offices of the President, Prime Minister, Registrar of Societies and the private sector? These are the owners of property. These are the people who actually “sit” on other people. So, we must change this. We should have something different so that Kenyans can participate in choosing the panel. Kenyans can have a commission which is going to fight, and not just one which will give people jobs. If we leave it the way it has been put, this commission will just want to give people jobs. They have not said what is going to be recommended. When the commission has done the recommendations, they have not said what judicial process should be used. It is just there. It has no power to prosecute. Even if it gives recommendations, they do not say what will happen to those powers. So, I am finding it very difficult to see the normal compliance with Chapter 33.

Mr. Deputy Speaker, Sir, when you come to Chapter 34, I am finding it very difficult to support this Commission; I do not see what it will do that is not done by the other organs. I do not see its real purpose and whether we are going to help the marginalised and those who are suffering. The commission is supposed to help the marginalised people and to reach the people who cannot reach the Commissioner of Police. The commission is supposed to help investigate for someone who cannot use the Kenya Anti-Corruption Commission (KACC). When you look at its composition, it is an elitist group. It does not serve any purpose. I am finding it very difficult to support it and its composition, unless it is changed so that we can have a commission that will truly represent the marginalised groups, and will really serve the purpose of administrative justice; the way it is, we are just giving people jobs. It will not be effective.

When you look at how they will manage their funds, especially on annual estimates, it needs to show a more transparent manner, so that this commission will be able to serve this nation. If it remains the way it is, it will have no purpose, according to

me apart from giving jobs to a few people whom we want to help. If it will want to help this nation, it will contribute no value at all, because it will have no powers to prosecute. In the recommendations, they have done nothing about it. Its composition is not clear.

Mr. Deputy Speaker, Sir, so, I am finding it difficult to support this Bill the way it is. Thank you.

Mr. Njuguna: Mr. Deputy Speaker, Sir, thank you for this opportunity to also contribute to this very important Bill. Let me start from the outset by thanking the Minister for Justice, National Cohesion and Constitutional Affairs for his efforts and commitment to these Bills. We need real justice provision in this country; I am certain that the formation of this commission will now start that process.

Mr. Deputy Speaker, Sir, one of the concerns that the new commission will address itself to is on the Internally Displaced Persons (IDPs). These are people who have really continued to suffer; they are unsettled and it is high time their plight was addressed. They should be removed from dilapidated tents where they are not able to take their kids to school; they are even not getting enough food.

Mr. Deputy Speaker, Sir, another area that I think needs to be addressed by this commission is the Mau Mau freedom fighters. These people really liberated this country and up to now, their contribution and service to this nation have not been appreciated at all. These people are aged and sick; they are in their twilight years. It is, therefore, important that this commission should also address their glaring concerns. They need land, or somewhere to rest when they pass on. It is important that I recognize that the Minister for Lands the other day talked about doing something about them. He should be able to fulfill the pledge that he made during a public meeting. We have seen how criminals are treated in the streets of Nairobi. Blood-letting has been the order of the day. We are not doing justice to criminals. It is, therefore, important that the CID does its job well so as to investigate and apprehend criminals and take these people to the courts. If they are found guilty, they should punish them according to the law.

Mr. Deputy Speaker, Sir, concerning the headquarters of this Commission, it is indicated that it will be stationed in Nairobi. However, my view is that this Commission must have branches in counties because that is where majority of the people are. This Commission should move down there to hear the cries and sufferings of the people. We know that these people at times have very genuine complaints, but they cannot always be coming to Nairobi. Therefore, it is important that we establish county offices.

Regarding appointments to this Commission, what we witnessed recently has not made us proud. It is important, therefore, that proper criterion is set and proper consideration must be adhered to at all times. We know at times, nepotism and regionalism have been considered as major qualifications. We have been forgetting areas that have been marginalized for the last 47 years. We want to hear somebody from the El Molo community being appointed a Cabinet Secretary in the new administration that is coming. We have noted that some people have been tortured in police cells. Mr. John Muturi Kariuki, a teacher in my constituency was arrested, brutally tortured and lost his life. This should not happen in modern Kenya. These victims must be heavily compensated.

Mr. Temporary Deputy Speaker, Sir, we have street families in our towns and urban centres. These families must be rehabilitated and assured of their security. We must make sure that their children get proper education.

It is vivid in our minds that our children have been defiled of late. Why are children being denied their basic rights? Why should we terminate the life of an innocent child? We have seen old and young people messing up our children. This is an area that needs to be addressed properly. Those major players in our country should be considered as we come to the appointment of Commissioners in this Commission. Teachers, principals, doctors, surveyors, pilots and registrars, among others, have done this country proud, but they have been neglected for a long time when it comes to these appointments. We should also consider the farming community when it comes to these appointments. These are people who have maintained life in this country. However, they have never been represented anywhere. It is high time that we considered members from the farming community and incorporated them in these appointments. Just the other day, we saw the corporate world doing Kenyans proud. They were able to raise close Kshs500 million to respond to the plight of starving Kenyans. What have we done for these people? Nobody has been considered. This is the prime time to think about them.

Mr. Deputy Speaker, Sir, Parliament is the voice of the people. Therefore, all appointments in this country must be vetted in this House. This House has the best capacity to interrogate and vet these appointments for the good of this country. It is this national institution that should be vested with that responsibility. We have been appalled by some appointments in the past. This anomaly must be corrected.

With those few remarks, I fully support the faster formation of this Administrative Commission.

Mr. Wetangula: Mr. Deputy Speaker, Sir, my comments are going to be very limited indeed.

The first one is on Clause 6 of the Bill where it says the headquarters of the Commission shall be in the Capital City, but the Commission may establish branches at any place in Kenya. I do not agree with this.

This Bill is coming on the heels and within the context of devolution. The most aggrieved persons that require the services of what we are setting up here which is more or less like an Ombudsman are people in the rural areas. Those are the people who suffer injustices from public administrators. Those people who suffer injustices from all manner of people from rich people depriving them of their properties and so on. I would be quite comfortable if the Minister adjusted this Clause to read the headquarters shall be in the Capital City, but the Commission shall establish branch offices in every County. We want to see a situation whereby each County is served by this very critical Commission because that is where the injustices are committed. That is where people are deprived. That is where people need these services. That is where you do not get even lawyers to assist people. You go to some places such as West Pokot and Turkana, people there have to travel all the way to Kitale or Eldoret to look for a lawyer. So, we must take these services to them so that they can be assisted.

Mr. Deputy Speaker, Sir, with regard to Clause 8 of the Bill, there is a whole host of functions listed out for this Commission. However, when you read through you see that actually what we are creating is a toothless bull dog. It has got no capacity to do anything. It is just to investigate complain, report and so on. Where do we derive power for this Commission? I think my learned Senior Counsel should find the way of strengthening Clause 8, especially in the far flung areas, where people cannot afford to hire lawyers. Although the Constitution says we will help people access justice, there is

no point of creating layer upon layer of dispute resolution and attention to people's problems. If this Commission is to be really functional, effective and productive to the ordinary Kenyans, it must have the capacity to ensure justice is done to all. For example, if a rich man has encroached upon the land of a poor widow or deprived a poor person of his land, the Commission should be given authority to handle the matter to finality. They will recommend the matter, perhaps, to a District Commissioner or a Governor who is part of the same game and he will never solve the problem. So, they should be able to make a decision. I would want to see a Clause, where after the recommendation has been made by this Commission, it only moves to court for enforcement. The court to enforce this should not necessarily be the High court, but any court. We must make sure that even rural courts have the capacity to enforce decisions involving disputes arising from this. I say this because when we go to our rural courts, they are bedeviled with all manner of petty disputes; people quarrelling over chicken, goats, one cow and an inch of land. These are all things that we can offload from the mainstream courts and put them in what hon. M. Kilonzo is describing as alternative dispute resolution. But that alternative dispute resolution must have positive results in order to give people the confidence and desire to go to such places.

Mr. Deputy Speaker, Sir, I can see that there is no provision for the Commission to recommend, although it is investigating unfair treatment, manifest injustice and unlawful oppression. You have not given them express authority to recommend prosecutions. They should also recommend prosecutions. For example, where an administrator colludes with other people to injure the rights of a citizen, sometimes that is not a civil matter. It is criminal in nature and when you have issues of a criminal nature, the Commission, although it cannot prosecute, should recommend prosecution and hand over its recommendations to the Director of Public Prosecutions, who then will decide what to do with the recommendations.

I also join my colleagues who have talked about diversity. We want to see this Commission with clear diversity of all Kenyans. In my humble view, I would wish to see the head of the Commission, to give it the seriousness and the import it deserves, to be a person qualified to sit in the Court of Appeal or the Supreme Court of Kenya, so that it carries that weight. When you just say anybody with a degree, that is not good enough. I would like to see a person fit enough to sit in the Supreme Court like my learned friend, hon. Orendo or myself, being responsible for this Commission. I have not seen and I hope it has not been left out, that the Commission must make periodic reports to Parliament, so that Parliament can scrutinize what they do, see their levels of implementation and assist them in achieving what we are asking them to do.

Finally, I want to urge that we all support this Bill because it is a good Bill.

Mr. Namwamba: Bw. Naibu Spika, ninakushukuru kwa fursa hii nichangie mjadala huu kuhusu hii sheria ya kubuni Tume hii. Kati ya Tume zote ambazo tumepata fursa ya kubuni chini ya hii Katiba mpya, hii ndiyo Tume ambayo tunaweza kuita Tume ya mwananchi wa kawaida. Hii ni Tume ya Mkenya wa kawaida. Tume hii itashughulikia masuala ya Mkenya wa kawaida katika sehemu mbalimbali za taifa hili, hasa kwenye sehemu za mashinani.

Utakumbuka kwamba swala la Tume hii kutazamwa kama Tume ya mwananchi wa kawaida ni muhimu sana kwa sababu sasa tunaingia kwenye mfumo wa kusambaza mamlaka na rasilmali katika sehemu za mashinani katika taifa hili. Tunaposambaza

mamlaka na rasilmali, vile vile tunasambaza uwezekano wa kuhujumu haki za mwananchi katika sehemu hizo. Ikumbukwe kuwa, Serikali za Maeneo ambazo zitasimamiwa na *governors*, zitakuwa na mamlaka yote ya kiserikali na jukumu la kuhudumia wananchi katika sehemu hizo. Kwa hivyo, ni lazima Bunge hili lijue ya kwamba tunaposambaza mamlaka ya kiasi hicho, ni lazima pia tuwe na mipangilio ya kulinda haki za mwananchi wa kawaida katika sehemu hizo ili tusije tukarudia historia mbaya ya kudhulumiwa kwa wananchi ambayo tumeshuhudia hapo mbeleni. Tumeona Utawala wa Mikoa katika taifa hili kwa muda mrefu sana ambao umekuwa utawala wa kidhalimu kabisa. Hii ndiyo sababu moja ya maswala ambayo wananchi walitaka yabadilishwe katika mabadiliko ya Katiba. Ilikuwa ni kubadilisha mfumo wa Utawala wa Mikoa.

Kwa hivyo, Tume hii ni lazima vile vile tuipelele kwa njia ambayo itaipaa nafasi kuonekana na kuhudumu katika maeneo ya mashinani katika taifa hili. Kwa hivyo, ningependa kuunga mkono.

QUORUM

Mr. Oyongo Nyamweya: On a point of order, Mr. Deputy Speaker, Sir. We do not have enough Members to continue with the business of the House.

Mr. Deputy Speaker: Are you raising the issue of quorum?

Mr. Oyongo Nyamweya: Yes, Mr. Deputy Speaker, Sir. I am raising the issue of quorum.

Mr. Deputy Speaker: The Clerk-at-the-Table, can you count and see?
Fair enough! Ring the quorum bell.

(The Division Bell was rung)

Mr. Deputy Speaker: Order, Members! Do we have a quorum?

Hon. Members: Yes, we have!

Mr. Deputy Speaker: Then, proceed, hon. Namwamba!

The Assistant Minister for Information and Communications (Mr. Godhana):
On a point of order, Mr. Deputy Speaker, Sir. Given the mood of the House, the level of deliberations that have prevailed in this House and in the interest of time, would I be in order to ask you to call upon the Mover to reply?

Mr. Deputy Speaker: Order! This is a very critical and important Bill, and so are all the Bills that are going to be passed through this implementation process. They are not to be rushed through. So, if there is a Member who is on the Floor, you allow him to contribute!

Mr. Namwamba: Bw Naibu Spika, ninashukuru. Inafaa kufahamika kwamba tunatekeleza Katiba na tunabuni sheria ambazo zina umuhimu mkubwa. Ninaamini kwamba Bunge hili lina jukumu la kuhakikisha kwamba tunachukua muda wa kutosha ingawa tumo kwenye haraka, lakini ifahamike pia kuwa haraka haraka haina baraka. Mhe. Godhana anafahamu sana kuwa haraka haraka haina baraka.

Ni muhimu sana Tume hii iweze kusambaa na tuweze kuiona na kuihisi katika sehemu zote za taifa hili ili wananchi kule mashinani ambao kila mara haki zao zinadhulumiwa waweze kupata nafuu kupitia kwa Tume hii.

Ningependa kuunga mkono wale ambao wamependekeza kuwa afisi kuu ya Tume hii iwe katika sehemu moja ya mashinani katika taifa hili. Nimemsikia mhe. Mungatana akipendekeza afisi kuu ya Tume hii inaweza kuwa katika Pwani, hata kule Tana River; sehemu ambazo kwa kawaida, ukitazama historia ya taifa hili, zimesahaulika pakubwa. Tunafaa kufahamu kwamba tunapotekeleza Katiba hii tunavunja minyororo ya udhalimu wa miaka mingi na tunaanzisha mfumo mpya wa haki na usawa katika taifa hili.

Bw. Naibu Spika, si kitambo sana katika taifa hili, kulikuwa na msemo kwamba, kuna haja gani kuharibu fedha kumtafuta wakili ikiwa unaweza kumnunua hakimu?

Hayo ndiyo mambo ya kihistoria ambayo tunabadilisha kupitia masuala kama haya.

Kwa hivyo, ningependa kusesitiza kwamba tuweze kuisambaza Tume hii ili wananchi katika sehemu mbalimbali za taifa hili waweze kuyahisi na kupata manufaa ya Tume hii.

Kwa hayo machache, ninaunga mkono.

Mr. Deputy Speaker: Hon. Members, I now call upon the Mover to reply.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, yet again, I am humbled by the enormous interest that hon. Members have shown in this very fundamental Commission. I particularly want to talk to hon. Wetangula, hon. Namwamba, hon. Mungatana and hon. Shebesh. I want to assure you that it is when I do not show passion that I am most passionate. This is a very fundamental Commission.

In fact, it will be recalled that we proposed, as a Ministry, the setting up of this Commission not just because His Excellency the President on 23rd March, 2011 said we would be enacting the law, but because of the enormous amount of complaints that my Ministry continues to receive, complaints which do not require going to the police, the Chief Justice or the Attorney-General, but they are complaints nevertheless. Some of them, in fact, cause enormous pain to our citizens.

Mr. Deputy Speaker, Sir, I totally agree that during the Committee Stage, I will support amendments, and bring some amendments myself to ensure that the headquarters of this particular Commission is not located in Nairobi, and that it has branches in all counties in the country, because its functions will be very important.

I also want to assure hon. Members that I am going to address the issue of enforcement. We are going to introduce amendments to the Bill to ensure that whenever reports are filed and any recommendations made, the person to whom recommendations are made must act and, where necessary, require that the enforcement of that recommendation can be done in a court of law. I have also heard hon. Shebesh on the experience required, of 15 years. I sincerely agree with her that we need to reduce this in order to also attract the youth.

Mr. Deputy Speaker, Sir, in view of the enormous amount of work that this House has, and since people have spoken openly, I beg to move.

(Question put and agreed to)

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

Second Reading

THE ELECTIONS BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I am waiting for you to look at me because the hour of reckoning has come for my country. This is the moment that this country has been waiting for. We went on our knees in 2007/2008.

Mr. Deputy Speaker, Sir, I beg to move that The Elections Bill, 2011, be now read a Second Time.

Mr. Deputy Speaker, Sir, I know you because I have practised law with you in the past, and we have had issues regarding elections; this is the moment of truth for our country. Therefore, as I pointed out during the debate on the Independent Electoral and Boundaries Commission Bill that this House passed, the electoral process is too important to be left to trial and error. As an independent country for over 50 years, we have made our many mistakes and this time round, we must make amends. We should recover the ground that we have lost.

In efforts to remedy our electoral system, we have attempted several initiatives, beginning with the re-introduction of multi-party democracy in 1991. So, we were allowed to have many political parties. During this period, our electoral management did not advance to the sophistication required in a modern democracy.

Again, in 1997, we tried to clarify the functions of the defunct Electoral Commission of Kenya (ECK). We further attempted to expand the ECK by incorporating representatives of political parties, if you remember the Inter-Parties Parliamentary Group (IPPG) formula. These quick fixes, if I may call them so, never addressed the underlying problem – that is a proper institutional electoral framework.

Our failure to institute the necessary electoral framework manifested itself during and after the disputed 2007 presidential election results. It was then established that our legal and institutional framework for managing our elections had all but collapsed.

Mr. Deputy Speaker, Sir, the independent commission of inquiry into the last general elections popularly referred to as “the Kriegler Commission”, rightly summed up our position. The Kriegler Commission Report contains the most comprehensive policy, legal and institutional recommendations regarding our electoral management process.

This Bill takes on board most of the recommendations contained in the said Report. Hon. Members will notice that it is a very bold law. It is one of my regrets that the deal has come so late. I have demanded it in the past. I demanded it severally from the Constitution Implementation Commission (CIC) and the Attorney-General. I demanded its publication because I realised its enormous historical significance for this country.

My Ministry hopes that after this Bill becomes law, we will move to the next stage, so that we can recommend to this country, an elaborate mechanism for changing our voter registration from manual to electronic, and our voting system from manual to electronic. However, this is a debate for another day.

Mr. Deputy Speaker, Sir, hon. Members will recall that the Kriegler Report recommended that laws relating to the operational management of elections should be consolidated under one statute. This Bill seeks to perform that function and consolidate

elections and referenda into one statute. You will find this in the long title of the Bill and in other clauses inside the Bill.

The Bill reiterates the fundamental rights guaranteed under Article 38 of the Constitution. The only condition is that a person must be registered in the principal register of voters, considering that this House has already passed the Political Parties Bill, which is awaiting Third Reading. Hon. Members, again, I suggest that you look at Clause 3 of the Bill.

Mr. Deputy Speaker, Sir, in addition to all this, we have also made provision in Part VII of the Bill to ensure that election disputes are heard in a just and timely manner. You have noticed what has been going on in the course of last week, and as recently as yesterday, when we swore-in hon. Hassan as the Member of Parliament for Kamukunji, arising from an election dispute which took so long to resolve. Another Member of Parliament has also lost his seat through an election petition. In this regard, therefore, we are proposing to have all electoral disputes other than election petitions determined by the Commission.

[Mr. Deputy Speaker left the Chair]

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

I suggest, very humbly, that hon. Members see Clause 76 of the Bill and use the wisdom of the House to fertilize it with better or improved ideas, if you do not accept it the way it is.

Mr. Temporary Deputy Speaker, Sir, the Bill further entrenches a statutory limit to ensure that election petitions are finalized in good time. This is in the spirit of the Constitution. It provides that elections petitions must be heard and determined within six months. Never again - and this is in Clauses No.77 and 87 of the Bill - Never again, because I have practiced law like you, Sir, where petitions went on and on and the voters who elect these Members of Parliament, did not know who represents them because the disputes raise fundamental issues regarding the election itself. Therefore, please look at these clauses with two eyes and consider them very carefully, so that we can improve on them.

Hon. Members will recall that the Kriegler Report recommended that State radio and television must allocate reasonable airtime to all candidates and political parties participating in an election. This Bill provides that all candidates and political parties participating in an election are allocated reasonable airtime on State radio and television during the campaign period. That is in Clause No.110.

State owned media such as Kenya Broadcasting Corporation (KBC) should further strive to offer balanced coverage to all the players in the election. In addition, the Commission has also been empowered to prohibit any media house that contravenes the code of conduct described under the Media Act from transmitting information relating to an election. In addition, the Commission may issue directives to the media to ensure that the obligations of the media are upheld. You will find that in Clause 42(5). This will go a long way to mitigate the possibility of misinformation as was witnessed in several regards during the 2007 Elections.

With regard to the registration of voters, it would be recalled that the Kriegler Report further recommended a move to a new registration system that integrates issuance of National Identity Cards (ID) with voter registration so that, voters are allowed to vote with the simple presentation of the National ID card. I feel privileged and proud as a Kenyan presenting this proposal to the National Assembly so that we can eliminate a lot of the challenges that our voters face at the polling stations. To this end, the Bill proposes that a person whose name appears in a register and who produces an identification document be entitled to vote. That is Clause No.10 of the Bill.

Concerning voter information and education, the Bill proposes that voter education should not only occur during an election period or a year, but on a consistent basis throughout every year. We have provided that in Clause No.41 and we recommend it to the House. In conducting civic education, we are also proposing the involvement of the young people, particularly students, who might help to interest younger voters and which will also strengthen the bond between the older and younger elements of communities to eliminate the often noticed debate between the old guard and the new guard, which is completely unwarranted and unnecessary. Furthermore, the design of voter education material should factor in the various needs and interests of target groups. It should also introduce simplified teaching of the key principles and values relating to the right of voting in schools from the elementary stage.

Mr. Temporary Deputy Speaker, Sir, we have also taken trouble to address and renew the concept of election offences so that we can frighten those politicians who continue thinking that the only way to get elected into Parliament is to violate every rule in the book. Allow me to draw the attention of hon. Members to the election offences, particularly in Part VI of the Bill, which proposes to criminalize certain actions so as to ensure a free and fair election. The Bill proposes to create offences and provides stiff penalties for offences relating to multiple registrations as a voter, forgery of ballot paper, making of false returns, impersonation, cheating, undue influence, bribery, use of force or violence or the use of public resources. It is my privilege this afternoon to put on record the provisions of the Constitution, Article 81, as to the requirements of elections so that, if there is anybody in doubt--- I think time has come for Kenya because I am going to make a few statements now – this is at page 55 of the Constitution. Time has come for my country; your country; to come to terms with Article 81 of the Constitution and it says as follows:-

“The electoral system shall comply with the following principles.

(a) Freedom of citizens to exercise their political rights under Article 38.

(b) Not more than two-thirds of members of elective public bodies shall be of the same gender.”

(Applause)

As you remember, I was fighting for 50-50 and I lost. So, I support this idea.

“(c) Fair representation of persons with disabilities.

(d) Universal suffrage based on the aspirations for fair representation and equality of vote.

(e) Free and fair elections which are:-

(i) By secret ballot.

- (ii) Free from violence, intimidation, improper influence or corruption.
- (iii) Conducted by an independent body.
- (iv) Transparent.
- (v) Administered in an impartial, neutral, efficient, accurate and accountable manner.”

So, I tell those who are used to participating in elections through corruption, violence and such things; your days are numbered! If this law is passed, you will have to be extremely careful because we have criminalized everything. In fact, in Clause No.27, it says:-

“A person who directly or indirectly participates in any manner or public fundraising or *harambee* within eight months preceding a general election or during an election period or in any other case, shall be disqualified from contesting the election held during that election year or election period.”

We make this recommendation without fear at all. We do not want anybody to think that merely because you are wealthy and, sometimes, it is not clear how your wealth came about; that you want to use it during an election year to go about using improper influence or corruption as outlawed by Article 81 of the Constitution. Similarly, in the offences that you will see we have put forth, the days of people who want to use their wealth are numbered. But even more significantly, the Bill gives the Commission powers to prosecute offences under this law. You will find that in Clause No.109.

Mr. Temporary Deputy Speaker, Sir, I know that this House is very jealous of conferring on other organs, other than the Public Prosecutor, the power to prosecute. But the time has come. I have just been told in another law I was moving this morning that I should create teeth for these institutions. Therefore, I encourage and I sincerely want to plead with the House to give the Electoral Commission the power to prosecute, so that when an offence occurs--- In fact, at page 997, it is written:-

“(i) A member of the Commission or any officer designated by the Commission may order the arrest of a person who commits an offence under this Act.

(ii) The Commission shall have the power to prosecute any offences under this Act and impose sanctions against a person who commits an offence under this Act, pending the hearing and determination of the offence.”

Therefore, I also make this recommendation very humbly but nevertheless, very firmly, because it is one method of ensuring that we have transparent elections. This is not meant to demean or reduce the authority of the Public Prosecutor but rather to compliment him so that during elections the Commission he can be able to take to court--

The Temporary Deputy Speaker (Mr. Imanyara): Minister, can you just read the last sentence on line two?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, let me read Clause 109(ii) again:-

“The Commission shall have the power to prosecute any offences under this Act and impose sanctions against a person who commits an offence under this Act pending the hearing and determination of the offence”.

Mr. Temporary Deputy Speaker, Sir, what we have in mind is, for example, if the person is found bribing voters, arrest him and prosecute him. Some of the sanctions may include disqualification---

The Temporary Deputy Speaker (Mr. Imanyara): Is it the determination of the case or the determination of the offence?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I think it is the determination of the case. Allow me to consider this; and I am glad you have noticed it with a view to addressing it and listening to the wisdom of this House as we go along.

Mr. Temporary Deputy Speaker, Sir, the idea behind this is that the Commission, if it arrests a person who is bribing voters or committing violence, they ought to be able to issue sanctions which may include disqualifying that person from continuing with the campaigns or something of that nature. But again, as I said I am ready to listen to the House on this very important law.

There are other provisions here; the Electoral Code of Conduct is found at page 106. It is very elaborate. It has been debated over a long time. We got the raw draft from my Ministry to the Constitution Implementation Commission (CIC) in February. This Bill has received an enormous amount of public consultation but it is now on the Floor of this House. In fact, at page 103 you will find the First Schedule. We have also provided for the election of the Speaker of the County Assembly in compliance with the Constitution. We welcome consideration and advice from this House as to how best to move this forward.

Mr. Temporary Deputy Speaker, Sir, you will also find that we have provided for the conducting of referenda. I am afraid most people in this country have not noticed that although we had a wonderful referendum last year, we did not have a referendum law. We still do not have a referendum law and yet there is an enormous provision in the Constitution for holding regular referenda. I suggest and would request hon. Members to look at this Bill from that perspective so that you can be able to add to the value and so on. You will see this on page 979; Clauses 76 onwards.

On election offences, we have tried the best that we can to make sure that we can make it once and for all clear to those people who want to participate in bribery, for example, Clause 65 onwards. We have made very elaborate provisions. However, the one I admire most is the one dealing with *harambees* during an election year.

Mr. Temporary Deputy Speaker, Sir, Clause 59 at page 956 of the Bill is offences relating to voting. It is a continuation of Part VI which starts at page 954. It deals with election offences.

Recall of a Member of Parliament is very important. We are also required to enact a law on this issue. I think it requires a very sober debate. We have debated it for a long time in the Ministry since the Constitution was promulgated. You find it on page 947, Clause 46 onwards. We have tried to balance two issues; the desire of the public to know that they are getting value for their votes from the person they elected but at the same time we do not want unscrupulous and petty applications and petitions for the removal of a Member of Parliament who thinks that he is doing his job to the best of his understanding. Therefore, I also ask the House to look at clauses 46, 47 and so on, to consider this requirement because it is a law that is required to be passed before the end of this week.

Mr. Temporary Deputy Speaker, Sir, the rest of the Bill is quite attractive although you will notice we have defined "*harambee*" for purposes of this particular Bill.

I think it is at page 920. I think it is also very essential that hon. Members contribute to this proposal:-

“*Harambee* means the public collection of monies or other property in aid or support of a cause or a project”

I beg to move.

Again, my good learned friend who has been really--- I could use Kiswahili or Kikamba, but he has been in support of the works that I have been doing together with the other Members of the Cabinet. Allow me to call on Mr. James Orenge, my year-mate at the university, to second this important law.

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I stand to second this Bill. I, again, commend the Minister for the work he has done in this very challenging period. We are living in very consequential times because everything that we are doing is literally history being written as we perform our legislative duties or as we watch.

It will be important to point out that this Bill actually amalgamates very important statutes which now become consolidated in this Bill. I think that is a good idea because previously we had three separate Acts of Parliament dealing with the matters that are dealt with in this Bill; the National Assembly and Presidential Elections Act and with the various regulations and rules that were made under that Act, Election Offences Act which now becomes part of this Bill and the other statute that has several provisions repealed is the Local Government Act.

Mr. Temporary Deputy Speaker, Sir, the fact that we are having the Electoral Law in one document or in one legislation is commendable. It was quite a task for the Minister to go through all these statutes and consolidate them into one deal making sure that any essential elements of those previous Acts were not left out and at the same time making sure that the new law was consistent with the Constitution that was promulgated last year.

I just wanted to point out why we really need this Bill. With the Arab spring, we have seen that not having elections can lead to civil conflict and disobedience such as the ones we are seeing in the Arab world and in the Middle East. You can also have elections but if they are not free and fair, again, those elections can lead to conflict. Therefore, what this Bill wants to achieve is to ensure that we have a level playing field and free and fair elections. There was a time at the beginning of Independence of this country; that is the first five, six or seven years, the elections were not too bad. They were generally free and fair but beginning from 1969, we went through a period where there were all forms of election rigging or activities of the State which resulted to some form of rigging. For example, in the first 15 years of this Republic, we saw many assassinations which were used as a mechanism of excluding some people from being in public office. They include the Late Tom Mboya and the Late J.M. Kariuki. All these people were assassinated and taken out of this Parliament through that process.

Mr. Temporary Deputy Speaker, Sir, there was another practice that was very popular at that time, which I thank God we have completely abolished in the new Constitution. That was detention. If it was not detention, they were malicious prosecutions like the one of Mark Mwithaga who was charged with the offence of assaulting his wife. Despite the fact that the wife denied that she had been assaulted, he was still convicted. It was something worth noting that even with those malicious prosecutions, convictions and imprisonment Mark Mwithaga still won the election.

The other thing was the establishment of the *de jure* one party State which again closed the democratic space. When we had the *de jure* one party state and we had a second president, there used to be a gentleman in this House whom I had a privilege of serving with in this House. That was the Late hon. Chotara who once said that there was a man at the university called “Karl Marx” who was causing a lot of problems. He said that Karl Marx should be put away or detained and Kenya would be at peace. But he had another wonderful idea. He said that since the then president was *Baba na Mama* and that he knew who was good and bad, we should let him go to every constituency and say that this man is the Member of Parliament for the area. Well, that happened to some extent but it was never part of the law of Kenya.

There was also the use of institutions like the DCs and the PCs some of whom used to be returning officers. They interfered with the electoral process in many ways and many people failed either to present their nomination papers or were not allowed to participate freely in election campaigns. For example, the Late J.M. Kariuki won an election although he was not allowed to hold any public meetings or conduct any campaigns. So, this law, in essence, is trying to make all these history so that we can have free and fair elections.

Mr. Temporary Deputy Speaker, Sir, right from the second part of this Bill, and in keeping with the Constitution, the Bill entrenches the right to vote. I think this is important because in the previous constitution, the right to vote was not clearly spelt out. This is a political right that in many international instruments is clearly spelt out and it is good that it is in this law. Regarding the registration process, in Clause 4 on page 923, the registers that will be kept by the Commissioners are spelt out so that there is no doubt at the time of inspection or at any other time when you want to look at the register which registers would be available for inspection. This is to ensure that the record keeping is part of the transparency and ensuring that the electoral process is free and fair.

The other important provision, which probably my learned Senior referred to is Clause 10. For emphasis, let me talk about this clause which talks about eligibility to vote. This time round, you can use an identification document and we will make sure that the identification documents for the future may not be just a passport or an identity card but one document that will serve for all purposes. However, on the eligibility to vote, the use of identification document has been liberalized so that it is not just the identity card as it was at some point.

Mr. Temporary Deputy Speaker, Sir, Clause 16 concerns those who will run as presidential candidates. They stand forewarned that in the middle of the election after nominations you cannot change your running mate. After the first round of voting, if you do not meet the threshold, you cannot divorce your running mate. You are tied to the running mate until the conclusion of the elections. I think that is a good practice because the same team that is declared number one or two goes to the electorate for the run-off.

Clause 24 is about qualifications for nominations as the presidential candidate. It is clearly stated in that clause and for good reason that those who would be running for the presidency must be citizens by birth. There will be dual citizenship but if you want to run for the presidency you must be a citizen by birth because we cannot expect that you have a head of state who owes allegiance to several states or jurisdictions.

I had made a lot of notes but in fairness to the interest in this Bill, I want to go to what the chair was pointing out. I agree with him that the provision in Clause 109 should

be spelt out more clearly because if you are imposing sanctions then they should be set out in the statute and they should not be left to the Electoral Commission to consider what sanctions to impose.

The clause about *harambee* is a very good provision. When I first came to Parliament, if elections were being conducted the way they are being done today, I would not have won an election. There were many like me in that House. Mr. Mwachofi campaigned on foot because he did not have a car. At least, I had a borrowed car although I did not have a house or wife but I still managed to win. These days unless you have a war-chest of some magnitude, you cannot be able to win any election and a wife or a husband becomes a qualification. However, we are living in new times and I think these qualifications are no longer there. I want to say that this is a good law for the elections to be held next year. However, it is good so long as those who are given responsibility, including the Electoral Commission and the leadership in this country ensure that we have free and fair elections. If the leaders are not committed to the call that is entrenched in this law then we may not have free and fair elections. So, I plead with all of us that it is part of our duty to keep Kenya going as a Republic based on democracy and the rule of law, and where elections are the mechanism to ensure that those who are elected as leaders have some element of accountability to the nation. The era of stealing elections is over. It does not pay and all over the world we are seeing that stealing elections, whether your people have the capacity to say “No”, the whole world would say “No” and you will end up in a lot of problems and also put your country in a state of disaster. I think it is upon us to make sure that this election law becomes part of our culture and part of the way we run our affairs.

With those remarks, I beg to second and support this Bill.

(Question proposed)

Mr. Mungatana: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to also make my contribution to this very important Bill. I congratulate the Minister for bringing this Bill at this time.

I want to make my contribution hoping that the Minister will take it in the spirit that we really want to get a good law. So, our hope is that he will be the one to bring most of the amendments.

First of all, there is the keeping of the Principal Register of Voters and this is in Clause 4. I want to propose to the Minister that while he has already looked at the other places in respect of voters - where they would probably be checking to verify - he has not stated where these voters may wish to check or verify their particulars. So, on the voters who will be living outside Kenya, I would like the Minister to say that, that register should also be found in the relevant embassy. The reason is that we anticipate that the voters who live outside Kenya will also be eligible to participate, at least, in the presidential elections if nothing else. So, we would like that register to be available in every accredited embassy in Kenya. I hope that the Minister will not be distracted by the other Minister so that we can move together quickly.

Mr. Temporary Deputy Speaker, Sir, I also want to take up the issue of eligibility to vote in Clause 10. I want the Minister to look at the possibility of making it reasonable by introducing a clause that if a person is very well known in that place, then he should

be eligible to vote. I remember, particularly, a very interesting incident in which hon. Mwakwere, in the real election and not the by-election, was being turned away from his own election by somebody who was saying that he had forgotten the identity card. This is - if I remember this correctly. I think this is being too legalistic and we need to take care of that to avoid difficulties in future.

Mr. Temporary Deputy Speaker, Sir, I also want to bring to the attention of the hon. Minister that we need to be ingenious and be very clear here.

(Mr. M. Kilonzo consulted with Mr. Muysoka)

Mr. Temporary Deputy Speaker, Sir, it will be better if the Minister can listen to me instead of the Vice-President and Minister for Home Affairs whom I appreciate very much.

I do not know how he will do it, but the Minister needs to find a way in which we shall clearly define the election date for the first general election. In my opinion, this is our opportunity for us to make it clear. Let us make a decision as Parliament. If we will stick to the second Tuesday of August, 2012, then let us say so, and let us say this very well advised of what I have seen might be the consequence.

From the provisions of Clause 14, assuming that the general elections will be on the second Tuesday of August, 2012, three months before will be the second Tuesday of May when all political parties will need to nominate their candidates. The people who are nominated, particularly, the presidential, parliamentarians--- It says that before the date of the election is when the process of initiation of the elections begins. That means that in the second week of April, 2012, parties need to have nominated their people.

Mr. Temporary Deputy Speaker, Sir, if you go upwards again to Clause 36, you will find that we need to have given the members of the party lists – the ones who will not go through the general elections – before we nominate those ones who are supposed to run for the general election. This affects all of us; that is from Presidential downwards. If you go again to this part which, to me, is very crucial, we are told that by January, we should have provided the list of all party members. That means that if the nominations will in the second Tuesday of April, it means that three months before – in January – you ought to have been a member of that party. This essentially means – and I want the Minister to come out very clear – that there will be no opportunity, irrespective of how we have voted and passed the Political Parties Bill, for people to do any party hopping, from January, 2012 up to the time we will have elections in the second Tuesday of August.

(Applause)

Three months before that, that is in October, 2011, we ought to have provided the nomination rules for our political parties to the Registrar of Political Parties. Essentially, the process of elections will start in October, 2011. I want the Minister to tell us whether this is possible. That in October, we give our party nomination rules; in January we give all our party members lists, including Members of Parliament, some of who have changed allegiance and are locked there; and then we go on until all these processes are followed and the second Tuesday of August, we have elections. I do not know what the

Committee will say, but as Parliament, we need to give guidance and accept what we will do. My only worry is that if all political parties are supposed to give their party lists on the basis of which all these other processes will be done by January, I do not know how many people will really participate in the next general election.

Mr. Temporary Deputy Speaker, Sir, I propose that the Minister comes up with reasonable timelines so that more Kenyans are able to participate in these elections. In my opinion, I do not know how this will be done, but I propose that either the Committee or the Minister needs to come up with better guidelines, so that, as a House, we give guidance to the nation. The process will not be in the second August, 2012 just like that because this will start in October, 2011. That is if the elections will be held in August, 2012. I want the Minister to come out very clearly because if we are to follow this, then the country needs to know what is happening.

Mr. Temporary Deputy Speaker, Sir, I want to say that Clause 27 on additional disqualification on the face of it looks very good.

Now that we will have elections and we may be candidates in various positions, eight months before the general elections, we cannot hold any form of *Harambees*. Some people may cheer this but I think this is not---

Hon. Members: One year!

Mr. Mungatana: No! Mr. Temporary Deputy Speaker, Sir, please, protect me. I think we have to agree that when you hold a *Harambee* in Garsen High School, the people who benefit ultimately are the students and parents of that school. Although the CDF is there, there are many things that it cannot do. If we say that we will rely on the CDF, we will be giving the sitting MPs unfair advantage over other people. I think this time, first, we need to agree when the election will be held. It seems all of us will be disqualified. We need to agree that, if the elections will be held next year in August, 2012, when will *Harambees* stop? We need to come out very clearly because, in my opinion, I propose that this time period should be reduced. We should have *Harambees* held three months before the general election. We should either have it that way or abolish the *Harambees* all together.

Mr. Temporary Deputy Speaker, Sir, I wanted to congratulate the Minister very much on Clause 32, which makes it impossible--- It is a legislation that, for the first time, says: If you participate in the selection process of, for example, NARC (K) as a political party, and you are defeated there, you cannot, under any circumstances, go to another political party and seek nomination there. This is one step towards bringing discipline into the political parties and I hope this law will be applied to the letter. I also believe that some of the by-elections that took place recently could not have taken place if this law was already in place. I want to thank the Minister for this provision.

There is another hot potato that I wanted to ask the Minister to reconsider. If you look at Clause 35 that basically deals with nominations of party lists, I wanted to ask the Minister to consider deleting Sub-clause 9. The Minister may want to respond to this in future when he takes the Floor. We will be presenting presidential candidates from our political parties. We are saying these presidential candidates will not be in the party list. Why are we saying so? I know the hon. Vice-President and Minister for Home Affairs is in the race. He will be busy running around the country. I also know Mr. Wetangula, Mr. Kingi and others will be in the race. If they will be busy running around the country, why is it that we are saying their political parties should not put them number one on their list

of nomination? If someone is a national leader, I think he should not even be defending his small seats. If I am running for the presidency, why should all my time be spent in Garsen trying to fight some little political wars there when I ought to be running across the country? I think this is not a good one.

All of us remember in history when Mrs. Ngilu was running as a presidential candidate on SDP ticket, how the KANU Government tried to mistreat her. They directed so much effort down to her Kitui Central Constituency, so that they could pull her out of the national race and put her there. This will be a negative way of dealing with the current political dispensation.

I think we should leave political parties to be free to make their decisions. If a candidate feels that he can easily retain his seat and does not need to be on the party list, then that is okay. However, if a candidate feels that he or she may be too busy running around the country and, therefore, the rest of the other politicians who are in his party will benefit from his running around, then it is not fair for you to tie him down to a place where he needs to be at home all the time.

With regard to submissions of political party lists, I want to bring to the attention of the Minister again---

(Mr. Kiunjuri held consultations with the Mr. M. Kilonzo)

Mr. Temporary Deputy Speaker, Sir, I really want to get the attention of the Minister!

The Temporary Deputy Speaker (Mr. Imanyara): Order, Mr. Kiunjuri!

Mr. Mungatana: This is an intelligent Minister and I want him to listen to this one. This is all connected to the election process. We, as political parties, are supposed to present our lists one month or thereabouts, before those who are nominated to run for public office.

I want to bring this to the Minister's attention to let us set the date in this Act. This is because it will make political parties to act in a predictable environment. We will not function if this will be left in the air, or to the interpretation of CIOC or to go to the Supreme Court and the process needs to start. If the court is going to say the process will be on the second Tuesday of August, 2012, then this process for political parties must start in October 2011.

I am very happy that the Minister is a secretary-general of a political party. I pray that he will be able to look at it and see that a proper amendment is brought and we fix this date appropriately.

Clause 44 is another dangerous one for sitting Members of Parliament and others. It says as public officers, we are not to engage in any form of political activities at all. In fact, look at it, hon. Members. I pray we do not rush on this Bill because it will kill us. While on the other side when we are talking about the qualification for the President, with regard to the qualification to run as an MP, we have created an exception.

Mr. Minister, if you look at Clauses 24 and 25, for example, for the President and also for the Members of Parliament respectively, they have created an exception that makes the President, Deputy President and Member of Parliament to be able to do their normal political work.

Here in Clause 24 we are saying “a public officer” and we are not creating an exception for people who are holding political offices. This effectively will mean we cannot do any political work before the general elections. We need to make sure that we actually create the clause---

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Order! Hon. Members, on that note, we adjourn our proceedings to this afternoon, Wednesday, 24th August, 2011, at 2.30 p.m.

The House rose at 12.30 p.m.