

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 24th August, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

RESTRICTION ON FOREIGN TRAVEL FOR HOUSE COMMITTEES

(Several hon. Members stood at the Bar)

Mr. Speaker: Hon. Members at the door, could you, please, quicken your steps! I have one Communication to make. As you are aware, the House yesterday commenced debate on various legislations pertaining to the implementation of the Constitution of Kenya. These Bills require the input of all hon. Members and it is, therefore, imperative that hon. Members participate fully in this historic duty and ensure expeditious passage thereof.

Hon. Members, Kenyans are anxiously following as the House makes solid steps to enable full implementation of the Constitution. I encourage the Executive and other stakeholders mandated by the Constitution to submit all the Bills that are required to be enacted by this House within the timelines set out by the Constitution for consideration. In view of this, and pursuant to Standing Order No.165, I wish to direct that all Committees constrain their sittings to within the precincts of the Assembly and, further, that for the next two weeks from today's date, all external travel by hon. Members and Committees be held in abeyance save for exception of cases which my Office will consider, taking into account the prevailing financial limitations.

I thank you.

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Departmental Committee on Administration and National Security on the Kenya Citizenship and Immigration Bill, 2011.

(By Mr. Kapondi)

Report of the Constitutional Implementation Oversight Committee (CIOOC) on the Commission on Administrative Justice Bill, 2011.

Report of the Constitutional Implementation Oversight Committee (CIOOC) on the Power of Mercy Bill, 2011.

(By Mr. Abdikadir)

QUESTION BY PRIVATE NOTICE

KILLING OF JOHN MUTURI KARIUKI

Mr. Njuguna: Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by private Notice.

(a) Under what circumstances was Mr. John Muturi Kariuki – a Biology and Chemistry teacher at Loreto Girls’ High School, Kiambu - killed after being arrested by police officers in Kiambu Town on 14th August, 2011?

(b) How many suspects have been apprehended/prosecuted in connection with the murder?

(c) What measures will the Government take to ensure that Kenyans are not unnecessarily arrested, tortured and killed by police?

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

(a) On the night of 14th and 15th August, 2011, police officers from Kiambu Police Station, while on normal patrol duties within Kiambu Town, arrested the following patrons who were found at Sams Pavillion Bar at 1.30 a.m. in contravention of the requirements of the Alcoholic Drinks Control Act (No.4) of 2010. John Ndung’u Ngotho, Nicholas Wambua, Mary Wambui Mungi, John Muturi Kariuki - who is the deceased - Daniel Njihia Kamau and Stephen Mwangi Kariuki. They were all booked in the cells at Kiambu Police Station vide OB No.5 of 15th August, 2011 at 1.50 a.m. The suspects were searched and placed in cells while appearing drunk. However, the deceased, John Muturi Kariuki, refused to be searched and have his personal belonging recorded for safe custody and opted, instead, to call a fellow teacher by the name Mr. Githua Stanley Mwangi, who went to the station and took all his personal properties. The deceased was then searched and placed in cells while appearing drunk. After some time, the officers on duty at the report office heard screams from the cells. When they visited the cells to inquire, they found John Muturi Kariuki had been beaten up by the other prisoners. The officers then removed him from the cells and allowed him to stay at the cells corridor. In the morning, 46 prisoners were taken to court in Kiambu and charged with various offences while eight others, including the deceased, were released without any charge being preferred against them. While releasing Mr. John Muturi Kariuki, it was noted in the Occurrence Book that he appeared sickly. He was thereafter taken to Kiambu District Hospital where he was admitted on 15th August, 2011 and Dr. Nderitu, the Kiambu District Hospital Superintendent who attended to him noted down his allegations of assault by prisoners while in custody, and communicated the same to the DCIO vide a letter reference No.KBU/PAT/IC, Vol.III/37 of 19th August, 2011, which I wish to table.

(Mr. Ojode laid the document on the Table)

The patient also complained of general body and abdominal pains. He was also diagnosed with acute myeloid leukemia - which is blood cancer - and referred to Kenyatta National Hospital (KNH) on 16th August, 2011 for specialized treatment. At KNH, the patient was attended to by Dr. Musila who performed a re-section which means to open up and anastomosis which means joined together of the gut. The gut is intestines! He later moved the patient to the Intensive Care Unit (ICU) where he succumbed to death on 17th August, 2011, at 5.00 a.m. On 23rd August, 2011, a postmortem was performed by Dr. Oduor and the cause of death was found to be as a result of septic shock due to perforated ileum caused by abdominal trauma. I wish to table a copy of the postmortem report also.

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

Immediately the death was reported, a murder case file No.Criminal211/31/3/2011 was opened and investigations led by Seif Mohamed, SSP, commenced and two suspects, Moses Yieki ole Molel and James Mburu Wamuti were arrested following information received from a suspect held in custody who. In his statement and subsequent identification parade, the suspect was able to identify Moses Yieki ole Molel as one of the suspects who was in police custody. He is the one they said assaulted the deceased. More suspects are likely to be arrested after the court through Miscellaneous Application No. 30 of 2011 granted to the police five more days to detain the suspects to help in the investigations.

The Police Service will endeavour to strictly enforce the law and ensure prisoners in police custody are treated humanely and complaints emanating from such prisons are acted upon without undue delay. Similarly, where the need arises, prisoners who complain of illness will be escorted to the nearest medical facility for treatment without further delay.

Thank you!

Mr. Njuguna: Mr. Speaker, Sir, while appreciating the reply that the Assistant Minister has given on this grave matter, could he assure this House that this postmortem report was not doctored to hoodwink the family members, Kenyans and the Speaker so as to suit the current situation?

Mr. Ojode: Mr. Speaker, Sir, the postmortem report is from KNH and there is no way it can be doctored. It was done by a doctor from the national hospital in Kenya. So, it cannot be doctored. That will be unprofessional if, indeed, it was doctored.

Mr. Kabogo: Mr. Speaker, Sir, surprisingly, the Assistant Minister has said that, that young man died of cancer and he has given a postmortem report. In actual sense, it is not a postmortem report. It is just a letter. Is it in order for the Assistant Minister to mislead the House that a postmortem report is here and yet, it is only a letter to the DCIO from the Medical Superintendent? Could he produce a true postmortem report that indicates the cause of death of that teacher? It is known that, that teacher was beaten up by police officers inside the cells and yet, he wants to create a situation to show the man died of cancer while in custody.

Mr. Ojode: Mr. Speaker, Sir, first of all, I think we should tread carefully while dealing with the loss of life of a professional. I have said clearly that there was a letter which was written by a doctor and I have tabled it. The postmortem report is here. I think he should have taken time to go through the postmortem report which I have tabled, other than just using guess work. When we are dealing with cases like this, it is always good to give your ears to the Minister because, number one, there is an inquiry already. We tried to check whether, indeed, the police officers were involved. We were told that the police officers were not involved. There was a suspect and I have already given his name to Dr. Khalwale. I have also given the name of the suspect who was in custody. As a result of that, I am also charging the five police officers who were on duty for having taken this same person to the cells while he was drunk. So, it is a double-phased situation.

Dr. Monda: Mr. Speaker, Sir, you have heard the Assistant Minister talk about the deceased screaming from the cells; he has already indicated that this victim was beaten by other inmates. Could the Assistant Minister inform the House what the relationship was between the screaming from the cells, going to Kiambu District Hospital and finally dying of leukemia with perforated intestines? How does one “marry” those aspects, so that finally a person dies of only perforated intestines? There were issues from the time when he was arrested!

Mr. Ojode: Mr. Speaker, Sir, I mentioned here that immediately after the death was reported, a murder case File No.211/3113/2011 was opened and investigations started. We were told by one of the fellows who was also in custody that two people, Moses Yieki ole Molel and James Mburu Wamuti, were the people who caused injuries to this particular fellow, who is the deceased. It looks as if the fellow was a sickling earlier on. His sickness was not caused by beatings by the fellow inmates. That was why in the morning the following day, he was rushed to Kiambu District Hospital; then later on he was taken to Kenyatta National Hospital (KNH). So, these are facts from the ground and that is why I tabled the letter which was written by the doctor, who actually saw the deceased.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister attack me on the issue of the postmortem, and say that I saw a letter and there was a postmortem. If you allow me to read the document he has tabled as the postmortem---

Mr. Speaker: I will allow you to read, subject to your understanding that you have risen on a point of order.

Mr. Kabogo: That is correct. I am trying to say that the Assistant Minister is misleading this House. The circumstances of the death are as follows: The deceased was received from the police on 15th August, 2011 while sick. He was admitted at the KNH and died on the night of 17th August, 2011 while undergoing treatment. That is the postmortem report. Does it say the cause of death? The Assistant Minister is misleading the House.

Mr. Ojode: Mr. Speaker, Sir, if you go through the documents which I have tabled, you will find that the doctor who was actually looking after him was the one who wrote the letter to KNH for the fellow to be admitted – this is the doctor from Kiambu District Hospital. I have a report of the postmortem. I am not an expert. I would have given this report to Dr. Khalwale and Dr. Monda to check whether it actually talks about anything---

Mr. Ochieng: On a point of order, Mr. Speaker, Sir. The Assistant Minister seems not to be telling us the truth about this death. Could I suggest that this matter be taken to the relevant departmental committee for further investigations?

Mr. Speaker: Mr. Ochieng, that is preemptive. Your colleagues are interested in this matter and they have questions to ask.

Mr. Wambugu: Mr. Speaker, Sir, very many Kenyans have been dying in police custody. People living around Kiambu are living in fear because of a lot of intimidation from the police officers around that place. Could the Assistant Minister inform the House what action he is taking to make sure that the police officers in Kiambu do not intimidate *wananchi*?

Mr. Ojode: Mr. Speaker, Sir, it is not a question of the police intimidating the ordinary citizens. Within Kiambu itself, we have a lot of problems of insecurity. In a place called Njuki within Karuri, Banana area, there is a lot of insecurity. The police must ask you where you are coming from in late hours. For Kenyans to sleep peacefully and without any problems, the police must patrol. When my police officers ask---

Mr. Wambugu: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to imply that the deceased was a criminal, and that was why he was beaten by the police in that place?

Mr. Speaker: Order! Hon. Wambugu, that cannot pass the test. Mr. Ojode, do not respond to it.

Mr. Ojode: I will never respond to that, Mr. Speaker, Sir.

(Laughter)

Mr. Imanyara: Mr. Speaker, Sir, indeed, it is appalling that the Assistant Minister should be so casual about the death of a prominent teacher. A death of any Kenyan under circumstances such as he has described clearly indicate that police officers were involved; if they were not involved, they would have moved immediately they heard the screams, taken action and if that suspect was sick, they would have taken him to hospital that night, rather than waiting until the following morning. In these circumstances, could the Assistant Minister inform the House, if the police officers were not involved, were they not aiding and abetting in the commission of a criminal offence, and why have they not been charged with the murder together with the people who are in court already?

Mr. Ojode: Mr. Speaker, Sir, I mentioned here that yes, there was some negligence on the part of the police. First of all, they should not have taken this particular deceased person to the cells because he was drunk, where he was eventually beaten up by the inmates. I have so far charged four police officers. I have charged Noah Maiyo, the Officer Commanding Police Station (OCS), Kasudo Towett, Duty Officer, Japheth Mwanja, Cells Sendry and Victor Barasa, the Report Officer as a result of negligence.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to evade answering the question? Could he inform the House what he has charged them with? My question was: Why have you not charged them with aiding and abetting murder? Why have you not charged them with murder of this deceased? What have you charged them with?

Mr. Ojode: Mr. Speaker, Sir, I have charged the four officers with being idle and negligent in the performance of their duty, which is contrary to Regulation 3, Sub-Regulation 24 of the Police Regulations. The reason why I cannot charge these officers with murder---

Mr. Olago: On a point of order, Mr. Speaker, Sir. The Assistant Minister drew the excitement of the House by saying that the policemen have been charged. Is he in order not to explain to the House that they have been charged not in a court of law but in orderly room proceedings under the Police Act?

Mr. Ojode: Mr. Deputy Speaker, Sir, yes, it is true that they have been charged under the Police Act Orderly Room Procedures. However, I cannot charge them with murder because they did not murder. Secondly, we have charged them because they should not have taken the deceased to the cells when he was drunk.

Mr. Speaker, Sir, we have very good leads which we are exploring. We have identified those who actually fought this particular gentleman. We will charge the two fellows who actually fought the deceased.

Mr. Baiya: Mr. Speaker, Sir, when the deceased was discharged the next morning, he was still able to speak. He spoke to members of his family and two other people all the way from Kiambu District Hospital to Kenyatta National Hospital. He was very categorical that he was assaulted by the police officers while in the cells. What has the Assistant Minister done to verify that allegation, or he merely believes what the police are alleging?

Mr. Ojode: Mr. Speaker, Sir, I am hearing that one for the first time. If the hon. Member wants to help me, let him get the names of the police officers who assaulted this gentleman. The two fellows whose names came up, we have arrested them. We are investigating them. However, if there is any name of any police officer, I would be very much willing to take action. Could I, please, have the names?

Mr. Njuguna: Mr. Speaker, Sir, the Assistant Minister has informed this House that they have established two prime suspects; these are ole Molel and Mburu Wamuti. Has the Government established the main motive of beating this person senselessly until he died?

Mr. Speaker, Sir, finally---

Mr. Speaker: Order! Standing Orders allow you to do one supplementary question at a time and you have done so.

Let the Assistant Minister answer!

Mr. Ojode: Mr. Speaker, Sir, we have not established the motive behind it. The only thing we know is that there was a commotion within the cells and they fought this particular gentleman. The teacher was a sick person even before he was arrested and taken to the cells. Those are some of the reports which we are awaiting. We will know whether the assault was done in the cells or before he was arrested.

ORAL ANSWERS TO QUESTIONS

Question No.838

STATUS OF GITHURAI KIMBO POLICE STATION

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

(a) whether he is aware that Githurai Kimbo Police Station is currently under the Kasarani OCPD instead of the Ruiru OCPD,

(b) Why the 72 police officers at the police station are assigned duties in Kasarani area which is outside Juja Constituency; and,

(c) whether he is aware that insecurity cases have escalated as a result of the anomaly and what measures the Ministry is taking to ensure the trend is reversed.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you are aware that this particular Question had been dealt with. We were supposed to go with Questioner to the police station in order to direct the police to have this particular division to handle matters coming from the constituency other than referring them to Nairobi, Kasarani.

Mr. Speaker, Sir, we have done very well with him. We have agreed in principle. We saw the Director of the Operations. They will deal with matters related to the constituency other than taking them to Kasarani.

Mr. Speaker: Member for Juja, indeed, that matter had only that aspect pending. So, if you have any further question, you may ask.

Mr. Kabogo: Mr. Speaker, Sir, telling the House that the Question was dealt with is not the true position.

Mr. Speaker: It was substantively dealt with.

Mr. Kabogo: Mr. Speaker, Sir, if you allow, it was never dealt with. What happened was that we deferred the Question and the Assistant Minister asked for two weeks to consult. Yes, he did consult. He promised that this station will be moved to Ruiru Division; an action I am yet to see. But it is true that we have been talking.

Mr. Speaker: Ask a question!

Mr. Kabogo: Mr. Speaker, Sir, when will Githurai Police Division be returned to Ruiru Police Division?

Mr. Ojode: Mr. Speaker, Sir, I had directed the Director of Operations to deal with this matter immediately. The hon. Member is also aware because when I gave that directive we were together with him. As the Assistant Minister in charge of Internal Security, I gave directions. My directives will be worked on very soon. The Director of Operations is out of the country; when he comes back, he will implement what he had been directed to do.

Mr. Speaker: Last question, Member for Juja!

Mr. Kabogo: Mr. Speaker, Sir, would I then be in order to ask the Chair to direct that the matter appears again after two weeks to see whether the immediate instructions have been followed by immediate action?

Mr. Speaker: Mr. Assistant Minister, perhaps, you will do some service to the House and, indeed, the Questioner and Kenyans, if you give some reasonable date by which you expect compliance.

Mr. Ojode: Mr. Speaker, Sir, ordinarily, when a Minister gives directives, they are normally acted upon immediately. However, this one escaped the immediate action because the Director is out of the country. Let me assure this House that once he jets in the country, he will definitely enforce it.

Mr. Speaker: Give a reasonable date by which you expect compliance.
Mr. Ojode: Mr. Speaker, Sir, could we talk of two weeks or three weeks from now?

Mr. Speaker: We will give you one month. You will be expected to report back.
Mr. Ojode: That is okay, Mr. Speaker, Sir

Question No.1058

LIST OF ROADS MAINTAINED
BY CESS COLLECTED BY KTDA

Dr. Kones asked the Minister for Agriculture:-

(a) whether he could table details of the total cess collected from each of the KTDA-managed tea factories, multinationals and private factories from September 2010, to date,

(b) How much of the tea cess from each factory was remitted back for rural roads maintenance, and,

(c) whether he could provide a list of roads maintained by each factory from 1st October, 2010 to date, indicating how much was spent.

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

(a) I hereby table the details of the total cess collected from each KTDA managed factory, multinationals as well as private factories from September, 2010 to April, 2011.

(b) The Tea Board of Kenya (TBK) disbursed a total of Kshs256,411,936.10 back to KTDA managed factories, multinationals, private factories, for rural maintenance through the District Cess Committees and local authorities.

(c) I also hereby table a comprehensive list of all the roads maintained by each tea factory and the respective expenditure for the period, September, 2010 to June, 2011.

(Mr. Mbiuki laid the documents on the Table)

Dr. Kones: Mr. Speaker, Sir, I would like to seek the indulgence of the Chair because the documents that have been laid here are a bit bulky and a number of Members would like to scrutinize them. I request that we defer this Question, probably, to next week to allow me time to go through the documents.

Mr. Speaker: Assistant Minister, are you comfortable with that? You should not have a problem.

Mr. Mbiuki: Mr. Speaker, Sir, I have no problem bearing in mind that the hon. Member is a statistician and he needs time to go through all that statistics. Therefore, I am willing to come back next week.

Mr. Speaker: I direct that the Question appears on the Order Paper on Wednesday afternoon next week.

Hon. Members, Question No.1083, is deferred following consent between the Minister and the Questioner by reason of the fact that she had to attend a funeral service at short notice, and the Member has agreed to accommodate her. So, those who are

interested in the Question can wait until next week. So, we will defer it to Thursday next week at 2.30 p.m.

Question No.1083

PROVISION OF WATER TO IJARA DISTRICT

(Question deferred)

Member for Emuhaya!

Question No.1096

HIGH COST OF POWER INSTALLATION
BY KPLC

Dr. Otichilo asked the Minister for Energy:-

(a) why the Kenya Power and Lighting Company Limited (KPLC) is demanding Kshs170,416 from Ebukuya Primary School in Emuhaya District for a single phase 4KVA supply of electricity instead of Kshs55,000; and,

(b) why the construction and installation of electricity by KPLC is generally more costly than by the Rural Electrification Authority (REA).

The Assistant Minister for Energy (Mr. Magerer): Mr. Speaker, Sir, I wish to seek your indulgence. I have discussed with the Member about the Question and I feel that we have not sufficiently addressed the issue that he has raised. I request that you defer the Question to next week, so that I can come with a proper and satisfactory answer.

Mr. Speaker: Member for Emuhaya, are you happy with Thursday next week?

Dr. Otichilo: Yes, Mr. Speaker, Sir.

Mr. Speaker: It is so directed that the Question appears on the Order Paper on Thursday next week at 2.30 p.m.

(Question deferred)

POINTS OF ORDER

STATUS OF LIBYAN INVESTMENTS IN KENYA
IN RELATION TO UN RESOLUTION

Mr. Imanyara: Mr. Speaker, Sir, I seek a Ministerial Statement in keeping with your Communication in this House, that policy statements by Ministers should be given in the House rather than at Press conferences in the first instance. I am glad the Minister for Energy is here because I am seeking a Ministerial Statement from him with regard to Libyan investments in Kenya, in relation to the recent UN Security Council Resolution and in view of the near change of regime in that country.

In the Statement, the Minister should explain and confirm that the seven projects that were the subject of the memorandum of agreement signed at the City of Site on 5th June, 2007, by hon. Kiraitu Murungi, Minister for Energy and Dr. Bitange Ndemo, the Permanent Secretary, in the presence of His Excellency the President of Kenya and the President of Libya, were the Libyan investments in Kenya, and that they have been seized in compliance with the United Nations Resolution. I want to table that memorandum of understanding here for the Minister's ease of reference.

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

Mr. Speaker: Minister for Foreign Affairs! Hon. Imanyara, is that where you want the Statement from?

Mr. Imanyara: Mr. Speaker, Sir, I am sorry. The request should be to the Minister for Foreign Affairs. I am very sorry.

Mr. Speaker: Leader of Government Business, your Minister is not here.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, could it be understood that this matter is most opportune. This is the time to deal with this matter and I am sure the Minister would want to deal with it personally by Tuesday. I have already seen Statements that are attributed to the Minister for Foreign Affairs on this particular matter because it is a developing story. If we give him up to Tuesday, he should deal with it.

Mr. Speaker: Very well! It is so directed to be delivered on Tuesday next week at 2.30 p.m.

DEPRECIATION OF THE KENYA SHILLING

Mr. Baiya: Mr. Speaker, Sir, I rise to follow up on a Ministerial Statement that I had sought from the Deputy Prime Minister and Minister for Finance. He was to give the Ministerial Statement on 2nd August and up to date, it has not been delivered. It is taking unduly too long. We raise these issues when they are topical and relevant and it is taking too long to be delivered.

Mr. Speaker: What was it about?

Mr. Baiya: Mr. Speaker, Sir, it was on the falling value of the Kenya Shilling.

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

Mr. Speaker: On the same matter or a different one?

Mr. Mbadi: Mr. Speaker, Speaker, Sir, it is on the same matter.

Mr. Speaker: Very well. Carry on.

Mr. Mbadi: Mr. Speaker, Sir, I just want to add that the same Statement by hon. Baiya was also asked by myself before we went on recess. In fact, it was the day we went on recess and the answer was to be given immediately. This issue is causing a lot of concern and panic in the economy. It is important that the Government addresses the House and explains what has contributed to the "devaluing" of the Kenya Shilling. It should also go a step further and tell the country how it intends to address the problem.

Mr. Speaker: What has contributed to what?

Mr. Mbadi: Mr. Speaker, Sir, what has contributed to the depreciation of the Kenya Shilling.

Mr. Speaker: That is better. I thought you were saying what has contributed to devaluing of the Kenya Shilling. Will you, please, withdraw the word ‘devaluing’ because I am not aware that the Kenya Shilling has been devalued?

Mr. Mbadi: Mr. Speaker, Sir, certainly, I have to withdraw that because---

Mr. Speaker: Just withdraw the word ‘devalued’. “Depreciation” you can keep!

Mr. Mbadi: Mr. Speaker, Sir, I certainly must withdraw that because that was a careless statement from a finance expert like hon. John Mbadi, MP for Gwassi.

Mr. Speaker: Member for Gwassi, it would be actually irresponsible bordering, of course, on the word you have used, namely, being reckless. Just thank God you recognized that immediately.

Leader of Government Business, when will this be forthcoming? I am also aware that this is a developing story even as you give your undertaking to tell us.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, considering the very heavy schedule before the House between now and Friday and it being understood that this is a developing story as you put it, you could give the Deputy Prime Minister and Minister for Finance up to Tuesday to come up with the Statement.

Mr. Speaker: Order! Because we have another Statement on Tuesday and given the nature of business before the House, maybe the Minister could deliver this Statement on Wednesday afternoon.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I am most obliged.

Mr. Speaker: Very well! That then brings us to the end of Order No.7. Next Order!

PROCEDURAL MOTIONS

EXTENSION OF SITTING TIME

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

THAT, notwithstanding the provisions of Standing Order 20(2) this House orders that the sitting time of the House on Wednesday 24th August 2011 (Afternoon Sitting) and Thursday, 25th August 2011 (Afternoon Sitting) be extended until conclusion of business appearing on the Order Paper on each of the days.

The reason for this Procedural Motion clearly has to do with the many other reasons that I gave yesterday afternoon. It is now very clear in the minds of all of us, as hon. Members of this House, that we have urgent business that we have committed ourselves to accomplishing. I want to congratulate the House because last night, the Members sat until midnight. Indeed, the House Business Committee was sitting after midnight - I congratulate the Members - in order to agree on the Order Paper for today. For those reasons, I would like to urge that we continue in that same spirit in order to continue with our tradition as the Tenth Parliament, the Parliament that gave this country

a new Constitution, namely, the most progressive Constitution in the world. I should be allowed to get away with that because I believe, indeed, it is.

Therefore, we are also committed to the fullest implementation of the Constitution for the benefit of all our citizens. This task is, therefore, both urgent and necessary.

With those remarks, I beg to move. I ask hon. Wetangula to second this Motion.

Mr. Speaker: Order, Members! Please note that henceforth, you are guided by the Supplementary Order Paper which was circulated timeously in accordance with the Standing Orders.

Mr. Wetangula: Mr. Speaker, Sir, I will be very brief. This is a continuation of what we started yesterday; to spend some extra time to see that these Bills are debated and enacted by this Parliament. I know that many Members yesterday voiced very legitimate concerns about the speed at which we are moving with these Bills, but we were able to do so last night up to midnight and I have no doubt that we have the capacity to do so today as well. I urge the Members to support this Procedural Motion, so that we can meet the deadlines set by the people of Kenya in the new Constitution.

Of course, the reservations that Members expressed yesterday, as I said, were legitimate to the extent that sometimes when we rush, we may not visit good laws on the country, but we were assured that these drafts have gone through various stages and have been so thoroughly scrutinized by the various relevant stop gaps that they ought to go through. I urge my colleagues that as we did yesterday, let us do the same today, so that we can spend much less time on this Procedural Motion and go to the substance of the matters of the day.

With those remarks, I second.

(Question proposed)

Mr. Speaker: Yes, Member for Central Imeni.

Mr. Imanyara: Mr. Speaker, Sir, I am not opposing this Motion. Even as I support it with reluctance because of reasons I gave yesterday, I would like certain assurances from the Executive, that as they bring these Bills to the House and as they co-operate with us, they should also co-operate with the Constitution Implementation Commission (CIC).

We created that Commission to assist the House in ensuring that the Bills that we pass here, in order to implement the Constitution of the Republic of Kenya, are consistent with the Constitution. I have noted that in this hurry to pass these laws and implement the Constitution, we may be overlooking a very important constitutional duty – to seek the concurrence of the CIC before the introduction of these Bills to the House.

With those remarks, I beg to support.

Mr. Baiya: Mr. Speaker, Sir, I also wish to make my comments on this Motion.

Much as I understand the main reason as to why the Government is seeking to move these Bills as hurriedly and they are doing, it is also true that I have actually spoken with quite a number of my colleagues. It is clear that we have not even had time to go through them. Some of us have not even read these Bills, and we feel that we should have an opportunity to study them and make contributions in an informed manner.

Mr. Speaker, Sir, it is true that the Executive has had about 51 weeks out of the 52 weeks in the year, yet it is now seeking to have Parliament pass these legislations within one week. I want to submit that this is not going to help this country, in terms of achieving the quality of contributions that are needed.

We are not here in our individual capacities.

We are here in our representative capacity, on behalf of the Kenyan people. One of the fundamental principles in the Constitution is about democracy and participation by the people. The rule of law is based on the fact that there will be transparency, integrity and free participation. I am afraid that the failure of this process is likely to lead to a whole range of laws that have not gone through a process and received the goodwill of the people.

Mr. Deputy Speaker, Sir, this could lead to a situation where we have so many laws in the country that are more honoured in print than in compliance. This is likely to lead us to that kind of situation, if we pass legislations hurriedly and without giving Kenyans an opportunity to participate in their making.

To that extent, I oppose the Motion.

Mr. Wambugu: Mr. Speaker, Sir, I also stand to support the Procedural Motion but with a few reservations.

As the other hon. Members who have commented on this Motion stated, it is rather sad that the Executive has had these Bills for almost one year. Kenyans are wondering why it had to take that long for these Bills to be brought to the House.

Mr. Speaker, Sir, you will recall that yesterday, newspapers said that the ball was in the court of Members of Parliament, and that in case anything went wrong, Members of Parliament would be responsible. We wish that some of these statements, or even feelings, are corrected, because for the last three or four months, Members of Parliament have been asking for these Bills to be brought to the House.

My request is to Members of Parliament to put in extra time, so that we can go through the Bills in a more thorough manner. We should not allow any mistake that may have been introduced into any of the Bills to pass without being noticed.

With those remarks, I beg to support.

Mrs. Noor: Mr. Speaker, Sir, I also rise to support the Motion but with some reservations.

As a Committee, we were looking at The Elections Bill. A Sub-Committee was mandated to work on The Elections Bill. We found that The Elections Bill has so many mistakes despite the fact that the Minister and his colleagues in the Executive have told us this Bill has gone through many hands, and that it is perfect. Therefore, evidently, if we hurry, we will miss out on many issues.

Mr. Speaker, Sir, the Executive must take responsibility. This morning, we were looking at The Employment and Labour Relations Court Bill. After looking at it, we literally changed the whole of it because it was not making sense. So, rushing Bills in this manner is going to give us problems. We must be very careful. We do not want to just say that we are beating the deadline, because we want to implement the Constitution. If we do not have the most important things in place, we will be carrying out an exercise which is not right for everybody.

Everybody must take responsibility. We will not allow the Executive to come here again and tell us: "Please, extend the time of the sitting, so that we can do this" when

they know very well that they were supposed to have taken responsibility. They were supposed to lead in this process. The ball is now said to be in the court of Parliament. Everybody is now saying that the ball is in Parliament's court.

Mr. Speaker, Sir, as Parliament, we are ready to work for this country, but we want the best pieces of legislation for this country. We can only have the best legislations when we go through all these Bills and understand what each one of them provides, so that we can make informed contributions to it.

With those remarks, I beg to support.

Dr. Nuh: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is your point of order, Member for Bura?

Dr. Nuh: Mr. Speaker, Sir, since we have so much work ahead of us, and the mood of the House seems to be in support of the Motion, I request that you put the Question.

Mr. Speaker: Hon. Members, I have determined that, yes, the Motion by the Member for Bura is valid. I am pleased that he has, since yesterday turned round.

(Question put and agreed to)

SPECIAL SITTING ON FRIDAY MORNING

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

THAT, notwithstanding the provisions of Standing Order 20, this House resolves to have a Sitting on Friday, 26th August, 2011 starting at 9.00 a.m.

Mr. Speaker, Sir, again, this is a very strong recommendation from the House Business Committee. We feel that, having advanced all the arguments yesterday afternoon, and the House having turned round completely, it is only fair that we use Friday as well. If we are able to go through all the Bills before Friday, the sitting on Friday may not be necessary. However, we need to prepare for that eventuality, and be able to take a decision.

This will be of help to the Member for Githunguri, considering that he may not have read all the Bills. I understand his arguments. I am sure that he is not alone. I think a sitting on Friday will then give us time to acquaint ourselves with all the niceties and the provisions of the Bills that will be coming.

Mr. Speaker, Sir, I beg to move. I ask the Member for Ikolomani to second this Motion.

Dr. Khalwale seconded.

(Question proposed)

(Question put and agreed to)

Next order!

BILLS

Second Reading

THE ELECTIONS BILL

*(The Minister for Justice, National
Cohesion and Constitutional Affairs on 24.8.2011)*

(Resumption of Debate interrupted on 24.8.2011)

Mr. Speaker: Who was on the Floor? Was there nobody on the Floor?

Hon. Members: Mungatana! Mungatana!

Speaker: Okay. How much time does he have left? I need information from the table.

(Mr. Speaker consulted the Clerks-at-the-Table)

Member for Garsen, according to the record available in the House, you had used your time. However, just so that you recap, we will allow you two minutes.

Mr. Mungatana: Thank you Mr. Speaker, Sir. Just very quickly, I had just put the point that the presidential candidate ought to be allowed to be within the party lists.

Mr. Speaker, Sir, I wanted to invite the Minister that in the same manner, if the Minister can consider bringing an amendment to make it clear to the whole country that although the Constitution is quiet about this, for Presidential candidates who so wish to defend any other seat be it Senators, Governors or Members of Parliament, we must put a clear clause to remove any doubt so that we can retain the talent within this House. We would not have President Kibaki today if he was outside. We would not have the Prime Minister today if at the time they tried, at the beginning, they would not have been allowed. We would have the case of Kizza Besigye who is thrown out and then you will have to demonstrate without legislating.

With those few remarks, I support.

Mr. Wetangula: Mr. Speaker, Sir, thank you for an opportunity to support this Bill. After the 2007/2008 disturbances in this country, this is perhaps the most critical Bill that this Parliament must give to this country; a Bill on how to conduct our elections, a Bill to give this country an electoral process free of disputes and a Bill to make it clear that in any electoral process in this country, the winners will not exalt themselves and the losers will not feel vanquished.

Mr. Speaker, Sir, in spite of the fact that we are in a mad race to pass these Bills, this is one Bill which, ordinarily, should have been subjected to a retreat by Members of Parliament so that they go through it very carefully. This is because it is a Bill that is going to determine the future of electoral process in this country.

[Mr. Speaker left the Chair]

[The Temporary Deputy Speaker]

(Mr. Imanyara) took the Chair]

Mr. Temporary Deputy Speaker, Sir, going straight to the Bill, in Clause 9, the Minister should note that it should be brought in line with Article 38 of the Constitution.

(Prof. Ongeru consulted Mr. M. Kilonzo)

Mr. Temporary Deputy Speaker, Sir, could you get the Minister to listen to what we are saying because he is going to respond to us? He is engaged in a very animated discussion behind me.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Prof. Ongeru! Consult in low tones so that our colleague can be heard.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, Clause 9 should be brought in line with Article 38 of the Constitution and the Constitution does not say that a person convicted of an election offense is disqualified from standing for any future election. Therefore, what has been stated here is inconsistent with the Constitution. The Minister should note that. He should list exactly what is in Article 38 of the Constitution that qualifies who to stand for elections and not to add any issues that are not necessary.

When you look at Clause 14 on the nomination of candidates, the Minister has not indicated - because we are saying candidates can be nominated within a specified period - the law relating to independent candidates. If we nominate candidates at a certain period prior to elections, we are talking of three months or six months, what happens to independent candidates? When do they declare their candidature so that fairness is done to everybody?

Mr. Temporary Deputy Speaker, Sir, I agree that changing running mates upstream should not be acceptable.

Clause 23 of the Bill says:-

“A person may be nominated as a candidate for an election under this Act only if that person is qualified to be elected to that office under the Constitution”

In Clause 23(b), when you say a candidate should hold a post---

*(Applause as Mr. Duale entered
the Chamber)*

*(Mr. Duale consulted with Members
of the Backbench)*

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! Mr. Duale, now that you have joined the Backbench, it does not mean that Standing Orders do not apply.

Mr. Wetangula, please, proceed!

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, when we say a candidate should hold a post-secondary school qualification recognized in Kenya, what does that mean? If we want candidates for Parliamentary seats to be Form Four leavers, let us say they should have certificates for Form Four and leave it there. What happens to a person who stopped at Form Four and has been working for the last 20 years; is that a post-

secondary qualification? It has no certificate. I think we just need to say: Persons who passed Form Four are eligible to stand for elections” and leave it there, other than to talk of post-secondary qualification and leave it as vague as it looks.

Clause 25 is okay.

Clause 27 is very important. This refers to Fundraisings; people who build watches for elections. I am happy that Mr. M. Kilonzo this time has been very careful. He has not talked of a public officer. He has said any person. So, even businessmen out there who want to contest in elections must be barred from doing so if they have been endlessly engaged in Harambees that appear like they are used to influence voters. I propose that instead of eight months, these Harambees should be outlawed for one year prior to the elections. In fact, with devolved resources in this country, I do not see why we should subscribe to Harambees anymore.

Mr. Temporary Deputy Speaker, Sir, Clauses 28, 29 and 30 are very important because they relate to how candidates are supported but Clause 31 is very dangerous for any candidate. If the law says that a party will nominate or appoint agents, you can imagine a situation where a party appoints an agent to help a presidential candidate, a senator, a governor, a parliamentary and a county assembly candidate and that agent perhaps supports the party’s presidential candidate and not the parliamentary candidate or any other candidate. It means that the agent will even undermine members of his or her own party. The law should allow any candidate standing the ability and capacity to nominate and appoint agents of their own. If the party supports it, so be it. There is no guarantee that agents appointed by the party will support every candidate standing on the line of the party. There is a possibility of prejudicing candidates for no reason. So, the Minister should look at Clause 31 and reframe it to say that any candidate standing in any election has the right to appoint an agent of choice to superintend his or her elections.

I agree with Mr. Mungatana that we should allow presidential candidates to be on party lists because it is only fair that they be allowed to do so, so that is good for those who win while those who do not must have a national arena to continue with their agenda for leading this country.

Regarding Clause 40, I do not know what informed my learned Senior to frame it this way. This is because when you give a latitude and say that the Commission shall determine, declare and publish the results of an election within seven days, this is very dangerous. It is extremely dangerous. Elections must be determined and declared as immediately as they finish counting the votes. If we are talking of seven days within which to publish the results in the gazette, is a different matter but declaring the results must be done immediately the count is done and that is what we have been doing. To give a latitude of seven days is to create room for mischief. The fact that we have a new Constitution in this country does not mean we have got rid of mischief makers. They are still there. The fact that we have a new Constitution does not mean fraudsters are not in this country. They are still there. There are people who can easily manipulate these figures within seven days and cause even more trouble in this country than we have had before. So, I urge my learned Senior to re-phrase Clause 40 and give a window of seven days for gazettement but announcement must be immediately after the count of the vote.

Mr. Temporary Deputy Speaker, Sir, Clause 44 says that a public officer shall not engage in the activities of any political party and so on. Again, Clause 44 is inconsistent with the provisions of the Constitution and I hope that my learned senior will note that.

This is because the Constitution says that a public officer shall not engage in the activities of any political party but qualifies that it does not apply to the President, the Prime Minister and Members of Parliament. When you leave it open--- We are public officers and, in fact, every Member of Parliament is engaged in activities of political parties. So, to leave this clause as it is, is to go contrary to the provisions of the Constitution.

Clause 46 talks about the recall of Members of Parliament. It needs to be re-phrased and to be less vague than it is. To begin with, I want to urge the Minister to look carefully at Clause 46(2), on recall. I hope that my colleagues are listening to this because the Clause says that a Member of Parliament may be recalled on any of the following grounds namely mismanagement of public resources - this is alright; desertion of the electorate without reasonable cause including continued absence from the constituency or county. What does this mean? Will there be a register in the constituency or county where every hon. Member must sign so that he or she could show his or her presence? Most hon. Members live in Nairobi. What does "continued absence from the constituency" mean? If you go to your constituency, that is, Imenti Central and conduct a church service and come back to Nairobi, is that enough to be in your constituency? Is there a register somewhere that you must sign to show your presence? That is unacceptable.

Another point is failure to adequately represent views, opinions and proposals of the electorate to the relevant House. Who will gauge the adequacy of your representation of views? Where is the gauge that shows that the views that you are representing are adequate? Your adequacy may not be my adequacy. Do we have a barometer to measure what is adequate in what we represent to this House or to any Committee? The answer is "No". I would like to tell the Minister that this is a superfluous provision and it should get out of the Bill.

Another point is failure to participate in the work of the relevant committees of the relevant House in which you are a Member. If you are a Member of a Committee of the House and you constantly go to the Committee, sit there, observe and vote, is that a failure to participate in the Committee meetings? Is that enough for a recall or must you go to the committee and become a nuisance by talking on everything, however irrelevant to appear to be participating? Again, this does not make sense.

Another aspect is failure to appraise the electorate on the working of the relevant house and decisions passed by the House. There is no constitutional requirement for any hon. Member to go to the Constituency to tell his or her constituency what Parliament has passed. So, where are we getting this? Why are we visiting on Members of Parliament issues that are not constitutional? Is it enough for a Member to be recalled? Where are we drawing authority that when we pass anything here, one must go back to the electorate and explain to them? Where is the forum for that? Do you own a radio to use to explain to your constituents what you passed in Parliament? Clause 46(2) should be deleted from the Bill.

Mr. Temporary Deputy Speaker, Sir, on the threshold for recall in Clause 46(3)(b), I urge the Minister to raise the threshold for those who will sign the recall requirement to 50 per cent plus one and not 30 per cent. What the Bill also needs to indicate is that in case of a recall and there are proceedings; who bears the costs? The mischief maker must be made to bear the costs. The Bill does not say that when you go through the proceedings of recall, who will bear the costs. I want to discourage busy

bodies by loading costs on them so that when they want to engage in such a misadventure, they think twice.

Mr. Temporary Deputy Speaker, Sir, Clause 68(2) on page 972 relates to what I said earlier on. It reads:-

“A person who is convicted of an offence under this Part shall, subject to any express provision to the contrary in any written law relating to an election-

(a) not eligible to be registered as a voter;”

Mr. Temporary Deputy Speaker, Sir, I cannot imagine anything more draconian and dictatorial. The fact that a person has been convicted of an election offence does not make him ineligible to vote. They can vote for others. I do not see why they should be disenfranchised. It further reads:-

“(b) not vote at any election.

(c) not eligible to be elected at any election; and----.”

We should go back to the old law, and this is what we did in the IPPG. If you are convicted of an offence, first you are punished with a fine or custodial sentence or both. If you are a Member of Parliament or any electoral level, you lose out on that term, but you can be eligible to stand in the next term because you cannot punish a person continuously. If our punishment process is to reform individuals, then we cannot confine a person. Maybe, your youths engaged in a fight somewhere during elections and you should not be barred from standing for any election in the future or removed from any poll register forever, as the Bill provides. I urge the Minister to seriously look at this.

Mr. Temporary Deputy Speaker, Sir, there are many clauses that I would like to touch on, but I can see my colleagues are restless because they also want to speak. I would like to tell the Minister that those that I have not touched on, I have prepared a written memorandum and I will forward it to him so that he can enrich this Bill.

I beg to support this Bill.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, you will notice that we have Order Nos.10 up to 15. So, with your concurrence, I will limit the time for making contribution to between five and ten minutes. If there is a repetition I will cut you short.

Yes, Dr. Nuh!

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I want to support this Bill. Without belaboring the point, I would like to make some observations that might be helpful to the Minister and the Committee in trying to see that this Bill is in line with not only the Constitution, but also the aspirations of Kenyans. I want to draw the attention of the Minister to Clause 5(2) of the Bill. It tries to outline what are the documents that would validly be seen as identity documents for one to qualify to register as a voter or even to vote. I want to draw the attention of the Minister to Article 38 of the Constitution. It says that every Kenyan citizen has the right without unreasonable restriction to be registered as a voter. When you start restricting the type of registration document that someone should have--- Nowadays, someone is allowed to do withdrawals from the bank using a driving licence. So, I wonder why Kenyans should be restricted to only producing identity cards or passports for them to be registered as voters. Besides that, if you go to Clause 10 of the same Bill, you will realize that it says explicitly that someone can only vote upon producing the registration document which that person used at the time of registration as a voter. If you have a passport on which the identity card number is

indicated and your names are well articulated on that document, why would someone be forced to go back and produce an identity card, just because on the day of registering as a voter he used an identity card? If the officer overseeing the elections can verify that this is the actual Nassir or Mr. Mutula Kilonzo, then I do not see the reason why such a person should be turned away on a vague statement that on the day he or she was acquiring a voter's card, he or she used a passport and today, he or she has come with an identity card. These documents should be interchangeable at any one given time, because they are valid documents that can be used for any transaction within this country.

Mr. Temporary Deputy Speaker, Sir, I think an amendment will be in order for us to be able to align ourselves with the aspirations of the Bill of Rights, and the reason the rights were made explicit that there should be no restriction at the time of voter registration and voting for Kenyans to be able to exercise their democratic right and space.

I want to draw the attention of the Minister again to Clause 6 of this Bill. It gives the mandate to the Independent Electoral and Boundaries Commission (IEBC) to determine when to close inspection of voter registers. If that mandate has been transferred to the Commission now and it has not been made open in this Bill, then the Commission must be made to publicize such closures in the daily newspapers for Kenyans to know that the voter registration exercise or the inspection of the voter registers will close on such a date. This will enable members of the public, in earnest to make sure that they verify their names on the register without being prejudiced.

I am a bit concerned with this issue of the Commission trying to sanitize the registers at any one given time and finding out who is dead and who is not. What is the information mechanism? How will the Commission know that such and such a person died? If we do not make clear the reporting system on which the Commission is supposed to be notified, then we might end up with people being deleted from the register on wrong information that they were dead, when actually they are alive and kicking.

Mr. Temporary Deputy Speaker, Sir, I also want to go to Clauses 12 and 13. Clause 12(2) says that when a Magistrate Court declares on any claim by someone to be registered, there shall be no appeal arising from that declaration by the Magistrates Court. However, Clause 13 goes ahead and gives the mandate to a registered voter to object to the registration of that person. If the threshold was so high that once the Magistrate Court decides on your registration and no appeal can be entertained forthwith, what validly does someone have, just because he is a registered voter to come and object to such registration? I think there is a bit of contradiction in that.

The political parties are forced under Clause 14 to nominate candidates three months before elections, while several other parts of this Bill try to limit the rights of the Members of Parliament to exercise the freedom of association. There is one thing people are trying to call here "party hopping", but if parties were democratic enough, their members would not be quitting them for other parties. I would like to draw the attention of this House to the fact that 60 per cent of the Members of this House were people who were shortchanged by their parties before.

(Applause)

Political parties in this country have become a one-man show. Political parties are not owned by constituents and people, but by individuals who can send you out and in at their pleasure. With such a reality, the possibility of a candidate who will come and serve the nation at the highest capacity and has the broad support and mandate of his people, being locked out because of partisan politics and mediocrity within political parties is eminent. Such a person is not allowed democratic space to represent his people or his constituents. I see in this Bill an opportunity for people to introduce clauses, through the back door, which are contrary to the ones which we passed in the Political Parties Bill that this House adopted a few days ago.

Mr. Temporary Deputy Speaker, Sir, when a person is shortchanged by a party, it is not his or her fault. That happens because of the internal tenets and democracy that is lacking in a party. I would like to draw your attention to the mandate that has been given to the political parties in the exercise of their nomination process. It is not explicit that they will invite the Electoral Commission to come and oversee the nominations.

The Bill says: “A party, in agreement with the Commission may invite— “That means, in any other order, they might be able to exercise their own form of nomination. That may lead to Members being locked out just because they are not in tune with whoever is the party leader at that juncture.

I would like to make a proposal in Clause 22 – and the Minister will have a look at-- We are trying to look at the election of the Speaker of the County Assembly. I would request that a provision be made for a Deputy Speaker’s position. The Bill says that in the event a Speaker resigns in the County Assembly, then a Member of that Assembly would hold brief. What happens if the Speaker of the County Assembly is sick? Does that mean that the County Assembly will always be nominating a Member? I think the position of a Deputy County Speaker would be in order.

There are provisions in Section 24 which stipulate that a person is not qualified for nomination as a presidential candidate if that person is a public officer. Exclusions are then made as to who, among the public officers, would not be restricted. They include the President, Deputy President and a Member of Parliament. What happens if a Governor wants to run for Presidency? What happens if a Deputy Governor would want to run for Presidency? I think such provisions should be made.

I am trying to look at the threshold of the people who are supposed to nominate a Member of Parliament, a representative of a ward or a senator. The threshold that has been put there would make members run for elections just because they want to go for elections. Some wards do not have 500 voters, especially in the sparsely populated areas. So, when you say that a person to be nominated as a ward representative must have 500 registered voters supporting him, then you are subjecting that person to elections, even before the elections are done.

Mr. Temporary Deputy Speaker, Sir, I will now touch on the issue of a person who has participated as a candidate in the nomination or selection of a candidate of a political party, and who shall not be eligible for nomination as a candidate by another political party.

The Temporary Deputy Speaker (Mr. Imanyara): Your time is up. Hon. Members, I want us to manage the time we have if we have to complete the business that we have set out for ourselves before midnight. I would like some comments on how long

you would want this debate to take. Will one more hour be sufficient? I want just one comment on that issue.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, we will take one hour and we should try to share the time.

The Temporary Deputy Speaker (Mr. Imanyara): We have agree that we will take one hour. From now on, I will give each Member five minutes to speak, starting with Martha Karua.

Ms. Karua: Thank you Mr. Temporary Deputy Speaker, Sir. So that I utilize my minutes well, I rise in support of this Bill. I would like to urge that the Electoral Commission be given powers to impound any item of Government resources being used by a political candidate. If it is a vehicle or any other equipment, the Electoral Commission must have the teeth to bite. On Article 47 on recall, I think we must insert a clause saying that those who stood against you in the last election, and those who have publicly declared that they want to vie, must not participate or support a recall. Otherwise it will be a general election all the time. The other provision on this one is that we must have, at least, half of the registered members of the constituency voting to get you out, so that we stop malicious orchestrations. We should have half the registered number of voters. Otherwise, I associate myself with the other remarks by Members.

(Loud consultations)

Mr. Temporary Deputy Speaker, Sir, could you, please, protect me from the loud noise?

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, could you lower your tones?

Ms. Karua: Thank you Mr. Temporary Deputy Speaker, Sir. I have also noticed that in this Bill, we are attempting to criminalize or over-legislate on defamation law. If everything is criminalized, that means that you cannot even criticize your opponent without the Commission coming for you. We have adequate defamation laws in our books and any person aggrieved can go to a court of law. We must remove clauses that impede competitive politics and that will operate as a gag so that, you do not criticize your opponent or even accuses them of embezzlement where you have reasonable grounds. These are gagging clauses. Those are Clauses 68(c) and 64(a).

Mr. Temporary Deputy Speaker, Sir, Clause 72 seems to outlaw propaganda; it says that you cannot give a loud speaker or any other instrument to your campaigners lest they are accused of issuing propaganda remarks. That is something that can be taken care of by other laws. We should not have clauses that restrict Freedom of Speech. Anybody who is aggrieved can go to court. With regard to Clause 27 on fund raising, we must amend that to read: "Except when the candidate is fund raising either for the party or for his own or her own election." If we are not careful, we can even outlaw fund raisings for our own elections. Not everybody is a monied person or a money power house. We always rely on contributions. Parties rely on donations. If we outlaw them, then how are we going to campaign? We need to be careful with that clause. Article 60 is on the penalties. The penalties for offences under this Clause should include banning those engaged in them for 10 years out of public service, on top of the jail sentence.

I have heard colleagues complain about the issue of registration. I want to say that there are matters we can put in the Citizenship Bill, where we can order that records by the Registrar of Persons with regard to births and deaths be electronic and be synchronized with the electoral role. That way, we can know when a person is born and when a person exists this world without having occasional clean ups of registers.

For those who are against discipline in the political parties, we cannot have our cake and eat it. If we do not want political parties, let us abolish them and have independent candidates. I stand for democracy in parties and the Registrar of Political Parties must act as a Whip so that where members are aggrieved, there is swift justice. However, let us know, as members, that a political party is as good as its members. It is members who sleep on their rights and do not take their leadership to task or follow the constitution of the parties. We are the ones who are breeding dictatorship instead of good political parties. Unless we, as Members, invest in political parties we shall forever be complaining of what has happened instead of being proactive.

Mr. Temporary Deputy Speaker, Sir, there are many other issues I would like to mention. This is a good Bill, but we need to look at it with a toothcomb, so that when we come to the Committee Stage we strengthen it in the manner proposed by myself here and other hon. Members.

I beg to support.

The Assistant Minister for East African Community (Mr. Munya): Mr. Temporary Deputy Speaker, Sir, I would also like to add my voice in supporting this Bill. This Bill is clearly an improved version of the previous Bill in the sense that it gives some strength and teeth to the Independent Electoral and Boundaries Commission of Kenya to be able to manage elections effectively.

It is a very good improvement. However, there are a few concerns that we have raised which need to be addressed so that the Bill can be improved further.

One of the key concerns is the attempt by the Bill to put other conditions for qualifications to be elected other than the ones that are already provided in the Constitution. The Constitution exhaustively handles the provisions and offences that bar a candidate from running. When we try to do that through ordinary legislation, by giving additional provisions barring candidates from running, what we are attempting to do is to amend the Constitution through the back door. This is unacceptable. If the drafters of the Constitution had wanted more conditions to be put, they would have done so. So, the list they have given is exhaustive. We cannot have any additional requirements for you to be disqualified from running other than the ones that have been provided in the Constitution.

Mr. Temporary Deputy Speaker, Sir, there is also another provision that has been put under Clause 26(2)(g). It says:-

“A person is disqualified from being elected a member of a county assembly if the person-

(g) has been found, in accordance with any law, to have misused or abused a State office or public office or to have or to have contravened Chapter Six of the Constitution.”

Whereas the drafters intended to implement Chapter Six of the Constitution, it is not clear in this provision who will find you to have violated that chapter. Is it a court of law? Is it a specific body to be set to do that job? Who is this person who will scrutinize a candidate and decide this candidate has abused office or contravened Chapter Six? So,

the provisions are not clear and they can be misused by the IEBC to bar a candidate who is otherwise, qualified under the Constitution to run for office. We must avoid giving unnecessary power, too much power to bodies that are not subjected to a judicial process to be determining who is qualified to run for office and who is not qualified to run for office.

The other key issue I also want to comment on is the provision on *harambees*. Whereas we agree that it is useful to bring some control over fundraising in this country because the culture of fundraising has been misused and abused, it is not right to put a very blanket definition of what a public fundraising is. There is no clear definition. I have looked at the definition; it just says that if you carry out a public fundraising--- If your mother is sick and you invite your friends to your home to help you raise funds to take your mother to hospital, that would fall under the definition in the Bill because you have done so publicly. You have been able to publicly invite people to come and help you to do a fundraiser. What that means then is that you would be disqualified from running for office if you do it within that period specified by the law before the general elections. So it is a very dangerous provision that can be misused to harass people, especially poor people because it is poor people who raise funds.

I was trying to see whether the Minister for Justice, National Cohesion and Constitutional Affairs is listening. I was not addressing him. It is the poor who have need for fundraising. Therefore, in most cases they are the ones that suffer when we enact laws that make it difficult for us to help other people in our society merely for the purpose of barring particular people who may have need for running. It is not right. It is dangerous. We have to correct that.

If we are not able to define properly what we mean by this thing we are referring to as “public fundraising” then we had better remove it from the Bill completely, so that people are free to run for public office.

Finally, this issue of trying to unduly restrict people’s freedom to move from parties---

The Temporary Deputy Speaker (Mr. Imanyara): Your time is up.

Mr. C. Kilonzo: Thank you, Mr. Temporary Deputy Speaker, Sir. They say experience is the best teacher. I want to refer to Clause 32 which reads as follows:-

“A person qualifies to be nominated by a political party for presidential, parliamentary and county elections for the purposes of Article 97, 98, 137, 177 and 180 of the Constitution if that person-

- (a) has been a member of that political party for at least three months preceding the date of the nomination.”

Mr. Temporary Deputy Speaker, Sir, when ODM defected from ODM Kenya, they did it at the last minute. If this law was in effect, it means all these hon. Members of ODM, including my good friend Kajwang, would not be in the House. So, why would one after having come to Parliament want to make such a law?

Secondly, some parties-- and I have nothing against ODM, but it was the one which had the worst nominations. I remember my good friend, I do not want to mention his name here, was shortchanged and he had to switch to another party to get to this House. There are several examples. Why would a Member of Parliament, a politician, want to make a law after going through these problems within the political parties? One

of the recommendations is that if you have suffered, do not make a law which will make sure you are totally finished. Clause 32 should be deleted in totality.

Mr. Temporary Deputy Speaker, Sir, I did support the Constitution. However, as I was supporting the Constitution, I never agreed on the issue of recall. Recall of Members of Parliament and Members of the County was wrong. Every elected Member of Parliament is recalled every five years. Nobody has given that kind of recall. You are automatically recalled whether you were good or bad.

Since the Constitution does provide for that we also have to make sure that recall is very unattractive. What is provided here will lead to by-election after by-election. We cannot afford issues of by-elections. It is a luxury we cannot afford.

I do not know whether you saw Clause 44 which had been mentioned earlier. Whoever prepared this Bill, I think he hates politicians and Members of Parliament. What do you do with somebody who tells a politician the following: During election when the politician is most required, but Clause 44 bars him from engaging in political activities because he is a public officer. It defines a Member of Parliament as a public officer. Clause 44(1) says as follows:-

“A public officer shall not-

(a) engage in the activities of any political party or candidate or act as an agent of a political party, or independent candidate in an election.”

It further says that: “You cannot publicly indicate support for or positions against any party during elections”. Then (c) says that: “You cannot engage in political campaigns.” Just imagine the last by-elections in Ikolomani and the other day in Kamukunji; our party leaders, or Members of Parliament who are politicians, should not go to campaign for their parties. Can you imagine---

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): On a point of order, Mr. Temporary Deputy Speaker, Sir. I have a lot of respect for my friend but I think he is mixing up a public officer with a state officer; I would like to know whether it is clear in his mind that this is limited to public officers and not state officers.

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, I am surprised that he is trying to correct me. I thought he had read Article 260 of the Constitution which very clearly states that a public officer includes a Member of Parliament. I will take you there; I do not want to waste time. That is Article 260.

Mr. Temporary Deputy Speaker, Sir, another article, which is very interesting, is that you want to tell us that under (d) use of public resources to initiate new development projects in any constituency, or county, three months before an election is not allowed. Kenyans have done this. Just the other day the Orange Democratic Movement (ODM) was moving state machinery to support their candidate in Ikolomani, but Ikolomani brought hon. Khalwale to Parliament. What about during the Kenya African National Union (KANU) regime? KANU took resources to Kipipiri, yet they lost. Let us not say that life must stand still, or that when there is an election then everything must stand still.

I support with a lot of reservations.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I support this Bill. In doing so, I want to also join my colleagues in congratulating the Minister for the job that has been very well done, despite

the misgivings that we are alluding to which, I am sure, we are going to deal with when we go to the Committee of the Whole House.

Mr. Temporary Deputy Speaker, Sir, I want to start straight with the issue of registration of voters, which is in Section 5. Initially, it had been proposed that registration of voters would be a continuous exercise. Now, in this Section 5, the Ministry proposes, or says, that it may be carried out at all times. I want to suggest that it shall be carried out; we should replace the word “may” with the word “shall”, so that registering voters will be a requirement.

Mr. Temporary Deputy Speaker, Sir, having said that, I know all hon. Members are aware that the biggest impediment to registration of voters is the identification cards. I am happy that the Minister responsible for registration, hon. Kajwang, is here. This has been the biggest problem. It has disenfranchised Kenyans for many years. Now, we must make sure that this time round, the Minister ensures that all Kenyans who are eligible to vote, and who require identification cards, are given the same without any excuses like lack of procurement, finance *et cetera*. So, it is very important that as we pass this Bill, identification cards will be available. As we speak today, over 50 per cent of Kenyans who need identification cards do not have them. Therefore, it will be a mockery of democracy if we cheat ourselves that we are allowing Kenyans to vote and we are registering voters, yet they cannot do so because they do not have identification cards.

Mr. Temporary Deputy Speaker, Sir, I want to move straight to Article 46(5). Members of the public raised a hue and cry about recalling Members of Parliament. Indeed, this was allowed in the Constitution and this Bill is meant to facilitate the same. I want to agree with my friend, hon. Wetangula, that the grounds that will determine whether a Member should be recalled must be clear enough and make sense. I agree that Article 46(2)(iv) does not make any sense. It says: “Failure to appraise the electorate on the workings of the relevant House and decisions passed by the House.” That is not really a ground. I do not know who will be going round telling people about it. Even the first one says” “Continued absence from the constituency or country”. There are rules in this House which permit Members to be out of the country. Therefore, we must make it very difficult for people with mischief to try and undo what the electorate has done.

Mr. Temporary Deputy Speaker, Sir, I also agree with my colleague, hon. Martha Karua, on Article 47(b) that 30 per cent is a very low threshold. I think we should up it to 50 per cent; that will ensure that those busybodies who lose elections and want to wait and harass the sitting Member of Parliament---. We want to make it very difficult for them to do so.

Mr. Temporary Deputy Speaker, Sir, I am very satisfied with Article 112 because it ensures that interference with elections by officials will be a thing of the past. I would like to say that as we were passing the Independent Electoral and Boundaries Commission Bill we provided very stiff penalties for election officials who somehow interfere with elections; I think this is appropriate and must be encouraged.

Mr. Temporary Deputy Speaker, Sir, finally on the issue of election petitions, it is very sad that even as we speak, four and a half years since elections were done, there are still pending petitions. Therefore, under Article 76 - I am sure the Member for Gatundu North is looking at me because he is one of those suffering - we want to ensure that within six months, all petitions are done away with; this will be the biggest improvement that will have been done to the law regarding elections.

I beg to support.

The Assistant Minister for Regional Development Authorities (Mr. ole Metito): Mr. Temporary Deputy Speaker, Sir, I also stand to support this Bill. I want to go straight to my areas of concern. Clause 27, about the fundraising eight months preceding a general election, this, as hon. Munya has said, needs to be classified as to what kind of fundraising or *Harambees* are referred to, because some of them are very important because of the need to help *wananchi*.

Clauses 29, 30, 31 and 32 need to be harmonized with the Political Parties Bill that we passed yesterday; this is because we allowed party hopping; you can leave a party at a short notice. Therefore, being told that your supporters must have been members of that political party three months before is really inconsistent with what we passed yesterday; that is in Clauses 29,30,31 and 32. In Clause 31 we said that a political party may appoint an agent and there will be no agent for individuals or individual candidates; they will all be party agents. Under Clause 32(3) a political party will bear expenses relating to nomination of presidential, parliamentary and county assembly candidates; it should also bear the expenses of party agents since there will not be agents for individual candidates.

Mr. Temporary Deputy Speaker, Sir, on Clause 44 everybody has talked about participation in elections by public officers. We need to clarify about those public officers who aspire to vie for positions during the forthcoming elections. What will be the time for resignation? When do they have to resign in order to participate in elections?

Again, Clause 44(d) does not allow a public officer to:-

“use public resources to initiate new development projects in any constituency or county three months before an election in that constituency or county.”

Take, for instance, the issue of civil servants who are serving and maybe they have development projects in those constituencies and they are also aspiring to vie. That is why we are saying it should be very clear when they are supposed to resign. In my case, public officers aspiring to go into politics must resign one year before the election.

Mr. Temporary Deputy Speaker, Sir, Clause 46 talks about the right to recall a Member of Parliament. I entirely agree with the previous speakers, that those conditions are not realistic. But more importantly, we have talked of recall of Members of Parliament. We should also talk of recall of County Assembly Members and Governors. As said by many hon. Members, these conditions are not realistic.

Clause 47(1) talks about petition for recall. It says:-

“A recall under section 46 shall be initiated by a petition in writing signed by a petitioner who is a voter in that constituency or county and filed with the Commission.”

Mr. Temporary Deputy Speaker, Sir, since we have now made registration of voters a continuous exercise. I believe after a general election, registration of voters will continue. So, the voter who will initiate the removal or recall of a Member of Parliament must have been a voter and must have voted during that election where that Member was elected, for him to have the mandate to recall that representative. So, that needs to be clarified, not just a voter. You may have registered long after the election was done and you start mischievous behaviour of recalling an elected Member.

Mr. Temporary Deputy Speaker, Sir, Clause 60 on the issue of Commission staff is good. They should be held responsible for mistakes of that nature.

Clause 72 is on the issue of limitation of political propaganda. I really do not know what political propaganda is. This needs to be clarified, especially where it says “a person shall not furnish or supply musical instruments or loud speaker to any person with intent that it shall be used by any person during the campaign period in any way or used in or upon vessels, animals, vehicles as or for the purpose of political propaganda---” That needs to be clarified.

With those few remarks, I beg to support.

Mrs. Noor: Mr. Temporary Deputy Speaker, Sir, I wish to support this Bill.

I would like to raise some concerns, particularly on the issue of registration of voters. Registration of voters is supposed to be continuous. However, here it is said it will be based in certain places and not in the countryside. So, I am proposing that we have this registration twice in a year and we make sure we do mass registration of voters all over the country. This is the only way we can give people chances to register themselves, particularly where the geographical coverage is so large that people cannot come to urban centres to register themselves.

Mr. Temporary Deputy Speaker, Sir, to me, this Bill is not constitutional. An election Bill that is not covering the two-third principle is not a constitutional Bill. This is violating the Constitution of this country. If you look at Article 27(3) of the Constitution, it is very clear on this. It says:-

“Women and men have a right to equal treatment, including the right to equal opportunity in political, economic, cultural and social spheres”.

This Bill has not captured that. Article 27(8) of the Constitution says:-

“In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that no more than two-thirds of Members of elective and appointive bodies shall be of the same gender”.

That principle is not captured in this Bill. That makes it not constitutional. I have been hearing debates that the proposals that the women organizations have brought forward are unconstitutional because they discriminate against men. Even in our Constitution there is limitation of rights where you can limit rights by looking at historical injustices. If there had been historical injustices which are very clear, then you can limit the rights of the other side of the gender. That provision is given in the Constitution. It is not something I am bringing on board.

Mr. Temporary Deputy Speaker, Sir, if you go to the general principles of elections, Article 81 is very clear. If you look at 81(b), it talks of no more than two-thirds of members of elective public bodies shall be of the same gender. This is an election Bill. If that principle is not captured in this Bill, then this Bill is unconstitutional. Immediately we pass it, I fear women organizations of this country can go to court just the way they went to court when we did not abide by the two-thirds rule with our supreme court. That is why today, we do not have a supreme court. The nominees to the Supreme Court to date have not been sworn in.

Ladies and gentlemen, Hon. Members of this House, this is our country and we must rise to the occasion. We must look beyond what we are thinking about. Let us leave our individual interests. Today, I am here, tomorrow, I will not be there. This is our Constitution that we so much love and talk about every day. If we are violating it at this

stage, it will not augur well. Here we are, debating a Bill that is supposed to anchor the Constitution, and we leave all those things out, then it is unconstitutional.

With regard to the right of recall, I think it should have its own Bill. It is something very big. It has a lot of things in the recall clause. All the issues of recall in this Bill should be removed. We should have a Bill that will deal with the recall clause.

On the election, I think the political nomination of candidates should be the same day. Here in the Bill it is not clear. Political party “A” can have its nomination, the other day and the other one, so it creates a lot of confusion. So, my suggestion is that all the nominations for political parties should be done on the same day. We should have it at the same time.

(Applause)

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Thank you, Mr. Temporary Deputy Speaker, Sir. Thank you, hon. Members for those breaking news. However, I have to wait to be sworn in first.

The Temporary Deputy Speaker (Mr. Imanyara): What is the breaking news?

Mrs. Shebesh: Mr. Temporary Deputy Speaker, Sir, the breaking news is that hon. Kamar is now a full Cabinet Minister in the Coalition Government. We are very proud of her and we want to congratulate her.

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill, which I support.

I want to address myself to a few clauses. I will start with Clause 5(1) which deals with the continuous registration. This is laudable. That children are being born every day and they are turning 18 years is also a continuous fact. So, it very important that registration is done on a continuous basis.

I would also want to recognize Clause 8(1) on the Updating of the Principal Register of Voters.

Mr. Temporary Deputy Speaker, Sir, you realize that when we had problems in 2008, one of the confusions that made Kriegler say that he did not even know who won the elections was the fact that our registers were not updated. This is one thing that must be taken very seriously after this Bill is passed. I would like to urge the Minister for Immigration and Registration of Persons that for us to realize the continuous registration and updating of the register, we must have our identity cards issued in tandem. So, it is very important that our records are right to begin with because an election can only be as good as the records that we have. If our records are wrong, then we will get wrong results and we will be confused.

The main area that I want to contribute on is the issue of nomination of women candidates versus the selection of women candidates and the rule of one third. A lot has been said about that. We have had even the Cabinet trying to look at it and understand how we can realize it, but there are areas that we need to look at to ensure that we do not break the law. I would like to take us to Clause 14(1), which talks of a political party nominating its candidates for an election under this Act, at least three months before an election. I would also like to touch on the Constitution itself. In the Constitution, when it comes to the election of county representatives, Article 177(1)(b) is very good in

providing for special seats to ensure that not more than two-thirds of the county representatives are of one gender. I understand what the rights are in Article 81(b) that again, not more than two-thirds of any elective posts should be occupied by members of one gender. We know that when you go to the Bill of Rights, a lot of people have debated and said that you cannot force anybody to elect whoever they do not want.

Mr. Temporary Deputy Speaker, Sir, be that as it may, I want to go to Clause 14(1) on the nomination of candidates. If a political party is to be considered to have disobeyed the Constitution, how do we measure that? This is the Article that we need to do deal with, so that at the point of nomination of candidates, every political party should be measured by producing one-third of the candidates from each gender. If the Constitution is saying that for all elective positions, you must have not more than two-thirds from one gender, in effect it means that for a political party not to be violating the law, it should ensure that the products that they bring to this House are in agreement with the Constitution. It is my considered opinion, therefore, that this is the Clause that we need to look at and amend to ensure that at the nomination stage, political parties should be held responsible for the Members that they bring to this House. We cannot hold responsible the Kenyans who would like to vote for whoever they want to vote for.

I am saying this strongly because we know that we came to this House because of the strength of the nomination that we received. If a political party would like to bring a candidate, it can only come through nomination.

With those remarks, I support.

The Assistant Minister for Education (Prof. Olweny): Thank you, Mr. Temporary Deputy Speaker, Sir. This is a very good Bill which will help us in reforming the electoral process in this country. The Bill talks of continuous registration of voters, which is also reflected in the Constitution. I do not know whether we shall implement that part to ensure that the registration of voters is continuous. I am dreaming of a day when the identity card number will be the same with the voter registration number except for the addition of the constituency or the polling station code. If we do that, then one can use his voter registration card as an identity card because it will have the same number, apart from a few additions. Those who will be charged with the responsibility of implementing this Bill could liaise with the Ministry of Immigration and Registration of Persons, so that those numbers are tallied and we will have made an achievement.

The Bill tries to address the malpractices and the violations that Kenyans engage in during the electioneering period. I do not know whether this Bill could have helped us if the Minister could have brought in something to do with how much money a candidate should spend during the electioneering period. You find that in some constituencies, candidates spend almost Kshs100 million while in others candidates spend just about Kshs2 million or Kshs5 million. What makes this difference? Why can we not criminalize unnecessarily exorbitant spending during the campaigns? I believe that this is simply because of bribing the voters. Why should you buy voters if you are a credible politician and you think that your constituency will benefit from your representation in Parliament? I do not think that has been covered in this Bill, but I think it should be. There is no point for some people to spend several millions of Kenya shillings trying to buy voters.

Mr. Temporary Deputy Speaker Sir, time has come when Kenyans should leave the elections rigging process of yesterday. Rigging comes along with bribing of voters

and malpractices by the people who have the responsibility of helping Kenyans during the voting process, for example, the Commission that will be charged with this. I am happy that in this Bill, it is specified that anybody who goes against the law will be responsible for it. We do not want to have a repeat of what happened during the 2007 elections. It was terrible. I do not think Kenya is ready for a recurrence of the same.

With regard to election petitions, it is sad that after four years in Parliament, the courts take Kenyans back to an election like we had in Kamkunji the other day. Surely, what is the country achieving by that? There was a time when we had a by-election and we had only six months to the end of Parliament. It is good that this Bill has addressed that issue. In fact, six months are too many. It could have been three months, so that every petition is dealt with and finalized. With regard to *harambees*, these are a process of bribing voters.

I beg to support.

Mr. Twaha: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill and I will be brief. I am concerned about the fact that the Electoral Commission will be given power to arrest. There have been incidences in the past where the Returning Officers are compromised and they practice criminal and unjust practices in the conduct of the elections, biased towards one candidate. If you award them powers to arrest and prosecute, what happens when a member of the public complains? He might get upset because this guy is being unfair, and he may get arrested and thrown in jail. There is danger there. So, there is need for the Minister to clean up these few paragraphs. We should bestow the prosecutorial and arrest powers – and rightly so – upon the police, who will be independent, or do away with them altogether.

The other issue that I want to comment on is freedom of association. As my colleagues have already stated, most of our political parties are devoid of any ideology. The only ideology is the tribal chief who happens to head that particular party. Personally, I do not want to be held captive by any tribal chief. My people are behind me. They will follow me to whatever party I go to. However, there should not be a law passed by us here; who are members of those small clubs to restrict my freedom to join or disassociate myself from any political party. So, I would like to propose that this also be done away with; I am in support of the people who spoke before me.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, the Minister will reply to debate in five minute's time. So, I will give two minutes to hon. Mututho. If the Minister agrees, I will give two minutes to each side, because we will be eating into his time.

Mr. Mututho: Mr. Temporary Deputy, Sir, I would like to support the Bill and request the Minister to look again at the code of conduct during elections and during the electioneering period, particularly the period we are in now.

Presidential candidates and other candidates have a chance to do some things which, definitely, will affect the results of the general election. I personally experienced a mess in 2005, where people, including myself, were manhandled because of the beliefs I held against the proposed Constitution then.

I would also like the Minister to seriously and comprehensively look into the area of opinion polls. Opinion polls lack the ingredients critical to fair elections, particularly when they come 12 months before an election.

Mr. Temporary Deputy Speaker, Sir, another thing I want to talk about is election petitions. In as much election petitions are unavoidable, there should be a threshold of crimes under the particular law. For instance, if it is just a petty issue, let us not call off the entire electioneering process, but have an option of a fine, so that only serious infringements lead to disqualification of a candidate. We have gone through this mess before. It is a very bad thing.

We should look again into the issue of affirmative action. I would like to look at Clause 84(a), (b), (c), (d) and (e) and say that it is technically not possible for one to know which vote came from whom, as defined herein. Therefore, this provision should be deleted because it is not possible during scrutiny of votes to tell a voter's votes from those of another voter.

Mr. Temporary Deputy Speaker, a petitioner should, first, apply to the court, stating that he is not able to get access to the person.

With those remarks, I beg to support.

(Several hon. Members stood up in their places)

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, the time I have left is for the Minister to respond. If he wants to share it with anyone of you, he is at liberty to do so. As agreed, I will be putting the Question at 5.00 p.m. If the Minister gives you his time, it is well and good.

Minister, it is up to you. It is your time.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I would like to donate a minute to each of these hon. Members for each one of them to speak on one item because I want the Bill enriched.

Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Very well.

Yes, Elizabeth.

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Mr. Temporary Deputy Speaker, Sir, I rise to support the Bill

Due to constraint of time, I just want us to take note of Clause 36, which requires political parties to submit their party lists before nomination, but which is vague. It just says "at least before nomination". So, a political party could choose to give its party nomination list a day before nomination. Can we fix time, so that we know whether it is 30 days before, so that if you are campaigning in your constituency, and you are number one in the party list, you can know where you are. If you are number 26, you can continue with your campaigns.

Again, on Clause 40(3), we cannot leave the determination of the order and manner in which elections results will be relayed to the Commission. We know what we went through---

The Temporary Deputy Speaker (Mr. Imanyara): Your time is up, Elizabeth!

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro): Can we, therefore, consider those suggestions?

I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Kiunjuri, it is your minute now.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Temporary Deputy, Sir, Clause 46, on recall of Members of Parliament, is very clear. You must go to court in order for you to make sure that you recall a Member of Parliament. We can only delete paragraph 5, which provides that the Member is supposed to go and report progress of the Committees and the Reports of the House. If you cannot fulfil those conditions, you are unfit to be a Member of Parliament.

On the issue of elections offences, as provided for from Clause 57 onwards, it is important that we thoroughly educate our people, so that they can understand the import of those provisions. We should do this in the manner in which the Ghai Commission conducted civic education before the first referendum, and in the manner in which the Interim Independent Electoral Commission educated voters. We should have intensified civic education in the same way we educate people on family planning, and in the way former President Moi educated Kenyans on re-forestation, whose theme was “*Ukikata mti mmoja, panda miwili*”.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Capt. Wambugu, you can now have your minute.

Mr. Wambugu: Mr. Temporary Deputy Speaker, Sir, I beg to support the Bill and comment on a few issues.

Registration of persons should be an ongoing exercise. It should preferably even be introduced to schools before students exit school in Form Four. Some children attain the age of 18 while in Form Four.

Registration of voters should also be continuous and, preferably, be done electronically to avoid double registration of voters. Continuous voter registration should be effected immediately. Voter education should also be undertaken immediately because most of the people do not know what they should be voting for.

Lastly, the campaign period should be very well defined, because this country has been in a continuous campaign mood from the time we had the last elections.

I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, Member for. Lari.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I would like to draw the attention of the Minister to Clause 46 on recall of Members of Parliament. The move to initiate a recall will come within the first two years. In my view, this is a very short period, and I would suggest that it be done within the first three years.

Secondly, a recalled Member of Parliament is barred from contesting a parliamentary seat in the subsequent election---

The Temporary Deputy Speaker (Mr. Imanyara): Your minute is now, hon. Mwatela.

The Assistant Minister for Education (Mr. Mwatela): Mr. Temporary Deputy Speaker, Sir, I would like to comment on Clause 19, which says that a County Governor candidate or a political party shall not at any time change the person nominated as Deputy County Governor candidate after the nomination of that person has been received by the Commission. In this case, there is need to have a way of dealing with a situation where circumstances beyond the normal wish of making such changes demand that such a candidate be changed even after submitting his or her nomination to the Commission.

The Temporary Deputy Speaker (Mr. Imanyara): Very well.

The Assistant Minister for Higher Education (Mr. Kamama): Mr. Temporary Deputy Speaker, Sir, I just want to say that I support the Bill and confirm that a lot of what we have in the Kriegler Report, and a lot of what was in the previous Act, has been captured in this Bill.

First, I want us to raise the bar in the recall clause. Secondly, we want the Returning Officers to announce the correct winner. Sometimes you have a situation where a Returning Officer announces the loser as the winner. Let us make it impossible for a Returning Officer to do that. Otherwise, on the whole, the Bill is okay.

I beg to support.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Temporary Deputy Speaker, I would like to comment on the recall Clause. As hon. Kamama has said, let us raise the bar, so that people do not misuse it. Let us put it at 50 per cent.

Lastly, on nomination of candidates, the Bill proposes post-secondary school qualifications for all electoral positions, but can we clarify this further and have separate qualifications for parliamentary candidates, presidential candidates and governorship candidates?

The Temporary Deputy Speaker (Mr. Imanyara): Order! Order! Minister, would you give a minute to one more Member?

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

Mr. Langat: Mr. Temporary Deputy Speaker, Sir, I also support.

On the recall clause, I think Clause 46 says that the High Court must confirm. When we go and see the actual procedure in Clause 47, it gives the impression that the Commission can just declare that there will be a referendum before the court. I urge the Minister to ensure that it is clear once you receive the petition, it has to go to court before it comes to the National Assembly.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I am overwhelmed by the support that Parliament has shown to this Bill. This is historic.

I want to assure hon. Members that we are going to address the recall clause although I would also welcome written proposals as to how best we should do it because the Constitution demands that we put in a recall clause.

Allow me also to address the issue of identification documents required during polling. I also welcome proposals.

On women, I want to assure Kenyan women that we love them, that clause 27 is completely irreducible. All that we are going to do is put a constitutional procedure as to how Clause 27 can be realized but not to reduce the two-thirds principle.

On Harambees, again, I am going to look at it. I also welcome opinion.

I want to thank Mr. Mututho for giving me a big dossier on opinion polls and I will be consulting the CIOC to see whether this is the right time to put this in or we can do it when we are finalizing consolidation of election laws.

Mr. Temporary Deputy Speaker, Sir, 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

URBAN AREAS AND CITIES BILL

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Deputy Prime Minister and Minister for Local Government, there was consensus. I think we will proceed on that basis to the end.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Thank you Mr. Temporary Deputy Speaker, Sir, for notifying me on that. I will shorten my presentation so that I can allow many Members to contribute.

Mr. Temporary Deputy Speaker, Sir, I beg to move that The Urban Areas and Cities Bill (Bill No.38 of 2011) be read a Second Time.

In moving this Bill, I would just like to, first of, all give some background that by and large in Kenya, the issue of management of urban areas has been structured and placed in Cap.265 - The Local Government Act. Over the years, people have discovered that that particular law has had a lot of defects and they needed to change and alter the way cities and urban areas are governed.

Mr. Temporary Deputy Speaker, Sir, this particular provision is covered under Article 184 of the Constitution. Within the whole context of devolution, cities and urban areas are going to become entities within the county government. One of the things that we seek to achieve through this Bill, as Members will look through it carefully, is that in enforcing devolution, we want to make sure that in the 47 county areas, it is clearly known that the county government is the superior government. This is very important. Therefore, urban areas and cities are units within those county areas.

The authority is, therefore, vested in the county government and the management of cities will be subsets in this context in the management of that county. This is a very important principle that underpins the whole aspect of devolution.

Mr. Temporary Deputy Speaker, Sir, you will find that this Bill seeks to eliminate certain mischief. For instance, in the past, a Minister for Local Government would just walk and transverse the county, come to a particular place and declare it a town council, city council or municipal council, without any clear classification criteria. It was more of a political game rather than anything based on fact, data or criteria that would be useful to justify the status that the Minister was conferring to that particular town or region. With this, we intend to provide a mechanism that can be understood and audited before an area is conferred city status or even municipal status for that matter.

The other thing we are bringing out in this Bill, which is of very critical importance, is that we cannot have elections because elections are at national level and ward level; that is the two-tier level of Government. We do not have a three-tier level of Government. What we are proposing here is that when it comes to the governance and management of urban areas and cities, I would like Members to look specifically at Part III of the Bill. The provisions from there onwards provide a new format of managing our urban areas and cities. What we are saying, if we are taking Nairobi as an example, Nairobi is a city and also a County Government, the same will hold for a place like Mombasa. Since there are people who are already elected as County Assembly Members

and their electoral unit is a ward and then you have a Governor who is also elected, we are now saying you cannot have a mayor elected and a governor elected because you are going to bring serious competition. We want that once the county government is in place, it is that county government that will now competitively seek and hire managers of the city. Those managers will be answerable to the county government and county assembly. This is the basic foundation that is coming out here.

Mr. Temporary Deputy Speaker, Sir, if it is in areas where you have more than one municipality, for example, Nakuru; you could have Molo, Naivasha and Nakuru itself. Once you are elected a Governor and you have a county government, you will appoint managers for Naivasha, Nakuru and Molo but competitively. They then become answerable to the county government. If they perform, yes. If they do not perform, they will be shown the door. This is because we are giving powers to the county government. Now, the Minister will not come in to interfere with a particular clerk or officer. We want to move away from that and give true meaning to devolution as the Constitution provides for. Once this Bill is passed, it will bring to an end that notorious game that we have seen over the years where councillors are hijacked and taken across borders. Some councilors from Migori and Kajiado go to Tanzania while others from Kisumu and Kakamega go to Uganda and very strange things happen. They are told to put their mobile phones in a basket as they come in and somebody locks them very far away. They retain one line for everybody's communication. So, the councillors are dealt with as if they are small children and yet they are grown up. I hope that with this Bill, we are giving an opportunity for elimination of that kind of practice. This will also give a window for professional managers and serious people to be charged with the responsibility of managing our urban areas.

Mr. Temporary Deputy Speaker, Sir, I also want to point out that this law also makes it very clear that planning must be enforced in urban areas and cities. If you look at Part V, you will find that we have integrated development planning. This is very important because what has been happening over the years is that the current city or urban area managers have not been taking the issue of development planning very seriously. We are now making it a legal requirement to make sure that these plans are in place. We have tried to seal all the loopholes but naturally, no human being is perfect. That is why the Bill is here for hon. Members to enrich it even further. I want to state that this is just one of the pieces of legislation that is supposed to support devolution. Once the main devolution Bill is cleared, it shall be brought here and Members will deliberate on it. There are issues that will relate to the financial management of county governments and that again will be coming within the context of the Public Finance Management Bill when it is brought to this House. As a requirement, this is the one that was supposed to be in place within the first year from the date of the promulgation of the Constitution.

This is a very straight forward Bill and it has also been very consultative. I appointed a task force to look at aspects of devolution. They went around the country and had various stakeholder consultative meetings which culminated in a national symposium. They have also shared their views with Members of Parliament twice, once at the Kenya Institute of Administration (KIA) and another one in Naivasha on the whole package regarding devolution, and this is one of the packages. So, this is not a Bill that is contentious in my view. It has also been looked at by the CIC and they have also given their input. It is now for the hon. Members to give their input and support it.

Mr. Temporary Deputy Speaker, Sir, I beg to move, and I will be very happy if Mr. Kajwang can second this Bill so that other Members can have an opportunity to contribute. I also want to state that we have had consultations with the relevant Departmental Committee on Local Authorities and I want to say that its Members have been very supportive in many areas and in pointing out a number of things, not only here but even in the whole context of devolution. I am sure they will be making their own contribution towards this Bill.

Thank you, Mr. Temporary Deputy Speaker, Sir.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, I wish to second this Bill. May I say very briefly that actually when we agreed that we will have election at two levels, that is, the national level and the county level, I was already worried what will happen to the office of the mayor because you cannot have a governor who is elected by the majority of Nairobi residents and also have a mayor who is elected by the majority of Nairobi residents and each one of them has executive powers. It was not going to work that way. This is a way of engineering how there can only be two elections; one at the national level and the other at the regional level and then see how to manage the city in a way that is peaceful and does not bring another election. I also looked at it from the rural dispensation because I come from a rural constituency. I have Suba County Council, Mbita Council and there will be Homa Bay County. I was going to ask how we will have only two elections. What will happen to Mbita County Council and Suba County Council? It came to my mind that they will just have to die. However, the question was: How will we govern those small urban areas to make sure that they are clean, services are provided, they grow and take care of the interest of the people who live in there? I think this is a very ingenious way of providing for this management. There will only be one government and we will have certain managers who are appointed by the executive authority at the county level and who will be answerable to the county government.

Ordinarily, there is something like that although it is not quite conspicuous. If you go to a big City like Nairobi, you will find there are departments that run Eastlands and other parts of the city but they are answerable to the City Council. This is not anything new but it has been improved to give effect to what the Constitution expects us to do.

If you look at Clause 21, you will find that it talks about the powers of boards of cities and municipalities. The executive government will appoint boards to run the city. They could appoint boards to run parts of the city. They could divide the City into 17 or less regions and then call them cities if they like or whatever name they can give them. However, they will create a board which will run the affairs of that small entity. That board will be answerable to the city government which is headed by the governor. Clause 21 says that the board shall exercise executive authority as delegated by the county executive. This means that they do not exercise any other executive authority as if they have also been elected. The authority is just donated and can be withdrawn. That makes it a very professional body that will then manage our affairs. This is just like the water boards which are professional boards that manage our water affairs but that donated power can be withdrawn or improved.

Mr. Temporary Deputy Speaker, I want to thank the Deputy Prime Minister and Minister for Local Government for this well-done job.

I beg to second the Bill.

(Question proposed)

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I have the honour of sitting on Departmental Committee on Local Authorities and we had a meeting with the Deputy Prime Minister and Minister for Local

Government and a group of interested participants from chartered institutes of planning, architecture, surveyors, city accountants and certified accountants *et cetera*. The meeting was very good. What the Deputy Prime Minister and Minister for Local Government is saying, and we are very proud, is that this is basically a governance, implementation and management Bill which will interlink with devolution. What we are trying to present here is the basic infrastructure framework we have. The major point that I am very pleased about is the issue of professional management of boards which is lacking in all local authorities. I am very proud that today, we will be able to look for professional managers to head and be part and parcel of the management of a local authority. What is very clear, and I think some of the councillors are still not sure, is that there will be no councillors other than the county representatives. The councillors will not be automatically absorbed in any management board which will be vetted by the county public service. That is what I understand. I also understand that the local authorities staff need not worry that we will kick all of them out with the passage of this Bill. They will be given time to either be seconded or redeployed. In the immediate short-term, they will have a job. However, they will be subjected to a vetting process either by the management or the board to see whether they are qualified. The local authorities have been overstaffed and one of the first things that any management board would like to do is to see how the management board of that authority, be it Kisumu or Ahero, will get the appropriate number of staff for the services that they provide.

Mr. Temporary Deputy Speaker, Sir, the Deputy Prime Minister and Minister for Local Government spoke about a Minister going to a place and declaring it a city. That was in the old Local Authorities Act that was changed, but the one in Tanzania still remains. That is how Mwanza was declared a city. However, I want to put to you that the former President Moi came and declared both Kisumu and Mombasa cities. I hope that this Bill will give the current President, H.E. Mwai Kibaki some powers to confirm the two municipalities as cities.

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

Mr. Wetangula: Thank you, Mr. Temporary Deputy Speaker, Sir. I will also be very brief. I want to congratulate the Deputy Prime Minister and Minister for Local Government for bringing this Bill to this House.

This Bill demystifies the criteria or lack of it that caused various governments in this country to bestow various status to towns without even thinking about the cost implications or what they mean and whatever that went with it. I urge the Deputy Prime Minister and Minister for Local Government to look at what we are doing beyond cities, municipalities and towns. If you talk of about 5,000 people as the criteria for a town status, you are locking out so many areas that are mushrooming that require planning. Any settlement with more than 2,000 people is a small town. If they have built and they are all resident there, then we must confer them some status, so that they get planning, sewage and facilities so that they can grow into a town. If we restrict to the threshold set

out in the Act – and I urge the Minister to really think about this – then by the time we confer status to certain towns, they would have grown beyond the control of any proper management. To come and start planning avenues, roads, parks and so on, you will start a new war with the residents. So, I would like to see a situation where anywhere where we have a market that has 2,000 people getting some special status and attention from the county government.

Mr. Temporary Deputy Speaker, Sir, I also want to support the Deputy Prime Minister and Minister for Local Government for setting up these professional boards. This is because if you look at our towns and cities, you will find that councillors are elected and work under the nightmare of the electorate. So, even if they see somebody building on a road reserve, the first thought is his vote and not what is right for the town. Now that we have management boards that are professional – and I hope they will be truly discharging their duties professionally – they will be able to do what I saw done in Nigeria. Abuja is a special city with a status where the Governor of Abuja sits in the Cabinet. At one time, a sitting President built a hotel, the size of 680 Hotel, on a reserve sewer line. The Governor came in the morning and razed it down without any ado, and the President had not recourse because he had offended the law. We want this protection so that we can have our towns and cities growing properly.

Another issue that the Bill should address – and this is a nightmare everywhere in this country – is that anybody in this country who owns land that touches on a roadside just wakes up and builds a shop, poshomill or bar. How will we manage this so that we have controlled growth of urban areas? How do we deal with these highway mushrooming structures? I hope that it will be expanded to give the governors sufficient authority even to close down some of those isolated structures. This is because it is very expensive to supply power and provide security to structures of businesses that are about five kilometres apart. If they are together, then you will know that a hospital will serve everybody, power will be supplied to everybody cheaply, water will be connected to everybody cheaply and security will be provided for everybody cheaply. But if people are very far apart and everybody is running a business, it becomes very difficult to plan our future. This devolution will make a lot of meaning to the ordinary people. Of course, it will start causing pain to some people and get resistance at the start, but when they see order coming and their cities and towns are clean, they will appreciate this.

Mr. Temporary Deputy Speaker, Sir, if you go to what we now call towns, you will find that they are all endless slums. They have no planning or roads. In fact, there is one small town in my constituency called Chwele. Two weeks ago, I was in the town and because of poor planning and lack of sewer, an eight-year old boy was walking next to a pit latrine and it just caved in and he was swallowed into the sludge. It took us one full day to pull out the body. If there was planning, there would have been sewage and no sludge and a pit latrine in a neighbourhood where people live. Recreation facilities are very critical for all these growing areas.

Mr. Temporary Deputy Speaker, Sir, since my time has run out, I beg to support.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I want to thank the Deputy Prime Minister and Minister for Local Government for bringing this Bill to this House.

Straightaway, let me say that this is a good Bill, but I want to make some specific suggestions. Picking from what Mr. Shakeel has said, I think we need to amend Clause 7,

so that we can protect the status of Mombasa and Kisumu which have already been granted city status. This is by making sure that they now comply with the new requirements under the Act. However, we should not go back and let them suffer, the same way we did with the Political Parties Act. The parties which were already there were given time to comply. We would like the Deputy Prime Minister and Minister for Local Government to look at that very quickly so that it does not also bring us a problem at home.

Another quick proposal I have for the Deputy Prime Minister and Minister for Local Government is with regard to Clause 8. He has talked about the *ad hoc* committee there which includes the Institute of Surveyors of Kenya and the Institute of Planners and Architects, all the way down to the business community. However, he has left out the clergy. I think the Deputy Prime Minister and Minister for Local Government should include the clergy because they form an important part of our society. Indeed, many social programmes that the governor will run will include some input from the clergy. So, I propose, quickly, that he looks at that.

I like the whole idea that the Minister has brought on the issue of managers for various urban areas and cities. I would like the governor to be the person to appoint those people through a competitive process, as the Deputy Prime Minister and Minister for Local Government has put it. What I do not see though, is the actual process. Perhaps, I have not looked at it properly but I have not seen the actual process. This, I feel, leaves a whole section of proper management to political manipulation. If I contest governorship, it will mean that in certain areas, you will be giving back political favours.

The other thing I see missing here is the qualifications of those managers. They are not set out at all. In fact, there is no attempt to say that a manager must have a degree or any kind of qualification. There is nothing to say that a town manager must have a diploma or that kind of thing. It is very non-progressive for us to create structures and then fail to man them with the correct material. What might happen is that there will be a void. Power does not accept a vacuum. So, politicians will fill those spaces. You will remember that we have many councillors who will not be elected.

In terms of politics, they will be useful in terms of the campaigns for the MPs, governors and there will be political horse-trading. If we do not put qualifications for the city managers, the urban areas managers and all the other areas, we will have a situation where nothing will change. Things will be the same. We will have the same people this time wearing different gowns. We will have the same councillors heading the same offices they used to head under different names. The quality of services that we, as a Parliament, intended for our people will not be delivered. We will then end up with the same situation where we will have a governor who appoints people who are his friends. He cannot tell them anything because he needs a second term. We will have people who will not care about the services that people should have. In between now and the time we will have the Committee Stage, I urge the Deputy Prime Minister and Minister for Local Government to get his team to put in some qualifications and some clauses that will help us have an efficient system of service delivery to people.

With those three points, I beg to support.

The Assistant Minister for Information and Communications (Mr. Khaniri): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I rise to support this Bill. At the very outset, allow me to congratulate the Deputy Prime Minister

and Minister for Local Government for bringing this Bill to the Floor of the House. This is a very important Bill because it will operationalize Article 184 of the Constitution that Kenyans voted for overwhelmingly. It will also streamline the management of urban areas and cities. Not only that, this Bill also goes a long way in strengthening devolution that Kenyans have been yearning for, for many years. Kenyans, in their wisdom, made provisions for county governments. It is important that the laws that we make give powers to the county governments. I am glad to note that this particular Bill has a provision for that. The Bill provides for the county government to appoint the management boards for cities and urban areas. Unlike in the past when this was done by the relevant Ministers, the exercise will be carried out by the governor and his team. They will put in place strong management teams that will manage those cities and urban areas. I want to agree with hon. Mungatana in his submission that there should be a provision for qualifications for people to sit in the management boards.

Secondly, I am happy to note that the Bill now makes it legally binding for cities to have development plans. We know that has been there on paper, but it has been flouted by developers in various cities. Therefore, with this kind of provision, which is in Part V of this Bill, we can now be rest assured that developers will abide by the development plans that have been laid down by the management boards of various cities. I am also glad that the Bill also gives neighbourhood associations strength. It gives residents some powers to participate in the management of their cities. That has been lacking and we all know that for any meaningful development to take place, the people being developed must be involved in that development. Therefore, I want to thank the Minister for making that provision. I also support the idea of coming up with a criteria to upgrade various areas to various levels like cities, urban areas and so forth. In the past, it was left to the whims of the Ministers and even, sometimes, to the President. I am happy with the threshold that has been put in place for a city to meet before it is given the status of a city.

Lastly, we may take this for granted but this Bill provides for Nairobi as the Capital City of Kenya. This has not been there, although we may take it for granted. You never know, in future, you may wake up with a tyrant in State House and he may decide to declare his home town the capital city of Kenya. Therefore, it is very good. It has been made clear that Nairobi is the Capital City of Kenya. I want to congratulate the Deputy Prime Minister and Minister for Local Government for this wonderful piece of legislation. Thank you.

I support.

The Temporary Deputy Speaker (Mr. Imanyara): I am hearing a lot of repetition. So, please, if you insist on being repetitive, I will invite a vote.

Mr. Mbadi: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me also take this opportunity to support the Bill as moved by the Deputy Prime Minister and Minister for Local Government and seconded by his colleague. One of the reasons why the Ligale Commission Report was contested strongly was by virtue of exercising or trying to fulfill the requirements of Article 89 of the Constitution with regard to delimitations of constituencies. One of the requirements was that there should be a different formula for declaring areas either as cities and rural areas.

It was not very clear what constitutes a city. Since now we are likely to have a law in place that defines what is considered as a city, a municipality, a town and rural areas, I

think, in future, this controversy will be minimized because it will be very clear which towns of Kenya become cities.

Mr. Temporary Deputy Speaker, Sir, it is clearly set out how to classify this particular entities. Of more critical importance, to me, in this Bill is that it has institutionalized active participation by the residents of a particular town, municipality or city on the management of the affairs of that entity. This is very critical in line with our Constitution which gives the people the power to govern and manage themselves.

Mr. Temporary Deputy Speaker, Sir, I would want some clarity to be put in Clause 13(1). It says:-

“A board of a city shall consist of not more than seven members, six of whom shall be appointed through a competitive process by the county executive committee, with the approval of the county assembly.”

I imagine that the other five remaining are the ones that are put down. But if you read subsection (2), it says of the members referred to in subsection (1), at least five shall be nominated by- It is listed here. It should be very clear that the remaining five are the ones that are supposed to be appointed based on the criteria shown below. It is not very clear whether these five are part of the remaining five or includes the other six.

My colleagues have talked about planning. I think city planning in general has been a problem in this country. We have heard of people losing their lives because of poor planning. This cuts across the country. There is no proper planning in all the towns. That constitutes to a lot of strain in the physical facilities like waste disposal and so on.

Lastly, I want to talk about the annual estimates. It is clear that the annual estimates will be submitted and approved. However, what is of critical importance is for our local authorities, including town councils and municipalities at the moment, to look at the question of the budget. The budget estimates are made and they look beautiful. They are even read to the citizens. However, when it comes to implementation, these authorities do not follow the estimates. So, I think it is important that as we move forward to this new dispensation, then we are very clear that these entities; the urban areas, cities, municipalities and towns, need to follow strictly their budget estimates.

Finally, I want to mention that in the transition, I think we need to really be clear of how to transfer the liabilities otherwise we will weigh down the new management with the debts which were incurred by the previous units which we are moving away from. Some of these debts were incurred based on the Local Authorities Act which we are just repealing.

With those very many remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Given the time I have before I call the Minister to reply and the number of people wanting to contribute, I think I will limit the speeches to three minutes for all the remaining hon. Members, so that everybody can get a chance to speak.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir. Let me start by thanking the Deputy Prime Minister and Minister for Local Government for the manner he has led his docket and particularly for this Bill he has presented in this House.

I would urge him to make sure that there is public awareness or public education, particularly to the councillors because they do not know what their roles would be com 2012. They need to know that they will not be there and mayors will not be elected. It is

also important for them to know that our urban areas will be led by executives. These people will be appointed in a certain manner. That manner must be known in advance.

The recruitment of staff in these urban areas should be done by panels. The membership of these panels must be well known in advance. The CEOs should not be allowed to recruit their members. I want to draw the attention of the Minister to what is happening now to the local authorities. If action is not taken, then the new counties will be at a loss. The current local authorities are now disposing assets and incurring heavy liabilities. They are selling houses and allocating their land to private developers. It is, therefore, important that this is put to a halt to make sure that the incoming administration will have facilities and land for expansion and planning.

With those few remarks, I beg to support.

The Minister for Lands (Mr. Orengo): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I would like to commend the Minister for a good job done. This is very innovative. It is one of the legislations or Bills that have come through a very innovative process. We have always believed that we run our cities and urban areas by having mayors and councillors. This Bill now is bringing a new framework for running the cities and urban areas.

I just want to talk about two things. One is about the principles of management and governance of urban areas which has been set out on page 1665. I think every time we are talking about this Bill and when we create these urban areas and cities, they should read thoroughly these principles of governance and management, particularly where they refer to promotion of accountability to the county government and residents. They are not just running the city or urban areas for their own good or purposes, but for the good of the residents, particularly and promotion of accountability to the county governments and more importantly, efficient and effective service delivery.

We have seen how our cities and urban areas have grown and the way they have been managed. I think it has been a major disaster. If you look at the Local Government Act, there are no such principles that guide these local authorities.

The other thing has been that the urban areas and cities were left largely to the whims of the central authority and not even the Minister for Local Government. In the last 30 years, it was the Head of State who made many orders and directives which had nothing to do with running the city in a better way.

The notion of having councillors run cities has not been good, but to divide land and all assets among themselves. This is a notion that will be killed by this particular Bill. I hope that we will not go back to those old bad days.

Cities and urban areas are godsend centres of the populations of this century. Every country is seeing growth going to the urban areas. If they are not planned, if they were just left to grow without any kind of---

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Minister, please, wind up now.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, this Bill is in the right direction because populations are moving towards the cities.

With those few remarks, I beg to support.

The Assistant Minister for Information and Communications (Mr. Godhana): Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to this Bill.

I want from the outset to support this Bill for some very few reasons. I will be very brief.

First, we are departing from the old tradition and culture where the planning and management of the affairs of urban areas and cities has been vested purely in the hands of the council and the municipalities.

This Bill proposes to have specific bodies in the urban areas in towns, which are going to be responsible for the planning and discharge of services that are directly going to affect the people of those areas. I am particularly impressed by the fact that we have gone down to towns. Much has been said about the cities and urban areas, but I want to restrict myself to towns. It has already been said that there is no provision in this document on the qualification of the membership of the management boards, although there is a qualification for the managers of the boards.

Mr. Temporary Deputy Speaker, Sir, I am particularly interested in the qualifications for membership to committees in the towns, specifically because Vision 2030 seeks to change the way of life of the people of this country to an urbanized society. It is important at this stage that while we are looking at the article on Integrated Planning, we should be able to have qualified people to look at the planning at that level.

Thank you, and I support.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Temporary Deputy Speaker, Sir, for the first time, we are debating a Bill that has gone through a lot of consultations. Quite a number of things here are going to help improve the management of our urban areas and cities in a great way.

Mr. Temporary Deputy Speaker, Sir, you will also realize that this Bill has actually repealed part of Cap 265, The Local Government Act, and made new provisions that are going to govern municipalities and cities.

Finally, looking at Clause 12 of the Bill, which talks about borrowing money by a city or a municipality, I guess the Minister may have to relook at this so that this borrowing is consistent with Article 212 of the Constitution, which mandates county governments to borrow only if the national government guarantees the loan, and with approval of the county assemblies, so that we do not have cities and municipalities borrowing left, right and centre, and without respecting the provisions in the Constitution.

With those few remarks, I support.

Dr. Otichilo: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I want to take this opportunity to thank the Minister for coming up with a very revolutionary Bill – a Bill that is deviating from what we have been having in terms of management of our urban areas, and coming up with a new governing structure. This new governing structure, I believe, is going to transform our urban areas. I am particularly very happy with this Bill, because for the first time, it has come up with the structure on how our urban areas should be classified, managed and monitored in terms of development. So, the classification criteria are very clear. Now we know how we can classify our urban areas, whether it is a city, a municipality or a town, because the classification is very clear.

Mr. Temporary Deputy Speaker, Sir, we also know very well from this Bill that we can now manage our towns using an integrated development plan. In the past, most of the other towns have had no development plans at all. They have only done their development in a very haphazard manner.

So, I wish to congratulate the Minister and support this Bill.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill and in doing so, I want to go straight to Article 54, and ask the Minister to have a timeframe. It is open and he should specify the time. Then on the qualifications, it is important that the election law we have just dealt with here did not state the qualifications of anybody. So, it is important that for these bodies, at least, there is the minimum expected qualifications even when you have to do competitive appointments.

Mr. Temporary Deputy Speaker, Sir, for avoidance of doubt, I would propose that we have a transition Clause 60 to deal specifically with Mombasa and Kisumu cities, so that we do not have any ambiguity in terms of them and retaining the status of cities.

The Temporary Deputy Speaker (Mr. Imanyara): Order! You are being repetitive on that issue. I will ask the Minister to give his permission for other Members to speak.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, on Article 58(1), I would rather introduce Clause 58(2) to provide review of all the contracts that we are talking about because there are so many contracts. We should also provide for three which will appeal either to the High Court or to a special court that we may set up.

I thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, this is your time and if you want, you can donate some of your minutes.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I will donate two minutes to each hon. Nkaissery and hon. M'Mithiaru, and then I will respond.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):

Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister. This is a very progressive Bill. It will cure all the ills and mismanagement of our urban areas and cities. The county government will be required to employ qualified planners who will plan our cities properly, and based on available resources. You cannot have a city depending on ponds. We need cities which have enough reservoirs of water. We will need proper managers and planners when we come to county governments; these will be in charge of our urban centres in our country.

Mr. Temporary Deputy Speaker, Sir, you realize that the infrastructure of urban areas, the current counties have mismanaged them. I am also very happy that the Minister brought that into this Bill. This will also reduce the running away of local leaders to go and hide for political reasons.

With those few remarks, I support.

Mr. M'Mithiaru: Mr. Temporary Deputy Speaker, Sir, I also rise to support this Bill whose objective is to operationalise Article 184 of the Constitution, and I will dwell on the issues of towns.

Time will be gone when delegations would be sent maybe to the Head of State to grant a city, municipality or a town. It is now about planning, especially in the areas that are said---Towns will have their own infrastructure. This is the area where we can properly take advantage in that our population should learn to live in villages. In this way, we will offload people from areas where they normally put up their homes and make such areas available for agriculture. Everybody will come and live near their towns. Once we have the criteria for creating towns, then it will be very easy to ensure that the

population is known. Once it is known, it will be easy to have a town status for an area and, of course, all the necessary advantages that go with this status.

I support.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I know Members would have liked to really contribute, but you have been very firm.

(Mr. Midiwo stood up in his place)

The Temporary Deputy Speaker (Mr. Imanyara): If you wish to give the Chief Whip to have a minute, you are free to do so.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): He might whip me. Could he take one minute?

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister. I will never sit on the left side of the Speaker's eye again.

I want to congratulate him. My concern was the issue raised by hon. Wetangula. We need to find a way of ensuring that the mushrooming towns or markets are planned, so that we do not have problems when the population increases without necessarily expanding the county governments.

The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I have noted this and I would take this into account. Indeed, some of the concerns will also be taken care of in the Devolution Bill which is also coming. Whereas we have focused here on the Urban areas and Cities, the primary responsibility of ensuring that there is planned growth in the entire county will still vest with the county government. We will make sure that that is taken care of.

Mr. Temporary Deputy Speaker, Sir, I also want to highlight that municipalities and cities will not just borrow recklessly because, again, they are accountable to the county government. So, again, we will seal any loopholes that are there. I would like Members to just appreciate one thing that we have 47 Counties. We need to give the county governments some measure of flexibility. Whereas we may find we have lawyers and planners in Mombasa, we may not necessarily have lawyers and planners in another part of the country. So, one has got to give the county government some degree of flexibility when they are looking for their board members. However, for the administrators, the Bill is very categorical; they must be qualified. The details of how they are recruited are provided for, particularly from Clause 28 onwards.

Mr. Temporary Deputy Speaker, Sir, I also want to state here that financial provisions that were touched on by hon. Mbadi are not fully exhausted here. This is because, again, when we bring the aspect of Public Finance Management Bill, the more detailed financial provisions regarding county governments are also captured in it. So, we will have an opportunity to, again, revisit this area and make sure we have sealed those loopholes.

Mr. Temporary Deputy Speaker, Sir, I just want to assure the hon. Mututho that we are looking at the details about the transitional process. In fact, it is proposed that we may need to have some transitional authority within the framework of this devolved situation to help us manage some of these issues of assets and liabilities.

On the aspect of contract, contracts are governed by law. If they had been entered into legitimately and so forth, each County Government will have an opportunity to review those. There are legal mechanisms under which those contracts have been secured. So, if there is a breach or anything, then those will be audited in the context of the respective county government where the cities fall.

Mr. Temporary Deputy Speaker, Sir, by and large, I want to thank the Members. I have also taken note of the issue of Kisumu and Mombasa cities. These are issues that we can look at very quickly when we get to the Committee Stage.

With those few remarks, I beg to move.

(Question put and agreed to)

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

Second reading

THE KENYA CITIZENSHIP AND
IMMIGRATION BILL

The Temporary Deputy Speaker (Mr. Imanyara): Like your colleague, please, do so acknowledging we should end this Bill by 7.00 p.m.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Speaker, Sir, I think I would be able to manage that.

Mr. Temporary Deputy Speaker, Sir, I beg to move that the Kenya Citizenship and Immigration Bill, 2011, be read a Second Time.

Mr. Temporary Deputy Speaker, Sir, the Constitution of the Republic of Kenya at Article 18 provides the foundation on which this Bill is grounded. Article 18 talks about legislation on citizenship. That is what this Bill is about. It says the following:-

“Parliament shall enact legislation-

- (a) prescribing procedures by which a person may become a citizen;
- (b) governing entry into and residence in Kenya;
- (c) providing for status of permanent residents;
- (d) providing for voluntary renunciation of citizenship;
- (e) prescribing for procedures for revocation of citizenship; and
- (f) prescribing the duties and rights of citizens; and
- (g) generally giving effect to the provisions of this Chapter.

So, this Bill actually is an improvement on our immigration law as it is known today. We have taken the cue from the Constitution at Article 18.

The Constitution also provides at Article 12 certain rights of a citizen. Article 12(1)(b) provides right to a Kenyan passport and also to registration document and travel documents. So, that is an expanded right to the Kenyans which we did not have in the original law.

So, in this Bill, we provided all the things that the Constitution expected us to provide and more. When we were given this job, we, initially, appointed a taskforce that went

round the country to seek opinion of Kenyans, opinion groups, institutions and departments of Government which later on brought to us the draft Bill. We have discussed it with several groups. We satisfied that this is a good Bill and takes care of the constitutional provisions.

May I highlight just a few new things that were not there which we have provided for in this Act of Parliament. We have provided for something called acquisition of citizenship either by birth which is covered under Article 6, by descent which is covered under Article 7, or by registration as provided for in Article 8. We have also provided for something called citizenship by presumption. That is a child who is found within the borders of Kenya and who looks like or is under the age of 8, but does not have any other citizenship, maybe presumed to be a Kenyan. It is provided for in the Constitution.

We have provided for those who have lost their citizenship and how they can regain it in Clause 10. We have provided for citizenship by marriage. Originally, if a Kenyan lady were to marry, for example, a South African who lives here, of course, he was not entitled to citizenship. To remove that discrimination, a lady who is married by a Kenyan man would acquire citizenship just like a man who is married to a Kenyan lady. The only condition is that that person must have lived in Kenya continuously for a period of seven years. We have also provided for widows and widowers. This was not envisaged earlier in our law, but we have realized that there are many people who are married to Kenyans but before they can live here for seven years or as they approach seven years, they die and their widows or the widowers lose status. We have provided that if they continue to live here, they can now benefit from what they would have benefited if the spouse was alive. We have also provided for adopted children. If a Kenyan adopts a child, then the child becomes a Kenyan.

Mr. Temporary Deputy Speaker, Sir, something which is new in this Bill is called Stateless persons. There are people in Kenya here who for many years have been considered stateless. They came to Kenya from Nyasaland with the railway line and from Sudan to fight in the Second World War and are in Kibera here. Some of them were freed slaves from Mombasa and have lived at the Coast for many years. We have found it difficult to register these people as citizens because if you ask of their grandfathers and great grandfathers, you find that they may not be Kenyan. So, we want to now deal with that problem because many of them have been very useful Kenyans. Then we have also provided for descendants of stateless persons. If somebody was a stateless person or a freed slave, but now he has children and the children have children, we also want to give those grandchildren status.

There is something that we did not have before at Clause 19 called voluntary renunciations of Kenyan citizenship. Earlier on, it was a must, if you really wanted to be a Kenyan, to renounce your citizenship. Where the world is going, you may apply to be a Kenyan, but we will not force you to renounce your citizenship. That is the provision of Clause 19. That is what goes on in America, Britain and many civilized countries; that if you become a citizen, you still retain your passport. They do not ask you to renounce your Kenyan citizenship. We do not have to force you to renounce your citizenship. In fact, there is a perfect case of a lecturer at Maseno University, a doctor, who is married to a doctor, and they have lived in Kenya for the last 40 years, but the lady has not become a Kenyan because she would be forced to renounce her citizenship. It was unfair. She can now become a Kenyan citizen without being forced to renounce her original citizenship.

Mr. Temporary Deputy Speaker, Sir, then there is revocation of citizenship. We have provided for it in Clause 21. If you cheated at the time we were giving you citizenship and gave us some false representation, we can revoke your citizenship. That is so far so good for citizenship.

A citizen has been given certain rights and duties in clauses 22 and 23. In Clause 22, a citizen has certain clear duties. Every citizen is entitled to the rights, privileges and benefits and is subject to the limitations provided for and permitted by the Constitution or any other law, including the right to enter, exit, remain in and reside everywhere in Kenya. There was a time when the right even to exit Kenya was restricted. There was a time when the right to own a passport was not a right. It was a privilege. These are things that we have provided for so that we can come within the four corners of the Constitution. There are certain entitlements that a citizen is now entitled to. Having a birth certificate was compulsory within the law, but it was not an entitlement. Having an identity card was compulsory in the law, but at the same time, it was not an entitlement for which you could go to court. Now it is. A passport was given to you as a gift of the state. It no longer is. We have also said that you are entitled to vote which is also a good entitlement. I have already covered Part IV, passports and other travel documents. I will not want to go into a lot of details. The rest is procedure of how to apply and obtain a passport and other travel documents. We did not have a law on passports. We have been issuing passports with some rules, but there was no real law on passports and travel documents. Now, we have provided for it.

Mr. Temporary Deputy Speaker, Sir, another one, which is also important is the immigration control which is on Part IV on page 1245. We want this part to control who gets into Kenya and who we can remove from Kenya. A prohibited immigrant is a person who is not a citizen of Kenya, but who has done some wrong. This is specifically for foreigners. We have provided for reasons why we can prohibit you from entering Kenya, remove you from Kenya or allow you into Kenya. Of course, there will be people who will be coming into Kenya to do some work and will require some visa. Those who want to visit Kenya and those who would want to work in Kenya would require some permits or passes. There are those who would require permanent residence. In fact, we did not have a provision for permanent residence in our law as it stands now, but now we have provided for the green card, if you like. This is a situation in which you can stay in Kenya for as long as you may want to stay without being forced to become a Kenyan. Of course, people will be aggrieved by the decision of the Director of Immigration if he refuses you a right to visit Kenya or stay in Kenya and you may appeal to the High Court.

Currently, the situation is that, if you are aggrieved by the decision of the Director or the Immigration Officer, then you can appeal to the Minister and the Minister's decision is final. But we have realized that even the Minister may be highhanded. So, we have provided that if you are aggrieved, then you may also go to the High Court as a final arbiter on that matter. The rest is talking about the responsibilities or obligations of persons who will be applying for foreigners to come to Kenya. If you are a hotelier, we will expect you to declare whom you are admitting in your premises. If you are a learning institution, we will expect you to declare who is in your establishment.

Clause 48 provides for the powers of the immigration officer. He has extensive powers, but also powers that are controlled because anybody who is aggrieved by those

powers can always appeal. They can enter into your premises and search them if they think that somebody who is living in Kenya illegally is in that facility.

Mr. Temporary Deputy Speaker, Sir, this is a very progressive Bill but the Constitution is even more progressive. The Bill is merely providing for the procedure of exercising the rights that have been given in the Constitution.

There are many areas we have discussed with the Committee. The Committee will give its proposals for amendments in areas where we had a few problems.

With those remarks, I beg to move and invite hon. Orengo to second the Bill.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, due to time constraint, I will try and take as short time as possible. The Minister has ably moved the Bill, and I commend him. He has had to come up with several Bills, the first being the one we are discussing today.

This Bill flows from the Constitution. Due to the new constitutional framework, we had to come up with this Bill to make sure that the laws we have today are consistent with the Constitution, and that they recognise the rights and liberties that are found in the Bill of Rights as enshrined in the Constitution.

Mr. Temporary Deputy Speaker, Sir, another thing that this Bill does, which is noteworthy, is that it consolidates three statutes, which we are going to repeal, if this Bill is piloted to the last stage and eventually receives assent by the President. By Clause 65, this Bill repeals Chapter 170 of the Laws of Kenya, which is the current law on Kenyan citizenship, the Migration Act, which is Chapter 172 of the Laws of Kenya, and The Aliens Restriction Act, which is Chapter 173.

It is neat and orderly to have all these legislations in one Bill. This is one of the success stories we are seeing with the implementation of the Constitution, in terms of codifying and amalgamation of certain statutes, so that they can be found in one document.

Mr. Temporary Deputy Speaker, Sir, the rights to citizenship, which hon. Kajwang has talked about, flow from the Constitution, but it is important that they are in this particular Bill. If the Bill is enacted, it is right that those rights are contained in the statute, so that when one becomes a citizen, or when one applies to become a citizen, one will need not go to the Constitution because in the Constitution, one will have to go through bits and pieces to know what one's rights are.

In Clause 22 of this Bill, there is the cocktail or an inventory of rights which are found in various articles and parts of the Constitution. This is really neat for one who is a citizen to know exactly what one's rights, privileges and duties are. This extends from the right to enter and exit Kenya, remain in Kenya or reside anywhere in Kenya, to political rights, which, again, are important.

Mr. Temporary Deputy Speaker, Sir, those rights also include entitlement to documents like passports, birth certificates and national identification cards, which raise the point that the Minister must be assisted. We must ensure that he has sufficient resources because it is now the entitlement of every Kenyan to have all the documents spelt out in Clause 22.

There is no reason as to why these rights should be spelt out yet one cannot enjoy them. Presently, we have had difficulties in issuing everybody with a national identity card or a passport, because the Ministry does not get sufficient funds. Parliament will be

called upon to urge the Exchequer to give the Ministry a lot more money than it has been given previously.

Mr. Temporary Deputy Speaker, Sir, sometimes, we take these rights for granted. There was a time when one Sheikh Khalid Balala was, by pronouncement of the Government, declared to be a non-citizen of this country, whereas one could trace his roots in Kenya, where he was born, where he had lived and where his mother came from.

Sheikh Balala went to Germany and became a stateless person. It was very difficult under the law, as it existed then, to have a clear determination as to whether he was a citizen of Kenya. Of course, the State was bending the law to make sure that Sheikh Khalid Balala could not come back to Kenya. Whether we liked him or not, that was not really the point, but if you read the law, as it is exists today, he would have a legal basis to go to court. Indeed, he went to court at that time. I think hon. Kajwang is the one who filed the case to try and assert the rights of Sheikh Khalid Balala, who was at that time a very unpopular person as far as the Executive was concerned. He was hunted everywhere.

Mr. Temporary Deputy Speaker, Sir, on the right to be issued with a passport, at one time, I was travelling out of this country. I was on an aircraft. I was gauged out of the aircraft and my passport was taken away. I was told that I had no business travelling because I was characterised as a wanted element. My passport was taken away, and I did not see it again for about six years. Every time I tried to get it back, I was not allowed to get it back. Now, even though it is a property of the Republic of Kenya, it is prescribed in this law that it is your right to own it. So, this is a progressive law, and the Minister has worked hard to make sure that it falls within the four corners of the Constitution. He has borrowed from the best practices in the world.

With those remarks, I beg to second.

(Question proposed)

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I also wish to congratulate the Minister of State for Immigration and Registration of Persons, the hon. Kajwang, for bringing this Bill to the House although as we have always said, when Bills come to the House too late in the day, you do not expect us to do a lot of work on them. The Minister has been there since 2008. These are things he should have done before. Knowing where he comes from, as a man with serious reform credentials, this Bill should have come like yesterday. Now that the Bill is here, we want to commend and thank him for it.

I was just looking at the provisions of this Bill, and I saw the rights and duties of a citizen in Part IV. I note with pride that he has also made it mandatory for every Kenyan citizen to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

Mr. Temporary Deputy Speaker, Sir, I think this is where hon. Orenge was looking at when he said that hon. Kajwang has borrowed from the best practice in the world. These are issues which are not very clear to the Kenyan people. Where I come from, some of us think that we want water, and we do not really care about how that water is generated. We must plant trees. It is an obligation. So, when I see a provision like this one, I really tend to appreciate it.

Minister, in this House we have always told you that some of the reasons we have for not ensuring that Kenyans get the necessary document is the multiplicity of documentation. You need a passport, a birth certificate, a voter's card and an ID card. This House has passed a resolution to assist the Government to reduce some of that cost by combining some of these documentations.

I am worried, Minister, when in Clause 2(g), you tell us that we are all entitled to the following documentation without specifying that these documentations can be collapsed into just one document. It is easier and cheaper for you. We also passed a resolution the other day that during the registration of ID cards and since in polling stations we are going to be information technology savvy, that we should also borrow from the same so that we ensure that each of the citizens of the Republic actually enjoy these documentation you are talking about without the burden of carrying all of them in one wallet and also with the advantage that it might actually be cost-effective.

Mr. Temporary Deputy Speaker, Sir, the last time when the Right hon. Prime Minister was making a Statement to this House, he actually said that you can use the ID card as a voter's card. Now when I see this differentiation, I am getting worried. I need that assurance because it is really important. We cannot be saying we are not going to get any support when we are not doing anything possible to reduce the cost.

There is the question of dual citizenship which we have all been crying about. We have all been saying that those Kenyans who get the opportunity to be away from this country, and who would still like to retain our citizenship, but because we had excluded them from that possibility, now they have an opportunity to be citizens of that other country and still retain the Kenyan citizenship which is by birth and we cannot deny them. This is a provision that we made in the new Constitution. I am glad that the Minister is giving specifications on how that dual citizenship can be acquired and the limitations it imposes on the particular citizen.

Mr. Temporary Deputy Speaker, Sir, mine is just to appreciate the Minister for this and we look forward to the fruits of the new Constitution.

Thank you.

Mr. Midiwo: Mr. Temporary Deputy Speaker, Sir, let me take this earliest opportunity to congratulate the Minister for a job well done in keeping within the spirit of the Constitution. I see that the Minister now has granted the Director power to provide consular services in missions abroad. I am sure now there will be no war between him and the Ministry of Foreign Affairs as to whose duty that is for. That is an advantage well taken care of.

Mr. Temporary Deputy Speaker, Sir, Clause 12 which talks about widows and widowers; people whose wives or husbands have died, who have met the requirement before the death and want to become Kenyan citizens, I see that as a serious loophole. All somebody would want to do is to get information of a dead person and claim they have been married for seven years. I have lived out of this country; to be specific, I saw what people did to become citizens of America when I lived there. I know friends who travelled on documents of dead people just because of these restrictions.

In Clause 11, one of the conditions is that the marriage was solemnized under a system of law recognized in Kenya. There are some marriages which do not have documentation. If I wanted to become a citizen of Kenya, I just cross the border somewhere in Gem and claim a customary marriage. That needs to be looked into.

I am proud with the section of stateless persons. I know there are very many Kenyans. As a matter of fact, I know a Nubian professor who has been in this country for very many years. His mother was even born here but he is basically stateless. He has no ID card. I think this is important because it affects too many of our neighbours especially those who came here from our warring neighbours. I am happy that we are finally going to take care of them.

Mr. Temporary Deputy Speaker, Sir, I want to urge the Minister that the issuance of passports should not just be left to the Director without mentioning where. I want to ask the Minister to kindly specify that in law, it is a requirement to bring these services closer to the people, particularly in the county headquarters, for example, so that people do not have to travel far to look for a document which the Constitution has recognized as their right, so that we can make it easy for our people.

The idea that the Bill says that a passport is a right of a Kenyan but the State has a right to take it; that is a right which can be abused as it has been abused in the past by cooked up charges. You must make it very hard for the state to victimize people or political opponents or whoever, not to use that right arbitrarily.

I beg to support.

The Assistant Minister for Information and Communications (Mr. Khaniri):
Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity to add my voice in support of those who have supported this Bill.

At the outset, let me congratulate the Minister of State for Immigration and Registration of Persons for this wonderful piece of legislation. I say it is a good Bill. I have had an opportunity to go through it. I know it will go a long way in streamlining matters related to immigration and issuance of travel documents to Kenyans and those who are seeking to be Kenyans.

Mr. Temporary Deputy Speaker, Sir, as I said, I support most of the provisions. But just to cite a few, I want at the very outset to hail the Minister for making provision for dual citizenship. This has been a big cry particularly for Kenyans living in the diaspora. I once lived in the diaspora; I went to school in the USA. I know what this particular provision will do to the people in the diaspora.

When you are out there, there are privileges that people enjoy when they get the citizenship of the countries where they are living or studying. I am talking of things like jobs. There are some jobs that are a preserve to only the citizens. Therefore, denying Kenyans who are eligible to get citizenship in other countries is denying them that opportunity to get access to these jobs. Things like bursaries and subsidized fees for students who are out there is now going to be possible if Kenyans out there will be allowed to hold dual citizenship.

Mr. Temporary Deputy Speaker, Sir, I also want to support the provisions of Clause 13 on this Bill. I know that we are trying to loosen the conditionalities for people to get their citizenships here. But as we do this, I want to insist that the security of our country should be paramount. It should come first and be given first priority. Therefore, when the Minister says in Clause 13(2) that:-

“The Cabinet Secretary shall not register an applicant as a citizen of Kenya under this section if at the date of making the application, the applicant’s country of citizenship is at war with Kenya”

We know that this could be a loophole where spies could sneak in and so on. Therefore, I want to hail the Minister for tightening that loose end. I also want to support the provisions in Part III(11) on citizenship by marriage. I know that provision for a Kenyan man marrying a foreigner was there but that discrimination has been removed and now a Kenyan woman getting married to a foreigner will also have the privilege of the spouse being registered as a citizen in this country. The only rider here is that we hope that our women will be married to one foreigner and that they will not bring us too many foreigners as husbands.

Clause 4 of this Bill provides for rights and duties of citizens. This is something that we could take for granted but I am glad that the provisions have been put here and it will be part of our Constitution that every citizen is entitled to rights, privileges and benefits and is subject to the limitations provided for and permitted by the Constitution or any other written law including the right to enter, exit, remain and reside anywhere in Kenya. That is the bit that I want to emphasize. We have seen every time after elections or during election time, our people who have bought land in some parts of this country go through hell. They are sent away because they are not part of the residents of that area. I believe that this clause will take care of that.

I can see my time is up. So, I beg to support.

Dr. Otichillo: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I want to take this opportunity to thank the Minister for coming up with a very revolutionary and innovative Bill. This is a Bill that has new and good ideas that will make this country move forward. I particularly want to say that I am very delighted with the way the Bill has been written. It provides very clear information with regard to citizenship. The Bill clearly gives procedures on how to regain your citizenship, how to acquire your citizenship, revocation and how to become a citizen through marriage. Therefore, this Bill defines a very important aspect of citizenship which has been lacking and has caused a lot of pain to many people who have never had access to this type of document.

Mr. Temporary Deputy Speaker, Sir, I also want to say that I am very happy with Part IV which deals with rights and duties of citizens. This is very clear and very important. For the first time, our Bill is defining what your rights are. These rights are already defined in the Constitution but this Bill goes further to do the same. It particularly gives the rights on citizenship, entry into this country, leaving this country and where one resides in this country. It is very categorical that, as a citizen, you can reside anywhere in this country. This is very important.

On rights, this Bill clearly gives a citizen the right to vote which, in my view, is very important. It gives you the right to own land and property. It also gives the citizen the right on all sorts of things and particularly on documentation. What documents are you legally allowed? These are documents like birth certificates, passports and so on.

As regards duties, I am very happy with this Bill because it defines the duties of a citizen. As it has clearly been stated here earlier on, most Kenyans do not appreciate their duties as citizens of this country. So, it is important that this is clearly specified. One of the most important duties of a citizen is to have give allegiance to his country. This is clearly stated in this Bill. The other duty is to fully obey the rules of this country. The other aspect is to pay taxes, which is, again clearly spelt out in this document. I want to say that this Bill brings out these aspects in a very good way.

Mr. Temporary Deputy Speaker, Sir, with regard to passports, this Bill also gives a clear chance for everybody to acquire a passport. As it has clearly been stated earlier on, let these passports not only be acquired in Nairobi. As we move to the counties, let us have offices in the counties where Kenyans can acquire these documents. Let us also have passports that have security features so that we can be sure that there are no fake passports being made in River Road or elsewhere. This is an area which is very important.

To end my contribution on this Bill, I want to say that this Bill clearly gives very good rules and regulations with regard to migration. What should be done with regard to migration? It is very clear here what one should do.

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

Mr. Wetangula: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to make a few comments on this Bill. First, I would like to congratulate the Minister for bringing such a wonderful Bill. It actually addresses some of my biggest worries when we were crafting the Constitution, particularly on the issue of dual citizenship where I had worries that we were going to open a door to international human traffickers and criminals to acquire citizenship of Kenya. He has taken care of that and has set out a very elaborate process through which dual citizenship can be acquired by non-Kenyans and how Kenyans can also harmonize their current foreign citizenship and acquire new citizenship. Perhaps in Clause 8, the Minister should look at Article 78(2) of the Constitution and see how to align the issue of citizenship and leadership as provided for in the Constitution.

Clause 9 has always worried me. In fact, immediately after Naivasha, I went public to protest against the clause on children found on Kenyan soil at the age of eight years and below to automatically become citizens. I want to congratulate the Minister because this is a major worry. Child traffickers are international criminals and it involves big money where they pick children from conflict or war situations and dump them in territories where the laws are laxity where they can acquire citizenship easily and they are paid for it. Where there are serious conflicts parents voluntarily give away their children to be taken and dumped in some countries where there is peace. I want to thank the Minister because Clause 9 is very elaborate on how such children can become citizens. I urge the Minister to extend that elaborate process to Clause 14 on adoptions because we have criminal syndicates whose sole business is to transact in adoptions. Unless you give a very clear criteria on how children can be adopted to become Kenyan citizens, again, traffickers and criminals will start abusing that process very easily. So, I urge the Minister to look at that and more or less, strengthen Clause 14 to be crafted in a manner that he has crafted Clause 19 in order to have those limitations.

Mr. Temporary Deputy Speaker, Sir, citizen by marriage is another regularly abused process of people getting citizenship. We know – and Mr. Kajwang and I have practiced at the criminal Bar for a long time – how criminals walk into this country, marry girls from Koinange Street and the next day, they are citizens. I am happy that Clause 11, again, addresses this mischief. I wish the Minister could make it a little tighter than it is because it is not as strong as I would have wished it to be.

I want to ask the Minister to reconsider Clause 15(1)(b). There are phrases like “you will be eligible if you have not been convicted for an offence and sentenced to imprisonment for a term of three years or longer.” We must define what offence would

deprive you the right to become a citizen. If you are convicted of a driving offence and sentenced to three years, which is possible, does that really become a criteria for being denied the right to become a citizen if you have lived in this country from 1960? I do not think so. I think the Minister should open up that clause and define exactly what offence he is talking about; whether it is treachery to the State, treason, murder or fraud of an aggravated nature. What are we talking about that would cause you to be denied the right to citizenship? There are people who go to prison for very frivolous charges and that should never be a point upon which you could be denied citizenship. The Minister should look at Clause 16(1) (c) because it also has a similar provision.

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

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, could you give me one minute so that I can address the issue of passports?

The Temporary Deputy Speaker (Mr. Ethuro): I do not grant time, Mr. Wetangula! You know that we had agreed on five minutes to every hon. Member.

Hon. Kilimo, you have about two minutes before I invite the Mover to reply.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill.

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to take this opportunity to congratulate the Minister of State for Immigration and Registration of Persons for bringing this Bill to this House.

I am particularly happy with the dual citizenship, because women are more global than men. Women have no boundaries. Most women get married across the seas. Many of our Kenyan girls who are married to foreigners have greatly suffered because of the issue of citizenship. I remember one day a Kenyan, who is also a Member of this House, depending on the mood of the immigration officer at the port of entry, the husband was denied a visa, and yet he was coming to visit the children. So, this comes as a great relief for the women and more so, students who go outside the country and sometimes they get married there. It has been painful for people returning home only to reach at the airport and be told that they can access Kenya but their children will have to wait and look for visas.

Mr. Temporary Deputy Speaker, Sir, I have an issue with Clause 10 which talks about the timeframe and where the committee might not give somebody an investment permit. Here, we are talking about making it easy for investors to come to this country. No timeframe is captured there on how long the appeal should take. Since we are anticipating a very efficient Judiciary, you have given 45 days and 90 days for the committee, but what about the Court of Appeal? It should be maybe 14 days or 30 days, so that an investor will know that his application has been rejected, but he has only 30 days to wait for the Court of Appeal to give him that.

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

The Temporary Deputy Speaker (Mr. Ethuro): It is now time for the Minister to reply.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Thank you very much, Mr. Temporary Deputy Speaker, Sir. I want to thank Mrs. Kilimo for pointing out that lacuna. I think we gave the committees too much time to look at applications and if you have an appeal, it is 90 days. I think the drafters gave

too much time. Investors will go to Tanzania, Uganda and South Africa if we are not careful. So, we will look at that clause during the Committee stage.

Mr. Temporary Deputy Speaker, Sir, on the integrity of passports, we will soon go e-Passport. We will have one of the most secure passports in the world with a chip and nobody will be able to alter it or change anything in it.

On the issue of citizenship by marriage, I thank the hon. Members for their support. I agree with Mr. Wetangula that we should not deny somebody who has lived in Kenya all his life citizenship just because, probably at one time in his life, he was charged with an offence and jailed for a period of three years. It could be for a very small offence which he would have served sentence for and he cannot carry that load on his neck forever.

Mr. Temporary Deputy Speaker, Sir, on the issue of children who are found in our borders becoming citizens, of course, it is in the Constitution. We have tried as much as possible to tighten it by saying that the Children's Officer will have to examine that and eventually, they will have to go to court and the decision of the court will be final. So, it is after the hearing and asking all the questions that a child found within our borders can become a citizen. So, it will not be quite automatic.

On the issuance of passports at the counties, even without this law, we had started very well. We are almost in all the regions in Kenya. We are in Mombasa, Nairobi, Garissa, Eldoret, Nakuru and Kisii. I think sooner or later, after this Bill is passed, we should be able to cover all the counties. This is something that can be done. It is just the bureaucracy that was there. We would have come with two Bills, but Parliament decided that we start with this one, which was mandatory, because there were timelines, but there is the other Bill, which is the Management Bill, which has provided on how all these things will be managed. In that Bill, you will find that the question of us not having sufficient resources will be a thing of the past. The issue of waiting forever for the Treasury to approve if we do not have enough officers, like I do not have enough officers for the Speaker right now, will be a thing of the past. This is because this will be a service that will be able to generate resources, which will be used for the efficiency that we require.

Mr. Temporary Deputy Speaker, Sir, I think we made a mistake in this Bill and I hope somebody will bring an amendment at Committee Stage to remove the provision for the voter's card. This is because in the other Bills that we have looked at namely The Political Parties Bill and The Elections Bill have actually provided that so long as you have registered with your identity card and the data has been captured in the register, when you go to vote, you only need the identity card to show and then you are allowed to vote. This idea that you must carry two identical documentation makes no sense whatsoever. We have removed it in The Elections Bill. I think it will also be removed in this Bill. This is because in any event, the right to vote has already been given in the Constitution and we do not need to replicate it here.

I will invite the hon. Members to move the amendments at the Committee Stage so that we polish the Bill and have a Bill that will be good for the country. Thank you once again.

Mr. Temporary Deputy Speaker, Sir, 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 EMPLOYMENT AND LABOUR
RELATIONS COURT BILL

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, the Employment and Labour Relations Court be now read a Second Time.

This is an important Bill whose tabling before this House has been awaited by the Government, workers, employers, the public and International Labour Organization (ILO), which works closely with workers and employers. The Employment and Labour Relations Court Bill is one of the courts that have been established under Article 162(2) of the Constitution with the same status as the High Court. The elevation of the Industrial Court to the status of the High Court has been a major concern to the Government, employers and workers for many years. The existing court is a department within the Ministry of Labour but it is under-funded year after year. Hence, there is hindrance to expeditious dispensation of justice. It is against this background that my Permanent Secretary constituted a technical committee to align and establish the Industrial Court as per Article 162 (2) of the new Constitution. The review exercise was a collaboration effort of social partners; namely, the Central Organization of Trade Unions (COTU), Federation of Kenyan Employers and the Government. With technical advice from the Attorney-General's Office, the Ministry of Justice, National Cohesion and Constitutional Affairs, the Kenya Law Reforms, the Law Society of Kenya and the Constitutional Implementation Committee. The Committee examined the existing Part 111 of the Labour Institution Act, No.2007 and the laws of countries like Nigeria, South Africa and Norway, among others, before embarking on drafting.

The Temporary Deputy Speaker (Mr. Ethuro): Order! Mr. Minister, I just want to guide you on something. These are unusual times. You have ten minutes.

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I will expedite.

The Committee submitted a draft Bill to the Constitutional Implementation Committee on 25th June, 2011. Further, the stakeholders comments were incorporated by the Constitutional Implementation Committee and the Bill submitted to the Attorney-General. On 19th August, the Cabinet approved and forwarded this Bill to the Attorney-General.

Mr. Temporary Deputy Speaker, Sir, the principle objective of this Bill is to establish an Employment and Labour Relations Court as a court with the status of the High Court. The Employment and Labour Relations Court is established pursuant to Article 162 of the Constitution to hear and determine disputes relating to employment and labour relations. Part I of the Bill contains preliminary matters. Part II provides for the establishment of the Employment and Labour Relations Court. The court shall be a superior court of the High Court and shall exercise jurisdiction throughout the country.

Clause 5 of the Bill provides that the court shall consist of a principal judge and such number of judges as may be determined by an Act of Parliament pursuant to Article 165. It goes ahead to talk about qualifications relating to the appointment of judges, the Registrar of the High Court and their terms.

Part III of the Bill provides for the jurisdiction of the court, the enforcement of the court orders and alternative dispute resolutions. Part V provides for the proceedings of the court, the powers of the court, quorum and representation before the court. The Bill establishes the Employment and Labour Relations Rules Committees and provides for the composition and the quorum of the Committee. Part VI contains miscellaneous provisions. The part ensures that gender, equity and equal opportunities are taken into account in all appointments under the Act. I will move a bit quicker because of time.

The following are the benefits of the Employment and Labour Relations Bill:-

(i) The Bill repeals Part III of the Labour Institutions Act, 2007, making the proposed statute user friendly.

(ii) The Employment and Labour Relations Bill establishes the Employment and Labour Relations Court at the same level with the High Court and succeeds the Industrial Court.

(iii) The jurisdiction of the court has been strengthened. The Bill has been renamed the Industrial Court Rules Board. The Employment and Labour Relations Rules Committee should be taken in harmony with the High Court Rules Committee. The Bill provides for the expansion of the court through Kenya and speedy settlements of labour and employment disputes. As we speak, there are over 5,000 disputes. In this kind of arrangement, we hope to expedite on the backlog of the cases. The Bill provides for funding from the Judicial Fund and the Consolidated Fund. Further, the Bill provides for consideration of gender in appointment of judges, registrars and officers of the court.

Finally, the Bill transits the existing laws, rules and regulations, judges and officers of the court.

With those few remarks, I beg to move and request hon. Cheptumo to second.

The Assistant Minister, Ministry of Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to second the Bill.

Following the passage of the new Constitution, we, as a country, undertook various reforms in our institutional governance, one of them being the police reforms. Yesterday, we passed a law that reformed the police force. One such other institution of governance is the Judiciary.

Chapter IV of the new Constitution outlines the Bill of Rights. These are human rights and fundamental freedoms. The Constitution is very clear that it is the responsibility of the State to recognize and protect human rights and fundamental freedoms. This is the only way we can preserve the dignity of the Kenyan people. The Bill before the House intends to fulfill the provisions of Chapter IV. Article 21 of our Constitution provides that it is the fundamental duty of the State and every State organ to observe, protect, promote and fulfill the rights and the fundamental freedoms in the Bill of Rights.

Article 41 deals with fundamental rights of the Kenyan worker. All our Kenyan people who are employed are given clear express rights under this Article 41 of the Constitution. Every worker is entitled to fair remuneration, reasonable working

conditions and he should not be deprived of the right to form, join or participate in the activities and programmes of a trade unions.

Mr. Temporary Deputy Speaker, Sir, the establishment of this court under this law when enacted will ensure that the fundamental freedoms and rights of the worker as set out under Chapter 4, particularly Article 41 will be protected.

It is very important to realize that this is the responsibility of the State to ensure that our Kenyan workers are protected as established in the law.

Looking at the qualifications of those who are to serve in the court, Section 6 of the Bill provides as follows:-

“A person shall be qualified for appointment as a judge of the court if the person-
(b) has at least ten years’ experience as a distinguished academic or legal practitioner with considerable knowledge and experience in the law and practice of employment and labour relations in Kenya.”

Therefore, those who will serve---

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

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Cheptumo): Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to second.

(Question proposed)

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. In supporting this, I want to echo what the Minister has just said that there are 5,000 pending cases. Under the circumstances, therefore, I would propose necessary amendments, so that we have more than one judge because it is not humanely possible for one person to hear and determine handle all those cases. With the enhanced Bill of Rights, it is not technically possible for somebody to hear 5,000 cases and determine them correctly and adequately, particularly given the lengthy time it takes to sort out labour disputes.

I have an issue with the name of the court. I would propose that you retain industrial court because we should be in harmony with the rest of the world. There is no adequate explanation given as to why we should differ from this. But by definition, we shall delimit ourselves and exclude ourselves from certain proviso if we do not come on to the industrial court.

On the issue of members we would propose that the Cabinet Secretary provides for regulations on the conduct of the members who sit in this particular court. One among them is the attendance which has been an issue in the past so that a member who does not, say, appear in three consecutive or two consecutive times without adequate reason, then that member is also knocked off from the list.

Another provision which would be adequate is that at every sitting of a court to have at least two members from the opposing camps; that is the COTU and the FKE. Each one of them appoint a member so that when the judge is determining a particular case, he has other two members to help him.

We should also harmonize other things too so that, that judge enjoys the same benefits that are enjoyed by other Judges of the High Court. He has met the minimum qualification and, therefore, he should enjoy the status of a High Court Judge.

Mr. Temporary Deputy Speaker, Sir, in saying this, I am privy to the fact that he will take certain decisions with finality. Such decisions should have been weighed properly to avoid unnecessary litigations at the Court of Appeal. At the Court of Appeal level then, we should allow the litigants to enjoy full benefit of the new Constitution, particularly the Bill of Rights. Now that we are encompassing other matters to do with the environment and other issues, workers will have to enjoy certain privileges which now form part and parcel of this package. Other than the remunerations, there are other critical issues.

An example is the flower workers of Naivasha. Those ones who were exposed to some very dangerous chemicals will have mandatory outfits that guarantee their health and safeguard their families from possible contamination from such work-related risks.

Mr. Temporary Deputy Speaker, Sir, I know the Minister is in tandem with his workers. However, we blame the courts and to some extent, the employers for the delayed action in terms of hearings in industrial courts. We have a case in Naivasha which has taken over 20 years. It is up to the employer to hasten and avoid applications to an extent that the judge for this court now will have power. When the judge reinstates an employee, the employee will have the full benefit of salaries, allowances plus interest. So, it is up to the employer to make sure that the hearing is done expeditiously.

I laud your view and assertion that SRM now be incorporated with permission from the Chief Justice to constitute courts in areas that are remote and which do not have access to the industrial court. Such arrangements too should be labeled industrial court.

I support.

Dr. Khalwale: Thank you, Mr. Temporary Deputy Speaker, Sir. I would like to thank the Minister for bringing this very important piece of legislation before this House. I want to remember and thank members of the Central Organization of Trade Union led by their secretary Atwoli for the fight they demonstrated when they were persuading Kenyans to pass the new Constitution. All hon. Members will remember that they were on the forefront.

I also want to acknowledge the fact that if we get this law right, this is the real returns that all the workers who voted for the new Constitution will be getting immediately from promulgation of the new Constitution.

I want to remember that we have gallant sons who served in this House including J.J. Mugalla and Juma Boy who were themselves trade unionists. Probably, if they were in this House now like Mr. Michuki, they would be supporting this particular Bill.

Having said that, I want to put it to the Minister that I have made quite a number of proposals for amendments and I have deposited them with the Committee. I have also deposited them with his Assistant Minister and senior officials in the Ministry. I hope that all those proposals will be brought on board.

Just to highlight one or two things about my proposals, I have found that in this Bill just like my colleague has said, we are attempting to give it a very lengthy name for nothing and yet this Bill is referring to a tradition that we have had in this country for many years. In this country, we call our courts the industrial courts. We do not see why we should disregard it when, in fact, the reason why we call these courts industrial courts is because in Kenya, trade unions are established on industrial basis unlike elsewhere in the world. This is why you have Hotels and Allied Workers Union and so forth unlike

other parts of the world where they are sector-based. So, I beg that when we are correcting this, we must call it “The Industrial Court”.

I have also seen an element of mischief in Article 31, where the Minister has introduced the word “affordable”. We should not allow the word “affordable” to be in this Bill. We must drop it. It will give an opportunity to some employers, especially Asians, to be mischievous and say that an award given is not affordable and, therefore, end up shortchanging the worker.

Mr. Temporary Deputy Speaker, Sir, I have also seen that this Bill is talking about the Registrar alone in Clause 8(1). It is important that we make addition of two deputies so as to align it with Clause 10(2), which contemplates the presence of a Deputy Registrar. Similarly, in Clause 9, it is important that we add the words “Deputy Registrar” so as again to align it with Clause 10(2).

Mr. Temporary Deputy Speaker, Sir, I have also noticed in this Bill that under Clause 10(2), it is important for us to introduce another clause. The reason is that under this, they are giving us the qualifications for appointment of a member of the court. Members will remember, especially you, hon. Speaker, who was in the last Parliament with me, that in 2007, we passed an Act which was very good. It was brought here by the late hon. Newton Kulundu. This made workers very happy and I propose that we lift Section 24(3) from that Act of 2007.

With those few remarks, I support.

The Minister for Public Works (Mr. Obure): Mr. Temporary Deputy Speaker, Sir, thank you for the opportunity to make a brief contribution to this Bill. I want, first of all, to congratulate the Minister on his timely act to bring this Bill to the Floor of this House. Issues relating to labour and industrial relations occupy a very important place in the life of this nation. The work force must be fostered and motivated. The welfare of the labour force must also be taken into consideration at all times. Therefore, there is need to foster good industrial relations, so that we can increase productivity, and so that overall, we can raise production at all levels – in our industries and all other areas of activity in this nation. It is very important.

Mr. Temporary Deputy Speaker, Sir, we must also motivate our workers. I am glad that in this Bill, there is recognition of that fact. That is why I want to thank the Minister for his initiative in this respect. We must ensure harmony and also ensure that disputes arising in labour matters must be resolved very quickly. It is very disappointing to hear that there are 5,000 outstanding cases which have not been resolved. Therefore, I am glad that in a way, this Bill makes provision for ensuring speedy resolution of those disputes. I am also glad that we are taking a step here to ensure that an industrial court, or labour relations court, is established to deal specifically with matters relating to labour. The court so established will be equivalent to the High Court and will have similar jurisdiction purely in labour matters. I hope that there will be an opportunity to establish to make sure that judges are posted to, at least, major industrial centers of this country, so that cases can be resolved speedily. This is very important.

Mr. Temporary Deputy Speaker, Sir, the jurisdiction of this court covers disputes between employers and employees, trade unions and employers generally. We hope that from now on, we will see warmer relations between employers and employees for the benefit of this nation. I want to take this opportunity to appeal to the Minister because we have not appointed enough labour inspectors around the country to ensure that workers

are not unnecessarily exploited by employers. This is an area which is receiving lesser attention. I think the Minister should ensure that we have labour inspectors at least several of them in major towns and counties to ensure that workers are not exploited. They should also educate workers on their rights. We want workers and the nation at large to benefit.

With those few remarks, I beg to support.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill. A previous speaker here suggested that we go back to industrial court. I do not agree with that opinion. Although the industrial court that we had was headed by a very eminent judge, the late Said Cockar. He actually raised its standards until it was recognized worldwide. I am opposed to this idea of industrial court because it restricts workers. For example, it does not recognise anybody working in a security company. It claims that this is not an industry. I like the title of this Bill because it dispels such fears. It is all inclusive. It recognises all employees. Either you are working as a security guard or in a company; you will all be treated equally.

Mr. Temporary Deputy Speaker, Sir, when we were negotiating for the new Constitution at the Bomas of Kenya, it was felt that decisions of the industrial court were not enforceable. It required the High Court to approve. That is why unscrupulous employers and my brother mentioned them as Asian origin or non-African, English, and Chinese took advantage of that. That is why we have over 5,000 cases pending in courts.

With regard to commissioners, I realize this Bill provide for eight of them. In line with the general trend, I think we can reduce them to five. I remember with the National Gender and Equality Commission, we suggested a maximum of five commissioners. This Commission should not have more than five members.

I also suggest that they should not be full time engaged. Let us appoint them on part time basis because they do not have much work to do. If we appoint them on full time basis, they may end up performing executive duties. That is not what we want them to do. We want them to be representatives of the people from where they are nominated from.

With those few remarks, I support.

Mr. Odhiambo: Mr. Temporary Deputy Speaker, Sir, I also rise to support this good Bill. Many Kenyans have silently suffered for a long time under the hands of employers who are not sensitive to the welfare of Kenyan workers.

This Bill is addressing quite a number of issues that if it is well implemented, it will improve not only the morale, but also the stamina of our workers to perform. Therefore, it will improve productivity which eventually will improve our economy. Many of our workers have silently suffered under very bad working conditions, some physical and some emotional. If you go to some of the factories in Industrial Area and other areas, you will find that some of the conditions prevailing there are unbearable. So, this Bill will surely address such issues. It will also help in making decisions or arbitrating between trade unions against each other like we had the case of KUPPET and KNUT, who represent people of the same profession, namely, the teachers, where they had conflict of interest. This Bill is addressing these issues. It will come in and arbitrate between the trade unions. It will also arbitrate between the workers and the employers.

Mr. Temporary Deputy Speaker, Sir, this Bill will also provide for fair judgement, rewards and appreciations where necessary, to the affected workers. It is also going to

take care of the employers who are not interested in taking care of the welfare of their workers. However, there are certain parts of the Bill that need to be looked into. For instance, the time factor within which disputes should be settled has not been catered for. They have left it open. It would be necessary that the Bill addresses the issue of the time factor. I propose that, at least, any dispute should be settled within a period of, say, three years. This Bill should also take care of the fact that most employers tend to want to encourage corruption or impunity by bribing the judges. This Bill also takes care of that because the judges, like any other judge of any other court, will be subject to vetting. The fact that they will be vetted, we believe, that we will come up with judges of moral standing and integrity. Through that, we should expect fair judgement for our workers.

However, I feel that the Bill should also have addressed the kind of personnel that is going to be in charge of the courts. The experience and the qualifications required are a little too high. Instead of 15 years experience, we should come down and say five years, so that we can also take care of some of our young people who are intelligent and gifted and can serve just as well as those who have had long term service in the Judiciary.

With those few remarks, I support.

The Minister for Co-operative Development and Marketing (Mr. Nyagah): Thank you, Mr. Temporary Deputy Speaker, Sir. I want to start by thanking the two Ministers who have done a first class job, namely, the Minister for Labour and the Minister for Justice, National Cohesion and Constitutional Affairs for giving us this Bill on a timely basis. This Bill covers a very important sector. Secondly, I want to confirm that I am very comfortable with the term “Employment and Labour Regulation Court Bill”. The minute you make it industrial, there is a history of making it small. It gives an idea of Industrial Area. In order to cover a bigger sector of the economy, it is important that we use the kind of title that the Ministers have come up with.

The reason as to why I support this Bill are that I see a growing need for this court. For instance, my Ministry has the Co-operatives Tribunal, which handles more cases than the labour tribunal. Given the title of this Court, my Ministry’s Tribunal could eventually become a department within the particular court being created by this Bill. So, let us look into the future, when the court being created will be expanded to cover more areas.

Mr. Temporary Deputy Speaker, Sir, in keeping with Article 126(2) of the Constitution, we did what we were called upon to do. The old Industrial Court has played its part. It has kept good relations between workers and employers. Obviously, there were problems. However, without this specialised area, our ordinary magistrate courts system would have gotten stuck with a lot of work.

Therefore, it makes sense to have a specialised unit. As the economy of Kenya grows, and this sector becomes bigger, and as people become more and more aware of their rights, the court being created through this piece of legislation will play the role of solving the conflicts that will arise. In the old days, it was okay, because people were not exposed. However, in the modern world, people are very much exposed. I now hear that 5,000 cases are pending in a society which is not very advanced. In the KANU years, this volume could go up faster, hence this very important court.

Mr. Temporary Deputy Speaker, Sir, it is my understanding we are talking about this being a court like any other, which will eventually be spread out to all the counties in the country as the economy grows. So, there is the possibility of this court spreading

down to the devolved governments. Many people in Turkana would find it very expensive to come all the way to Nairobi to access the services of the court we are creating. That is why it makes sense for us to eventually devolve this court system to the counties.

Within the law that has been prepared, it is possible for this court to go down to the county level, so that the counties can speedily sort out cases relating to this law and reduce the cost of litigation, and so that justice does not become expensive. I can see that the judicial officers going to preside over these courts will be of the same level as other judges. That is the way it should be because the specialised courts are meant to enable us do better.

Mr. Temporary Deputy Speaker, Sir, I look forward to the day when courts similar to the one we are creating through this Bill will replicate themselves throughout the country.

With those remarks, I beg to support.

Mr. Were: Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity. I also give support to this Bill except that I want to look into a few clauses which I think make this Bill ambiguous.

I will begin with Clause 5(1)(b), which talks of the composition of the courts. In paragraph (b), we are providing for such number of judges as may be determined by an Act of Parliament pursuant to Article 165(1)(a) of the Constitution. What I do not understand is why we need another Act of Parliament to prescribe the number of judges that will be in this court when we could as well provide for it in this same Act. So, this is something we should look at in this very Bill rather than have another Act of Parliament to prescribe the number of judges that will sit in this court.

The next clause I would like to talk about is Clause 5(3), which says that the principal judge shall hold office for a term of not less than five years. If we are talking of not less than five years, it means we do not have an upper limit. It means that this person can serve for even 100 years. So, when will you renew his contract?

So, when do you renew this contract because we are saying that the judge can be re-elected for another five years? If he is already serving for not less than five years, when will you re-elect? I think this is something that should be looked at because we can only re-elect if we have a definite term. Therefore, there must be a term that ends then we restart.

Mr. Temporary Deputy Speaker, Sir, I have also looked at Clause 23 on the Employment and Labour Relations Rules Committee. If you look at Clause 23(b) (iii), it says:-

“one person, not being a lawyer, appointed from two nominees, one woman and one man, with experience in employment and labour relations in Kenya”

Where do you pick these people from? Where do they come from? Who provides these two names so that we can pick one from the two? Where will this one woman and one man come from? I think this is ambiguous and it should be determined where they will be picked from so that they will be nominated.

Mr. Temporary Deputy Speaker, Sir, if you look at parts (iv) and (v) down there is says:-

“...nominated by the most representative employers’ organization with a national character”.

We are going to have war. Which is this organization with deals with employers of national character? Does it mean that we are registering some organizations without national character? Which is this organization we will be dealing with? When I look at this, I find it ambiguous and it is going to create a problem.

If you go to (v) it says:-

“...nominated by the most representative workers’ organization with a national character”.

This is also another front for war. Why do we not come up specifically and say which organization so that we fix it here and we do not have a problem in the future? My brother here talked of KUPPET and---

Dr. Khalwale: On a point of information, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Were, would you like to be informed by Dr. Khalwale?

Mr. Were: I agree, Sir.

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, I want to inform the Member for that wonderful thought that in our proposed amendment, we have seen that difficulty and said, for the time being the most representative---

The Temporary Deputy Speaker (Mr. Ethuro): Who are “we”, Dr. Khalwale?

Dr. Khalwale: We have just come from a meeting, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): For the Committee?

Dr. Khalwale: Mr. Temporary Deputy Speaker, Sir, we have then said that the most representative national employers is the Federation of Kenya Employees (FKE) and for the employee, we have said for the time being it is the Central Organization of Trade Unions (COTU).

Mr. Were: Mr. Temporary Deputy Speaker, Sir, I am not a member of that Committee and, therefore, I would not have known. I have just picked these things sitting here when I picked this Bill. Quickly going through it, I realized that there is going to be a problem in identifying these bodies. That is why in my contribution, I am saying that we should come out specifically and be very clear on what organizations or bodies we are talking about.

With those few remarks, I support.

Mr. Wetangula: Mr. Temporary Deputy Speaker, Sir, I want to congratulate my good friend the Minister for bringing this Bill at this time. It is very critical for the implementation of the Constitution.

I have just about two points to make; number one, the judges to be appointed under Clause 6 should just be bearing the same qualifications as judges being appointed to the Superior Court and any other court, so that we do not have this court looking as if it is lower. We should just lift from the High Court Judges’ qualifications.

Number two, when the courts operate, because we are in a devolved situation, there is always the tendency that this court will be based in Nairobi, Naivasha, Nakuru, Kisumu or Mombasa and people have to troop to Nairobi to solve their disputes.

I think there should be a provision in the Act that courts should sit on circuit so that they can go round the country because it is very expensive to open courts everywhere. We can

have nominal registries in vantage places like the current provincial headquarters or where we have a massive province like Rift Valley, we can have three or four places so that we do not have somebody coming from Lodwar to Nairobi to fight over an employment dispute in the court. I think the Minister should look at that.

Mr. Temporary Deputy Speaker, Sir, we should - I do not know whether this should be in the rules of the court - simplify the process of access to justice because we are talking about workers like watchmen, flower pickers, cleaners and all manner of low level citizens of this country in terms of employment. We should make their access to justice cheap, simple and easy. That is the only way they can realize the benefits of the new Constitution. The Act is also not very clear about the enforcement of the awards. I have practised at the Industrial Court for a long time and I know that awards are given in vain. They are given but they are ignored by the employers especially where there are big employers who manipulate everybody or ignore everybody and get away with it. We should have a clause that makes it very tight and very clear that when an award is given to the workers, it must be enforced within a reasonable period so that if there is no appeal lying then the period of appeal, which is normally 28 days in civil matters, should be the period within which the award must be brought to fruition so that they get the benefits of the outcome of their cases.

Mr. Temporary Deputy Speaker, Sir, as we deal with that, there is also a process which is not quite clear. That is the representative capacity of the workers. We should clearly say that workers can be elected to go to court through their unions; and I have very many cases where a union or union leaders are compromised to ignore their workers' complaints. So that if you are not able to access the court through your union, you are able to access it individually to fight for and enforce your rights. There are many cases which I have done where a worker is injured, goes to the union, the union goes to the employer who then compromises the union and they ignore the worker. The worker roams everywhere looking for justice but does not get it. So, the workers must have the right to access this justice either through their unions or on their own. This is to enable them get the fruits of the new Constitution.

If the Principal Judge reports to the Chief Justice, then the Registrar of these courts should hold a rank equal to the Deputy Registrar of the Superior Court because it is like a court which is auxiliary to the main Judiciary. We should have a registrar who has annexus. It should be the Deputy Registrar of the Superior Court that is the Registrar of this court so that there is a linkage on what the High Court does, what the Court of Appeal does, what the Supreme Court does and what happens here.

Finally, there is no provision for an appellate process to go up to the Supreme Court. I want to urge the Minister to consider that.

The Temporary Deputy Speaker (Mr. Ethuro): Your time is up!

Yes, Mrs. Noor!

Mrs. Noor: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this Bill. We were able to go through the Bill together with the Minister and his staff, people from the Federation of Kenya Employers and the trade unionists. We went through the Bill together and we agreed on some amendments to be moved particularly on the title of the Bill.

We agreed that because we want to look at the best practices all over the world and see how our industries and workers will do in the future, we agreed to amend the title

and call it “Industrial Court.” This is what happens all over the world and we should not be left behind as a country. We have given ourselves a Constitution so that we can have a new outfit for ourselves; where we can put issues in the right perspective. That is why we have proposed to amend the title of the Bill to read “Industrial Court.” I thought that the co-operative movement is an industry and the Minister for Co-operative Development should not panic by saying that the co-operatives will be left out. We thought that building industries start with everything and the co-operative movement is one of the industries that we would like to empower and put in the right perspective.

Mr. Temporary Deputy Speaker, Sir, the other thing that we thought was very important and we needed to look at was the provision in Clause 3(1) which talks about affordability. When we talk about affordability in a Bill like this one, and we are targeting the employers and employees, when there is an award to be given, the employers can simply say that they cannot afford it. Putting affordability in a Bill like this one, where we want to improve the status and situation in this country, we will have a problem. We thought of amending that by removing the word “affordable” so that whenever a dispute arises and an award is given, Kenyans themselves will judge and see what is in the best interest for that award to be given to anybody.

If we leave Clause 32 like this without amending it, all the Judges and staff that are already serving in that Court will be dropped and we will advertize and new people will come on board. We felt that, that is not the right way because all the other Judges are being vetted and are going through a process. We are proposing that this Bill is amended, so that the Judges and the staff who are already serving in the Industrial Court go through the process of vetting, like any other Kenyan so that we can give them that opportunity to serve the industry.

Mr. Temporary Deputy Speaker, Sir, we have many amendments. The other one is on Clause 8, which talks about a Registrar of a court. This clause implies that the Registrar of the court, whenever he or she is not present, he or she is supposed to go and ask for permission from the Chief Justice. The Chief Justice is just too busy to allocate work to an individual every other morning when that person is not in the office. Because we have a Registrar and two deputies, then we must delegate and give responsibility to the most senior person who follows the Registrar so that, that person can take over the responsibility instead of referring every other day the issues of the Industrial Court and the Registrar to the Chief Justice. I think the Chief Justice is too busy for this kind of work or to just monitor and carry out the day to day work of the court.

We also looked at Clause 10 which is about the Registrar, Senior Registrar and the Deputy Registrar.

Clause 21 of the Bill is about representation before the court.

The Temporary Deputy Speaker (Mr. Ethuro): Mrs. Noor, your time is up. It is now time for the Mover to reply.

Mrs. Noor: I support the Bill.

The Temporary Deputy Speaker (Mr. Ethuro): Order! You are completely out of time. It is time for the Minister to reply.

Mr. Baiya: On a point of order, Mr. Temporary Deputy Speaker, Sir. There is an important point of law that I wanted the Minister to respond to before he replies. It relates to the provision in Clause 5 of this Bill. Clause 5 talks about composition of the court. This clause, with regard to qualifications, also mentions judges of the High Court.

However, it does not say how the judges, either the Principal Judge or the other judges will be appointed. It does not really say that.

Mrs. Noor: On a point of information, Mr. Temporary Deputy Speaker, Sir.

Mr. Baiya: I can be informed by my colleague.

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! You can only inform a Member who is contributing.

Mr. Baiya: Mr. Temporary Deputy Speaker, since I am on a point of order, that clarity is really needed. We need to know how the judges will be appointed. The only reference being made is adopting the Constitution with reference to qualifications. However, it does not say whether they will be appointed by the Judicial Service Commission, the Chief Justice or how they will be appointed. The other thing is under the same clause, sub-clause 3 talks about the Principal Judge being eligible for re-election for a further one term. That provision appears contradictory with Clause 7, which anticipates that a judge of the court shall hold office until such a time--- If you require that he holds office only on those conditions, then the principle of eligibility for re-election does not arise. The two provisions are not right. The last thing I want to---

The Temporary Deputy Speaker (Mr. Ethuro): Order! Hon. Baiya, you should have been listening. That has already been raised by hon. Were. In any case, your point of order should only be one. Let the Minister now respond.

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I beg you to allow me to donate one minute each to the hon. Members behind me.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Minister, you do not have all that luxury. You have five minutes to go. I am just informing you that if you donate two, you will be left with three minutes.

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I will summarize.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, let me take the opportunity to thank the Minister for doing a good job on this timely Bill. I would like to say that the economy of a country depends on the welfare of its workers. Economic growth depends on the attention the plight of workers is given. In my view, the court, once formed, will address all those concerns.

With those few remarks, I fully support the formation of the court.

Mr. Wambugu: Thank you, Mr. Temporary Deputy Speaker, Sir. I also stand to support this Motion. I would like to just mention a few issues. I think the Industrial Court that has been in existence has been taking too long to dispose of cases. I think through the Bill, as we go along, we will need to look at ways of increasing the number of magistrates who will be sitting in that court so that cases can be disposed of quickly. With regard to issues of arbitration on labour disputes, it is very disturbing because most of them take very long, maybe, because of issues that are not very clear. We have cases which have been in court for over ten years. We request magistrates who will be in that court to be of high integrity so that all the cases of corruption can be dealt with almost immediately.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Wambugu! You have exceeded the generosity of the Chair.

The Minister for Labour (Mr. Munyes): Thank you, Mr. Temporary Deputy Speaker, Sir. I start by appreciating the comments and suggestions from hon. Members. I

really want to say that these amendments will be considered in the Committee Stage. For sure, they have enriched our Bill.

Let me just make some few comments. About the appointment of the principal Judge, there is provision under the Act that we will create as many as we can. On the issue of the Industrial Court that is also the subject of discussion, we borrowed the long title from the Constitution, Article 162(a). If hon. Members feel there is need to amend the title, it can be done in the Committee Stage tomorrow.

We appreciate the work that COTU and FKE have done in this Bill. Thank you, for that. You talked of expansion of courts to the regions. Again, there was an amendment which even came to Cabinet strongly suggesting that the Chief Justice could designate magistrates at the regional level to actually determine---

Mrs. Noor: On a point of order, Mr. Temporary Deputy Speaker, Sir. I want to quote the Article that the Minister has just referred to. It is Article 162(2) on system of courts and this is what it reads:-

“Parliament shall establish courts with the status of High Court to hear and determine disputes related to

(a) employment and labour relations---

It is not the name.

The Minister for Labour (Mr. Munyes): No, what I said was that the longer name “Employment and Labour Relations Court” was borrowed from the Constitution of Kenya. So we just borrowed the subject of discussion. If we decide to amend it at the Committee Stage, it will be okay.

I was saying we want to thank COTU, the stakeholders for the input in this Bill. The term “affordable” is another subject of discussion. We fear that it will be used to exploit the workers. So, again, that could also be considered. The position of the registrar to have two deputies, I am acceptable to that. There should not be a problem.

The Temporary Deputy Speaker (Mr. Ethuro): Mr. Minister, there was a more substantive point by Mr. Baiya on appointments.

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, regarding appointment of judges, Clause 5 of the Bill provides for the court.

“The court shall consist of -

(a) The Principal Judge; and

(b) such number of Judges as may be determined by an Act of Parliament pursuant to Article 165(1) (a).”

So the matter is back to Parliament. We can create as many as we can. On appointment of Labour Inspectors---

Mr. Baiya: On a point of order, Mr. Temporary Deputy Speaker, Sir. The Minister says that Parliament can do it now. Is he not the one to propose? He is actually the Minister in charge of the docket. He can estimate the demand for judges needed. He is the one who can propose. The Act of Parliament is this one we are about to pass. He should also tell us how we will appoint the judges. Do you appoint them through the Chief Justice or through the JSC?

The Minister for Lands (Mr. Orengo): On a point of information, Mr. Temporary Deputy Speaker, Sir. I just want to give information that we must realize that these courts, including the court we are talking about, are part of the Judiciary. If you look at Article 161 on Judicial Officers and Officers, the Judiciary consists of the judges

of the superior courts, magistrates, other judicial officers and staff. Then you go to Article 162 on system of the courts. The superior courts are the Supreme Court, the Court of Appeal, the High Court and the courts referred to in sub-clause 2 which include these courts. All the judges are appointed by the JSC. So there is no problem there.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Minister! We agree with you. I think what the hon. Members are saying is that then that reference should have been made.

Proceed, Mr. Minister!

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I think our learned friend has helped clarify that. I was on the point of Labour Inspectors. The Ministry has poor budgetary allocations and, therefore, that was to blame for the kind of problems we faced on that.

On the issue of industrial spirit and improvement of arbitration, well this Bill will improve that. On time factor in dispute resolutions, that is a matter for discussion. Of course, judges will be subjected to vetting. That has already been explained. On personnel, in the past the Industrial Court lacked adequate budget allocation. Now, with the new Bill and system, the Judiciary will take care of that. On whether the Co-operatives Tribunal could be expanded, the Minister for Co-operative Development said that in future we need to incorporate the co-operative movement, and somebody said the co-operative movement is one industry and, therefore, is part of the same. There are also so many amendments from hon. Were which I think will be considered. The Committee and my Ministry worked on them. I agree with all that he said on that.

With those few remarks, I beg to move.

(Question put and agreed to)

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

Second Reading

THE POWER OF MERCY BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Power of Mercy Bill, Bill No.35 of 2011, be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir this is, perhaps, one of the highlight of reforms because, unknown to a lot of people, the Constitution now recognizes all citizens – whether those citizens are convicted of an offence or otherwise, and they have special rights. Therefore, Article 133 of the Constitution requires this Parliament to enact this law to set down the procedure when a Kenyan citizen has been convicted of an offence, the process that he can use to seek mercy because justice must be tampered with mercy.

Part one, strictly speaking, deals with short title interpretation, which is standard practice. However, I would like to encourage hon. Members to look at Clause 4, which deals with guiding principles, so that everybody is clear that in the performance of the functions and exercise of the powers under the Constitution in this Act, the President and

the Committee shall act in accordance with Article 47(1) of the Constitution and be guided by the values and principles set out in Article 10 of the Constitution. That demonstrates the point I have made that even our prisoners are citizens and are entitled to the rights under the Bill of Rights.

Thereafter, Part Two deals with compositions, functions, and so on. I suggest to the House that we look at them and add value using the now widely acknowledged wisdom of this House.

Further than that, in Part Three, it is the process for the petitioning for the exercise of the power of mercy and thereafter miscellaneous provision. You will observe that, in fact, for the first time, if you look at page 1050 of the Bill, it has provided for proceedings of meetings of the Committee, so that there is no doubt that they are governed by law. In consequences, this is a law whose time has come.

I want also to emphasize that quite apart from the Articles of the Constitution; that is 133 that I have read, you will see the composition in Part Two of the Committee and, therefore, these Members are appointed under Article 133(2A) of the Constitution. You will find that in Clause 5.

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

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

Madam Temporary Deputy Speaker, similarly, you will find that Clause 13 deals with tenure and vacancies of the Committee. They appear on page 1036 to show what happens when vacancies occur. Clause 14 deals with functions of the Committee. We would like to hear from the House, whether there are any comments.

Above all on page 1038, Clause 15 deals with the powers of the Committee. This bear repetition, particularly 2

“In the performance of its functions and in the exercise of its powers, the Committee -

(a) may inform itself in such manner it deems fit. “

We are giving them discretion to be able to carry out research and, perhaps, even hire consultants. Subsection (b) “shall, where appropriate, receive written or statements, (c) may establish sub-committees, (d) may co-opt into its sub-committees persons, whose knowledge and expertise its requires. (e), is not bound by the strict rules of evidence and (f) shall conduct interviews of the individuals on whose behalf the petition is made”. Then, we establish a secretariat.

Clause 20 on page 1040 shows how petitions are commenced. Above all, on page 1042, Clause 22(1) is the criteria to be applied by the Committee. We do not want our prisoners to remain citizens for all purposes, except the denial of day to day freedom; to be treated casually, or in a manner that suggests that they do not have these rights. So, therefore, the criteria are established under Clause 22(1). Again, it bears a bit of reputation, the age of the convicted criminal, circumstances surrounding the commission of the offence, whether the person, for whose benefit the petition is made, is a first offender and so on and so on.

We hope that in due course, we will catch up with other countries in the world where when you are convicted you may have to wait for a period before you start serving a sentence. In some countries like the Nordic countries, prisoners are even entitled to receive visits from their spouses. I know that may upset a number of people, but I am sorry, I am a Minister for reforms and I am looking for a modern country which respects the rights of citizens. In fact, at page 1046, Clause 30, we have provided for a citizen who is a prisoner and who thinks that he has suffered in the hands of the Committee to commence proceedings.

Madam Temporary Deputy Speaker, I have no hesitation in commending this Bill to this hon. House in order to show, in addition to legislating on rights of ordinary citizens, we are including our prisoners.

I beg to move and my good friend, hon. Otieno has kindly agreed to second the Bill.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I am happy to second this Bill. It is one of those innovative approaches in our fair administration in the country.

The Constitution has made a significant change that we are not any more talking of prisons. Actually, we are talking of correctional services. The prison concept is that if you are jailed for ten years, you take ten years and then you are released, whether you have changed or not. But a correctional institution means that a prisoner can be jailed for 20 years, but if he feels, and it can be shown that he has been corrected within five years, there has to be a mechanism to shorten the imprisonment term for that kind of prisoner. So, this Bill is so important that there will be a committee that will continuously be receiving and reviewing petitions from the different correctional facilities.

Madam Temporary Deputy Speaker, the only weakness that may be in this Bill that needs to be looked at is how the pardon officers are going to be appointed in each of our prisons; the training that those pardoning officers will require and the training that our prisons officers will need to have to change their mentality from administrators of prisons to managers of correctional facilities. The pardon officers are the ones who will be generating activity to the Committee. Therefore, they have to be active enough to scrutinize all our prisoners, so that they can determine who is proceeding well on the correctional path and may deserve the application of the power of mercy. Maybe, after the whole process commences, more powers will be given to the Committee in practice as to how they will work. After they get research findings, how they will initiate action within the correctional facilities, so that actively, the fewer people that can stay in prison for very short periods, the better for us. As of now, the prisons are bursting. There are people in prisons who do not need to be there anymore. They should have left prison a long time ago. Sometimes even their productivity within the prisons is not sufficient. Some have read, obtained degrees and have passed examinations, but nobody is checking whether they do not deserve to stay more in prison. Being in prison is not adding any more value to the country or to the Prison Department itself.

This is a very important Bill. It will set in motion a process by which we will be reviewing our prisoners more frequently, to be able to exercise the power of mercy more actively and reduce not only the attitude of the workers, but the attitude of Kenyans; that if you commit an offence and go to prison, if you can change and we observe that you have changed, you do not have to rot in prison for the rest of your life.

With those few remarks, I beg to second.

(Question proposed)

Mr. Mututho: Madam Temporary Deputy Speaker, I want to thank the Minister because in life, there are little matters that people ignore and which are very important.

I seek your indulgence to narrate a situation of a lady who is now in Lang'ata Prison. This lady happened to have a very wonderful husband, but who never kissed her goodnight. One night, the man came, slept and went to Heaven. The lady woke up, but because both good night and good morning were missing, she did not bother to check what was happening. It happened that at the place of work, they said that the man was missing and, subsequently, at around noon, they checked out and found that the man was actually in the House. He had actually died in bed. Doctors confirmed that he must have died at about 2.00 a.m. The lady was charged with murder, and she is at Langata Prison. That is a clear reason as to why we need these laws.

Madam Temporary Deputy Speaker, accidents do happen. Mistakes happen even in a very elaborate legal system. What looks very obvious will always have a repercussion at one point or another. So, I thank the Minister for bringing this Bill. I would really wish that the Minister, together with the necessary authorities, review the cases that are already there, and which qualify under the particular law we are enacting, so that those people can also enjoy the full benefit of the new Constitution.

With those remarks, I beg to support.

Mr. Wambugu: Madam Temporary Deputy Speaker, I also stand to support this Bill.

I think this is one of the most important statutes that we are going to have in this country, after a long time. I echo the sentiments of the Member of Parliament for Naivasha, who has just spoken; sometimes you find that most of the people who are serving sentences in jail, even today, ended up there not because they intended to be there, but because there was a mistake somewhere. It is because of our court procedures these days that they end up in some of those places, and they cannot get themselves out.

Through the statute we are enacting, our people will have a chance of appealing for mercy, so that they do not spend all their lives in jail because of nothing. The Minister must have done a lot of research, which enabled him to come up with this Bill. I congratulate him. There is also the panel that has been proposed to be formed. As I said earlier, we need to have proper guidelines for very high qualifications and the courses those going to sit on that panel will need to attend before they can take up some of the responsibilities.

Madam Temporary Deputy Speaker, the document has been very well set out, and very well explained. As you might have noticed, we might not have very many Members of Parliament to contribute to this Bill because it is very well set out.

With those very few words, I beg to support.

Dr. Khalwale: Madam Temporary Deputy Speaker, may I thank the Minister for this piece of proposed legislation. Obviously, if you look at it, you will realise that this is not one of those "cut" and "paste" kind of pieces of legislation, where you lift text from somewhere and put it somewhere else and go on with the balance of events. Reading it, it feels fairly innovative. For that reason, I support it.

I want to echo the comments by hon. Members that this legislation opens a new chapter in the way we dispense justice in our prisons. I want to especially recognise the fact that, for the first time, the issue of a prisoner being pardoned will be structured. If we structure it in the way it has been done in this Bill, it will mean that we are more unlikely to be faced with situations like what we find ourselves in, where upon being released, convicts cause havoc in villages. They go home and hack to death relatives of people they thought caused their arrests and so on, because their case was not very well thought out.

Madam Temporary Deputy Speaker, as I support the Bill, I would also like to encourage the Minister to think hard and ensure that after we have pardoned people, we have a strict post-pardon follow up programme, so that such people are not just released and forgotten. Some of the bad habits in these people can actually be repeated. I say this because, as a doctor of medicine, I know that these things can happen.

I would like to comment on three things in the actual Bill. Clause 6(d) says that a person is qualified for appointment as a member under this section, if that person has knowledge in law, psychiatry, *et cetera*. I just want to make a small correction. Under paragraph (ii), you are talking about psychiatry and under paragraph (v), you are talking about medicine. You do not have to put there “psychiatry” once you put medicine because psychiatry is a branch of medicine.

Mr. Minister, I just want to exercise your mind. Maybe, now that you have space to add to that list one more specialist, having dropped one specialist, can you consider the possibility of also including on this list a former convict who has successfully benefited from presidential clemency? This could be somebody who really knows what it means, and he could be very useful. The second comment is in terms of these general principles of appointing members. They are saying:-

“The panel and the President shall:-

(a) have regard to ethnic and regional diversity of the people of Kenya.”

I hope that the appointing authority now and in future, will be taking this importantly. It looks like if we do not start emphasizing it at this time, we might see in future, a repeat of what we are seeing. Like in the recent appointments, it looks like what ethnicity means to the appointing authority these days is a trade-off between the Prime Minister and the President. We want to start complaining now so that we move ahead with a new Kenya that will do things that recognize the letter and spirit of the law.

Madam Temporary Deputy Speaker, finally, I want to comment on Clause 21(2). “In determining the admissibility of the petition under subsection (1)(a), the Committee may consider -

(b) where a person who is convicted and sentenced to imprisonment for life or to death and whose sentence has not been effected, has served for at least five years; or”.

This is important but as we use it in real exercise, we have to be cautious that inside the prison itself, there is a control. This is something which can be set as a tradition so that they hide people just to ensure that they stay there for five years and then they are pardoned.

Madam Temporary Deputy Speaker, the same Constitution that we are giving effect to is the same one that provides for death sentence. Those who believe in the death sentence would also like to see that once a death sentence has been pronounced and it has been pronounced by judges who we have vetted and we have done so with good reason, we want to see a situation whereby the President of the Republic of Kenya will be

respecting that particular sentence by the judge so that he goes ahead to sign for the exercise to be carried out. This is important because when you take oath to be the President, it means you have to do some of the things you do not like very much and if you are a born again Christian and find this difficult to do, that will be reason for you not to ask us to elect you as our President.

With those remarks, I support.

The Assistant Minister for Industrialization (Mr. Muriithi): Madam Temporary Deputy Speaker, I rise to support. As I do so, let me start by saying that we in the Executive never ever cut and paste. We endeavour to write good laws. I in particular support this Bill because of Clause 22. This is because it sets out the criteria that the Committee would apply to determine on a petition for mercy.

Madam Temporary Deputy Speaker, time has come to recognize correctional services or correctional work as a key reason so that it is not just about locking away people forever but it is about correcting behaviour of human beings or citizens of this country. I am quite pleased because at the beginning of this Bill that is at the definitions, we talked at some length about correctional facilities. I believe that, that service is about correcting behaviour and rehabilitating members of the citizenry back into civil and proper conduct of the society.

With those few remarks, I support the Bill.

Mr. Njuguna: Madam Temporary Deputy Speaker, let me start by thanking the Minister for Justice, National Cohesion and Constitutional Affairs for his tireless effort in presenting these important Bills in this House.

It is notable that our correctional facilities have been congested for too long and it is, therefore, important that we support the formation of this Committee to review the various cases committed by this people. We need to have increased centres in the country and the prisoners must undergo counselling and proper training so that when they come out they will be useful citizens in our country. We have seen time and again those who have been given clemency by the President become dangerous criminals. So, there is need for thorough training and rehabilitation.

We want these people to undergo thorough training so that when they come out they are useful to the society. I recall Kiriamiti who at one time led a very dangerous robbery at Bata Shoe Factory but today is a pastor. This means that he underwent through a very serious rehabilitation programme and now he is a very useful member in our society. He has started a church and he is converting very many people. This is the way we should handle this programme in our country.

We have seen criminals being released and this should not happen in our country. With the composition of this Committee, it is important that we consider the church element so that they can also participate in this very important committee. As to when this Committee will be meeting, it is not indicated. In order to decongest our prisons, time must be regulated so that we can free these people.

Therefore, I wish to very seriously support the formation of this Committee and authority to govern correctional facilities in our society.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, I want to thank the House for rising to the occasion and recognizing that our citizens in correctional facilities require to be recognized. The Government will be bringing further reforms to this sector as soon as we

finish Constitutional implementation because this falls under the Governance, Justice, Law and Order sector that is under my Ministry.

I beg to move.

The Minister for Lands (Mr. Orengo) seconded.

(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 ENVIRONMENT AND LAND COURT BILL

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, I beg to move that The Environment and Land Court Bill be now read a Second Time.

From the outset, I want to congratulate the work that has been done by my colleague, Mr. Michuki, the Minister for Environment and Mineral Resources. Quite early, after the promulgation of the Constitution, he set about establishing a taskforce which looked into the necessity of coming up with this Bill. Not only was he at various workshops and stakeholder meetings, but he even sent delegations to look at how other countries have dealt with such courts in different jurisdictions. So, I want to thank him very much. If it was possible for the two of us to move the Bill, we would have done it, but he has graciously allowed me to move this Bill and I am greatly honoured to do so.

Madam Temporary Deputy Speaker, this Bill flows from the Constitution, just like the previous Bills that we have been dealing with on employment and labour. Article 162 of the Constitution requires that Parliament establishes a court which will deal with the environment, use and occupation of land and title to land. So, the jurisdiction of this court that we are establishing is not a matter for real debate because the Constitution has spelt out the jurisdiction. But additionally, it is important to note that Section 3 of Article 162, says that Parliament shall determine the jurisdiction and functions of the courts contemplated in Clause 2, one of them being the Environment and Land Court.

This court, as I indicated earlier on when I was allowed by Mr. Munyes to give information in the previous Order that we have finished, is part of the judicial system of the country. It is found in Chapter Ten of the Constitution. So, it should be realized and noted that it is part of our legal and judicial system. Part 1 of Chapter 10 talks about the Judicial Authority and Legal System of the Republic of Kenya. The principles upon which the Judicial Authority is contemplated is found in Article 159. Therefore, the appointment of the judges will be subject to the Judicial Service Commission. The qualifications will be those that are basically established under the Constitution for the Judges of the Superior Court. So, we should not have any doubts about the process of appointing judges to this court and the manner in which they will be appointed by the Judicial Service Commission.

Madam Temporary Deputy Speaker, I want to be very brief, go through the Bill and highlight which are the most important features in the Bill. As I do so, I note that the

relevant Committee of Parliament led by my friend, hon. Mutava Musyimi, has looked at this Bill. I commend them for going through it thoroughly in a very short time. I have looked at the amendments they propose to make to this Bill. I have looked at them and I have no problem. I will be giving a copy of those proposed amendments to my colleague, hon. Michuki. I wanted to make that point, at the outset, and say that they will make the Bill even better. This is not a matter that will cause any controversy.

Part II on page 1204 talks about the establishment and constitution of the court. The court is established as the Environment and Land Court and shall be a superior court of record with the status of the High Court. This is a repetition of what is in the Constitution. Clause 5 is about the composition of the court, very much similar to the Employment and Labour Relations Court which will consist of a principal judge. That judge will be elected in accordance with Article 165(2) of the Constitution. There are provisions on how judges in the various superior courts can elect a principal judge. Those provisions are applicable to that court.

The qualifications of judges are found in Article 7. They are the same qualifications. There may be additional qualifications there, but they are neither here nor there because we cannot go against what is written in the Constitution. Every public and State officer is required to meet the requirements of Chapter 6 of the Constitution. That is stated in Clause 7. This is in addition to the qualifications required for every judge. The tenure of office of a judge of the court, you can see that in Clause 8. There is a lot of reference to the Constitution. Clauses 9, 10 and 11 deal with the registrar of court and that is normal for every superior court. You will find again, when you look at the Judicial Service Commission Act and the other Bills that deal with the superior court, the functions are the same. The more important part which I think is for you to look at critically and give us your comments is Part III which deals with jurisdiction of the court.

Clause 13(1) says:-

“The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution.”

With the provisions of this Act or any other written law relating to environment and land again, emphasis is that the jurisdiction falls from the Constitution. However, it also has an appellate jurisdiction because, as you will agree with me, there are various tribunals, even as we speak, dealing with issues of environment. The magistrates court also deal with issues of land. Therefore, courts which would be subject to these provisions on appellate basis or otherwise would be the Environment and Land Court. Those are all set out in that Article.

Clause 13(2) states: “In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes”. Those are spelt out - environmental planning and protection, trade, climate issues, land use planning *et cetera*. I think the most important thing to say is that it is only in circumstances where the environment and the use of title to land is involved. That is the basic jurisdiction as set out in the Constitution.

The number of judges should be such that we have a judge in every county. As you know, nearly 60 per cent of cases before our courts are land cases. So, it is important that we have a land court in every county.

Not just with one judge, but several Judges to deal with land issues in every county. This is what we want to do.

Finally, I do not want to take much time on this land, like my friend Mr. Mututho likes saying, it is not a finished product; it is a factor of production. We want issues involving land to be settled as expeditiously as possible. We want all land available in this Republic to be put to good use, particularly public land.

So, I would pray when we go to deal with the substantive law which is coming, the law that this court will apply, that the principle that land is a factor of production should be all the time in our minds. The new paradigm for land ownership is that land belongs to Kenyans collectively, individually as a nation and as a people. So that you may have land which belongs to you, but you are still accountable to the larger nation because we all need it for food, shelter and many other things.

With those remarks, I will ask Mr. Michuki to second.

The Minister for Environment and Mineral Resources (Mr. Michuki): Thank you, Madam Temporary Deputy Speaker for granting me this opportunity to second this Motion.

In doing so, I do not want to repeat what my colleague, the Mover, Mr. James Orengo has said. However, I would like this House to know and I am sure those who have studied this Bill have already noticed that the creation of this court will revolutionize how justice reaches our people.

In this court, no Kenyans or any other person will be required to show that he has a *locus standi*. The rules that require that you must establish your connection with the matter before the court will not apply. You will be able to go to this court and get the polluter of Nairobi River to quote where an order will be made. You will not be required to prove why you are concerned about that pollution of the river.

So, this system of justice has been overdue. I think it does explain the fact that 80 per cent of the backlog of cases in courts in Kenya relate to these matters of land, environment, title deeds and the occupation of land.

As soon as this Bill becomes law, the High Court and all other courts will no longer deal with these matters. This is because they will be solely in the hands of this court that will also not be doing anything else other than to deal with matters concerning the environment, land, occupation and title deeds. Therefore, Kenyans will not only be able to protect themselves through this court; they will protect the future as well. They will be able to go to Mau and say: "You are destroying that condition which is needed by those who will come after you by destroying these forests." You will go to places that I have seen, where people have cultivated the slopes of various hills causing soil erosion and also depleting the fertility of that soil. They will be able to go there and say: "No, you cannot do this.", and the court will not need to prove why you are doing that because it will be its duty to recognize that you are doing so because of posterity, and not because of selfishness. Therefore, it seems to me that this is a Bill that must be passed in haste in order to confront the problems that we have.

Madam Temporary Deputy Speaker, the other point this House should note is that although there are similar courts in South East Asia and all those countries in the East, this is going to be the first court of its kind in the whole of Africa; so, this is another first one. A new Constitution during peace time, and not during war, was attained by Kenyans; we made it, and now we are going to have another particular Kenyan first by leading the way in environment, land use, land occupation and issue of titles.

As I am anxious that this Bill is passed, I have more that I could say, but I would like Members to debate this Bill. I request them to pass this Bill tonight, so that we can go to other business tomorrow.

With those few words, I beg to second.

(Question proposed)

Mr. Musyimi: Thank you, Madam Temporary Deputy Speaker for giving me this opportunity to give my comments on behalf of the Committee. Let me take this opportunity to thank the office of the Speaker and the Clerk for all the assistance they have given us. I also thank the Committee members who, believe it or not, since the Committee was constituted in June 2009, 109 weeks ago, have attended the Committee's 121 meetings. That is at least a meeting every week; today we met twice and so I convey my appreciation to this Committee. It just goes to tell you the amount of work that goes into issues of environment and land.

Madam Temporary Deputy Speaker, I think all of us are grateful for the new Constitution, and the commitment of this House to close ranks and dig deep, so that we can pass the enabling legislation. I think all of us are also aware that in passing this Bill we are also anticipating the more substantive laws that will make it possible for these courts to actually operate. We very much look forward, as a Committee of this House, to support the Minister. We are privileged to have oversight with regard to land law, mineral law, environment and all the other Bills that are pending.

I think it is true that we need these courts. They are needed in every county. My good friend, hon. Orengo, has spoken very eloquently and also my friend, hon. Michuki, with regard to the jurisdiction of this court. Also there is need for what is being called reasonable and equitable access to the services of this court in every county. We only came back yesterday from Lamu. We are supposed to go to Nyatike and Trans Nzoia. We have been to Kirinyaga, Bungoma, Kwale, Embu and Uasin Gishu. There are issues right across the country. I trust tomorrow I will be in a position to table the amendments as talked about by hon. Orengo, so that the House can be aware of them. They are fairly minor changes. This is a very good Bill. We commend the Cabinet for that. It is quite obvious that a lot of very professional work has gone in.

I do not want to sit down without paying tribute to those that at very short notice joined us yesterday after Parliament approved, maybe a decision that we go through these Bills. I call at about 4.00 o'clock different institutions. Today, we were privileged to have the Law Society of Kenya for three hours, Kenya Land Alliance, Kenya Private Sector Alliance, FIDA, Kenya Chamber of Commerce and Industry and Kenya Miners Co-operative Society. We started from 10.00 a.m. until 1.00 p.m. going through the amendments of this Bill. I am very grateful to these institutions. The Chair of LSK and the secretary were there. I think that is just symbolic of the commitment of our people to make sure that the enabling legislation is actually in place.

Madam Temporary Deputy Speaker, we look forward to tabling the amendments tomorrow morning. I wish to again thank the Minister for this Bill.

I beg to support.

The Minister for Justice, National Cohesion, and Constitutional Affairs (Mr. M. Kilonzo): Mr. Madam Temporary Deputy Speaker, what a wonderful day to be able to stand up and support the last published Bill for the deadline of 26th.

Even as I support this Bill, I want to inform the House and the country that if the House passes this Bill, it is the last published Bill towards complying with the deadline set by the Constitution for the first year on the 26th August. In the event that there is somebody still awake at the Government Printer, I want him to read my lips that I am expecting them to deliver to the House tonight the two remaining Bills on Contingencies Fund and Loan Guarantee, so that this Parliament can prove once and for all to the doubting Thomases, that it is up to the task of implementing the Constitution.

Madam Temporary Deputy Speaker, the most developed countries have always treated land, as the hon. James Orenge has said, as a factor of production. But I would like to call it a commodity. It is land that allows citizens to get loans. It is land that allows citizens to have investments that is guaranteed and it is not subject to the fluctuation of the currency. It is land that leads to inheritance. It is, in fact, land where we are all buried. Above all, it is land that allows spatial planning as the country heads towards the 2030 Vision.

It is that land that will enable this country to develop spatial planning, so that we do not end up with urban centres where you find you cannot even drive a tractor in between the houses for purposes of grading the road. It is this court that will be determining land use, environment and the rest.

So, therefore, I am really proud to be able to stand up, here. I am quite sure this will emerge as the single most important court, not only in Kenya, but the whole of East Africa, and later the whole continent. It is that land that will facilitate an area such as Mbooni Constituency where although I have some of the most beautiful land in the world, I do not have a title deed because land adjudication has not been completed. My voters cannot borrow money from banks. Even the market centres in urban centres do not have title deeds. Therefore, allow me to say that the introduction of this court is timely.

I want to salute the Kenyan people for giving themselves this gift of a land use court and environmental court that will be able to ensure that if the land use for your property is for residential use, nobody can come next door and set up a drinking unit next to you without following the right procedures. Therefore, I am just happy to be able to stand up here at a few minutes to 9.00 p.m. and tell the country we have done it. I knew we could do it. I am proud to be Kenyan. May God bless you.

I beg to support.

Mr. Mututho: Madam Temporary Deputy Speaker, I admire the way hon. Orenge has put it, but for clarity and emphasis, there are only four factors of production in agriculture, namely, land, capital, labour and management or entrepreneurship. Without land, you are nowhere.

The late President Jomo Kenyatta put it very well that in land lies our survival. If anyone doubts that, then you need to come and see the denudation that we are seeing in the refugee camps in northern Kenya. When the inhabitants or the people who were moving the refugees decided to bring those refugees there, they forgot that, that was a very delicate eco-system. They never supplied them with firewood. They forgot about water and everything else and they have created a micro desert because of that action.

Madam Temporary Deputy Speaker, I will go straight to Clause 10 which provides for the qualifications of the judge. I want to persuade the Minister to squeeze somebody like my brother Dr. Otichilo, a well-known Environmental Scientist, who is qualified in environmental matters and land issues, so that he also qualifies as a judge from the definition of this Bill. For example, people imagine that irrigation is just pouring water and then crops grow, but irrigation is a very complicated science. It involves such delicate issues like soil temperature, erosion, the volume of water and the quality of the soil. Prof. Olweny, who is an Agriculturist, understands what I am talking about. This includes the microbes. I want to emphasize the need to have special prosecutors or people to assist the court to understand these intricacies. I had a personal experience recently when I was dealing with the issue of the Genetically Modified Organisms (GMO) which indicates that even the most decorated gentlemen sometimes do not understand the basics of some of these complicated new sciences. For us to get good judgments or decisions from these courts, it is important that we have people who have a bias in environmental science. For instance, we will be looking forward to this court making the first landmark decision to clean up, like they did in California, the environment in respect of the GMOs, so that those multi-nationals that have introduced GMOs in this country can be penalized by doing risk management where it occurs.

With those remarks, I support this Bill wholeheartedly. I only miss the fact that it should also have read land in part, so that matters to do with agriculture and the related pollution and pollutants are captured in this court.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Ongoro!

The Minister for Public Works (Mr. Obure): Thank you, Madam Temporary Deputy Speaker.

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Madam Temporary Deputy Speaker, I am not aware that there is another hon. Ongoro in this House! Could you ask the Member to take his seat?

The Temporary Deputy Speaker (Dr. Laboso): Hon. Obure, I called hon. Ongoro!

The Minister for Public Works (Mr. Obure): Madam Temporary Deputy Speaker, did you actually say “Ongoro” or “Obure”?

The Temporary Deputy Speaker (Dr. Laboso): I said “hon. Ongoro”.

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Madam Temporary Deputy Speaker, could the Minister stop insisting on adopting my name?

I rise to support this Bill that establishes the Environment and Land Court. Nothing can be more appropriate. If you look at Clause 3, you will find that the guiding principle of this Bill is to help us to deal with the backlog of the various land cases that are lying in our courts and also to help us to again find time to deal with the challenges that we are dealing with now because of the various offences that have been committed either by individuals or organizations on matters concerning land issues.

Madam Temporary Deputy Speaker, I am quite impressed with Clause 13, which gives the jurisdiction of these courts. Article 13(2)(a), states “In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes relating to environment and land, including disputes-

(a) relating to environmental planning and protection, trade, climate---” *et cetera*.

We find ourselves in the situations that we are in, especially in the planning and management of cities, because of lack of such an institution that can guide planning and protection of the environment. We also have a provision here which is now going to involve the public, who are the end users of all land planning activities. We now have a process which is enshrined in this Bill, by which their opinions will be listened and factored in when it comes to matters of land planning.

Madam Temporary Deputy Speaker, another thing which has been provided by this Bill is found in Clause 18. In exercising their jurisdiction, there is contained herein a set of guiding principles, especially under Clause 18(a)(i), which will be dealing with disputes relating to the environment and land. It says that in exercising its jurisdiction under the Act, the courts shall be guided by the principles of public participation in development of policies.

This is a very timely provision but the most impressive of them all is the guiding principle of polluter pays. For a long time, the poor man in this country and elsewhere has been made to bear the burden of multinationals that mint money on our own land. A company will come here, establish its operations, pollute our environment and land yet it does not undertake to give back to the community, or to even act responsibly by paying for the damage it causes.

Ironically, you find that all the negative effects of such activities are borne by the poor within our environment. Examples are all the industries operating in Nairobi's Industrial Area and polluting Nairobi River. Those who suffer most from that pollution are the slum dwellers – people who earn less than one US Dollar in a day in the slums of Mathare, Korogocho, and all the riparian communities downstream, all the way up to the Indian Ocean.

With the enactment of this Bill and this court, this kind of action will stop. From now henceforth, it will be for every man to carry his own cross.

With those remarks, I beg to support.

Dr. Otichilo: Madam Temporary Deputy Speaker, tonight is my happiest moment. It is my happiest moment because this Bill captures what I have spent many years advocating for. Therefore, I am very excited. I want to thank the Minister for Environment and Mineral Resources, and the Minister for Lands for coming up with a very brilliant Bill. This Bill has been written by professionals. When I read it, I just knew that it was written by professionals. This Bill is going to address environmental and land disputes, which are so numerous that our Judiciary cannot handle them. I want to agree with the two Ministers that this is going to be a milestone in this country.

This Bill has captured international guiding principles on the management of our environment and land. Some of the principles are so crucial for the management of our environment. If I were to quote a few of them which are very crucial; the principle of international co-operation in the management of environmental resources, the principles of intergenerational and intragenerational equity, the polluter-pays principle and the precautionary principle. So, I can tell you that this Bill is just nice.

Madam Temporary Deputy Speaker, some of the issues I can tell you this Bill captures is like those found in Clause 19 which says:-

“In any proceeding to which this Act applies, the Court shall act expeditiously, without undue regard to technicalities of procedure and shall not be strictly bound by rules of evidence”.

This is because when it comes to the environment, you may not prove your case. It is very difficult to prove your case on environmental issues. Therefore, I am happy that this has been captured here so that we can look at it in a very sober manner.

The other one that captures this is Clause 19(2) which says:-

“The Court shall not be bound by the procedure laid down by the Civil Procedure Act and shall be guided by the principles of natural justice”.

This is brilliant! I can tell you that this is brilliant. I am very excited.

Clause 19 also gives a chance for experts to go to court and give evidence. This is because the matter that will be deliberated on in court will be so complex.

Madam Temporary Deputy Speaker, other issues that are of interest in this Bill is that the court proceedings will be transacted even in local languages. They will be able to use sign language and Braille so that local people can participate in this course. The most exciting of them all is this; allow me to read:-

“Where it is expedient and appropriate to do so---

Hon. Members: Where? Where?

Dr. Otichilo: That is Clause 23(3). It says:-

“Where it is expedient and appropriate to do so, the Court may direct that proceedings be conducted and appearances be made through electronic means of communication, including tele-conferencing, video-conferences or other modes of electronic communication”.

This brings us to the latest technology! So, this is better.

Finally, these courts are going to be available at the county level. Therefore, the local *wananchi* will be able to access them. I could speak the whole night but I will stop there.

I want to support.

(Applause)

The Minister for Public Works (Mr. Obure): Madam Temporary Deputy Speaker, I want to say from the outset that I share the excitement of Dr. Otichilo.

I want to thank Mr. Orenge and Mr. Michuki for eloquently presenting this Bill to this House. I also want to thank Members in this House for their patience and determination to sit up to this hour of the night to ensure the passage of these important Bills so that Kenyans can realize the fruits of the new Constitution they overwhelmingly passed.

Madam Temporary Deputy Speaker, the object, of course, is to establish the Environment and the Land Court with a status of the High Court to hear and determine issues and disputes relating to environment and land.

Madam Temporary Deputy Speaker, I am very excited when I read Clause 4(3) which states:-

“The Court shall have and exercise its jurisdiction throughout Kenya and shall pursuant to Section 26, ensure reasonable and equitable services in every county.”

It is very important that we are being guaranteed access to justice in relation to land matters at the level of every county. The reason the majority of Kenyans overwhelmingly supported the new Constitution was to do with land issues. Kenyans wanted to see change in the way we administer land as a resource. Kenyans have lost land to those who are more economically endowed through various ways of injustice.

Some Kenyans have not had an opportunity to access land at all. There are those who have cases in courts and they have to wait for years before they are even heard. All these people combined have wanted to see change in the way we administer land as a resource. Today we are aware that very large numbers of cases in our courts have to do with land. Land cases are the majority practically in every court. The fact that we will now have courts to deal with environment and land issues, will take away the huge number of cases so that overall, we will see improvement and efficiency in our Judiciary. This will be one of the immediate results that we will see through the action we are taking tonight in passing this law.

Madam Temporary Deputy Speaker, I am aware of people who kill each other because of land. You will get a son killing a father and a brother killing a brother over land disputes. This is common in the Kisii County where I come from. It is also common in Meru and Kakamega. People are forced to take the law into their hands because the justice system has not been able to meet their expectations. For this reason, I think this is a great day. The initiative to bring this Bill to this House by the two Ministers is a great thing. I want to support it. This is something we should speedily pass because this is what Kenyans are expecting everywhere.

Madam Temporary Deputy Speaker, the passage of this Bill into law tonight could be a major achievement for all the citizens of this country in realizing the fruits of the new Constitution.

I support the Bill.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, if we will stick to the one-hour rule, we only have ten minutes for everybody to contribute and there seems to be a lot of interest in this Bill. So, can we agree on two minutes each before we call upon the Minister to reply.

Mr. Murgor: Mr. Temporary Deputy Speaker, Sir, I congratulate and thank the two Ministers for presenting this long awaited Bill and also the establishment of land courts that will be an answer to the concerns of many Kenyans which has been there for a long time. If you talk about land in Kenya, you are talking about a commodity that determines the self-worthiness of somebody. People feel respected when they have land. When you talk about land, you are talking about a commodity that guarantees food security and security to the family because that is where the family settles. There is also an assurance of where to be buried when that time comes. It is land that guarantees a family the last destination for rest. Therefore, somebody who does not have land will live in a situation that is not definite. These courts will also protect our wetlands which have been misappropriated and misused. When you travel around the country---

The Temporary Deputy Speaker (Dr. Laboso): Your time is up, Mr. Murgor!

Mr. Murgor: Madam Temporary Deputy Speaker, I support.

The Assistant Minister for Industrialization (Mr. Muriithi): Thank you, Madam Temporary Deputy Speaker. I beg to support for three reasons.

The first reason is a sorry tale that starts in the year 2000 into 2001 of wanton destruction, perhaps, bordering on criminal destruction of Marmanet Forest. If we had this law, it would not have been possible for people to destroy 16,000 hectares of pristine forest and hence destroy the livelihood of hundreds and thousands of poor people who depended on the water from this forest.

Madam Temporary Deputy Speaker, the second one is the question of jurisdiction. In many parts of Laikipia, where I hail from, large tracts of land were bought by well meaning but, perhaps, ill-informed land buying companies and divided into small parcels of one acre each. In the plateaus of Laikipia, an acre of land holding is a sentence of lifelong abject poverty. This is because after every three or five years you only get one good harvest. These pieces of land were or should be for other uses. That this court has jurisdiction on land use, I support it.

The third point is on enforceable interests. For far too long in this country, members, particularly of the female gender, have been denied inheritance rights primarily by lower courts. Therefore, that we have a court of the status of the High Court to determine and ensure that enforceable interests in land are upheld is, to paraphrase Dr. Otichilo, brilliant.

Madam Temporary Deputy Speaker, I beg to support.

Ms. Karua: Madam Temporary Deputy Speaker, I beg to support this Bill and say that the current tribunal is a disappointment. The National Environment Management Authority (NEMA) in terms of enforcing the Act is a total disappointment. This court is, therefore, very welcome.

Madam Temporary Deputy Speaker, we should amend Article 16 and make appeals from this court to go from the Court of Appeal to the highest court. Environment is everything and we can sentence ourselves to death through mishandling it. Therefore, we should access the highest court.

Madam Temporary Deputy Speaker, the other point is that the environmental impact assessment by NEMA has become an enrichment process. The fees charged are unreasonably high. Unless they put their act together, now we have a court through which we shall quash some of these practices. We at last have an opportunity to challenge the decisions of both NEMA and the tribunal. I am suggesting that after this, we amend the environmental act, so that we create offences for officers of Government who cause deliberate destruction of the environment, to our detriment. We should also create offences for individuals who do the same, so that we deter people from wasting our environment.

Madam Temporary Deputy Speaker, I would also like to say that for too long, we have polluted our water bodies, destroyed our forests and environment. All these things need to be attended to by this court. I suggest that we strengthen the Bill where we can, especially the section on appeals and also move to amend the environment act.

Madam Temporary Deputy Speaker, I support the Bill.

Mr. Konchella: Madam Temporary Deputy Speaker, I stand to support this Bill very strongly. Today, my constituency is one of the areas affected by the destruction of the environment. We have the only natural forest, but it is being destroyed daily and yet the court cannot punish anybody. All the charcoal that is taken to Nairobi and Kisumu is burned in my Constituency. The police have tried and I thank hon. Michuki for that concern. However, I think the punishment is not appropriate. I think Kshs1 million is okay. The jail sentence should have a minimum of three years and not two years. We need to lock up those people for some time so that when they come out, the trees will have grown.

The other thing that I want to point out is environmental protection. The amount of plastic bags in our cities and towns is enormous. It is an embarrassment. It is a shame

that we do not have laws to protect our environment against such things. Malaria is caused by mosquitoes which breed in stagnant water. Stagnant water is caused by blockage of drainage by garbage. I support the Bill very strongly and thank the Minister for doing a very wonderful job.

Mr. Gaichuhie: Thank you, Madam Temporary Deputy Speaker. I first want to support this timely Bill. I want to say that once Wangari Maathai said: "If we do not respect nature, nature will surely judge you wrongly." We can say that today, she is a happy woman because we have a Bill that will take care of that. The Bill makes it very easy for every Kenyan to be responsible and to report without being asked why they are doing so. The Bill has also started showing that Nairobi will become the green City under the sun as it used to be.

The way that we have embraced technology in the Bill makes it easy to expedite cases. Cases will not take too long. People have not been going to court because of the backlog of cases. So, this is a very timely Bill and I want to support it.

Mr. Mwaita: Thank you, Madam Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill. If anything, I want to support it for one major reason; that it seeks to abolish and repeal the Land Disputes Tribunal Act which has been the cause of many killings in this country. The Land Disputes Tribunal, since it became operational in the 90s--- It was a case for the DCs and PCs appointing elders and friends to determine disputes. It has left many families maimed; brother turning against brother. This Bill sets a court with people of competence, and not just elders who are laymen and are picked by DCs. From the DCs, the case would go to the PC as an appeals board. This is a very good day.

Secondly, the issue of environment, as my colleague has highlighted elaborately, is very important. Environmental impact assessment and dealing with professionals and experts within the environmental sector will be useful to us. There will be no conduits for corruption. I appeal to the Minister concerned that, when he will be making the regulations, if possible, to see how environmental management assessment fees will be guided by the court and not by the experts.

Finally, with regard to the issue of compulsory acquisition, those courts will determine fair and just awards to be given to land owners where land has been taken on compulsory basis. That is a good thing. I would like to support and agree with what hon. Dr. Otichilo said.

The Temporary Deputy Speaker (Dr. Laboso): Since you have performed very well, I will allow a few more minutes before we call the Minister.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): Thank you, Madam Temporary Deputy Speaker. I would like to support this Bill. This Bill supports the Constitution by doing one basic thing; that is, to institutionalize governance and to ensure that the mechanism to benefit the citizenry is empowered through a process which is very solid. Putting the courts in every county is another statement that devolution is not just about resources. Devolution is not just about resources because that is what has really mesmerized a lot of people. It is about devolving the institutions to capacitate the people at every local level to access fairness and justice.

Madam Temporary Deputy Speaker, this Bill is emphasizing the need for the inheritance and the access of property for all gender. It is not just specifically talking about, as known to date, the marginalized lot that has been women, but about everybody;

those who have disabilities and those who have disadvantages because of clanism or family matters.

For once we are seeing that everyone in Kenya has *locus standi* to go to court if in the opinion of that individual there is degradation or violation of the law as pertains to natural justice, issues of land and environment. In a way, it is making a statement that we are mainstreaming the basic responsibilities on the basic rights that include environment, unlike in the past where issues of governance in the environment were bestowed upon well wishers like it has been mentioned by Nobel Winner Wangari Maathai. Coming forward, the same Parliament that was supposed to have enacted that a long time ago, had demolished that effort. Now institutionalization is also taking the responsibility of these issues from the civil society to Government to ensure that Government responsibility is actually mainstreamed through a judicial process.

Finally, recognizing the need to appreciate our heritage, the Bill appreciates that alternative dispute resolution systems are recognized and can be employed by these superior courts in order to avoid cases where communities in agreement of what need to be done, are denied that chance.

The Temporary Deputy Speaker (Dr. Laboso): Your time is up.

The Assistant Minister for Youth Affairs and Sports (Mr. Kabando wa Kabando): I beg to support.

Mr. Baiya: Thank you, Madam Temporary Deputy Speaker. I also rise to support. The establishment of this court is likely going to make a lot of influence as far as addressing the problem of backlog of cases in the High Court is concerned. This is basically because much of the litigation already pending in our High Court and subordinate courts touches one way or the other on land. The creation of a specialized court to deal with land cases will also create a readily available approach to resolving the various disputes.

The other most important and very welcome aspect of this Bill relates to the already existing land policy. The court being part of the process of enforcing this land policy will also help this country in a most dramatic way in terms of addressing what have been historically outstanding challenges within our land system. The situation we have in Kiambu, for instance, where most of the disputes emanating from that place relate to land, will not arise again. Brothers, sisters and so on keep on fighting over meaningless small pieces of land. You will find that most murder cases in Kiambu are traceable to land. The same happens in Meru, Kisii, Kakamega, among other parts of the country. This law will have a fundamental impact as far as administration of justice is concerned.

The former Public Land Tribunal Act was clearly a disaster. There was really nothing that could be said to have emanated from that procedure where we were using lay persons. Modern land law is essentially available or accessible only within the formal educational mechanism system. We need to be quite careful when we also talk about utilizing traditional dispute resolution mechanisms. This is because that will tend to rekindle what we have used through the Land Disputes Tribunal, and there has certainly been a disaster. A lot of corruption goes on. Influence peddling takes place and all there is justice for sale. I hope, therefore, that the court system which will be created to address land problems will be able to create a reservoir of capacity to address these land issues, and will make this readily available and useable across the country.

Madam Temporary Deputy Speaker, concerning environment, I also want to support the sentiments expressed that we need to come up strongly with laws to criminalize certain of these environmental acts; they literally amount to crimes in terms of their impact. There is no justification why the law should not penalize some of these things like cutting down of trees, destruction of public land meant to be catchment areas and so on and so forth.

With those words, I beg to support.

Mr. Njuguna: Madam Temporary Deputy Speaker, let me start by thanking the Minister for the very candid manner in which he handled this Bill in this House. Secondly, I wish to encourage the Minister to continue fighting the corruption vice that used to be experienced in the Ministry. In addition, I would also like to thank the Minister for Environment and Mineral Resources, Mr. Michuki, for rehabilitating Nairobi River.

Madam Temporary Deputy Speaker, under Article 4, it is provided that the principal judge will enjoy a five-year term. This, to me, is wastage of human capital and resource. The term must be renewable at five years. Therefore, the judge should be in office for ten years.

This court, after establishment, will address the various concerns different communities have voiced in this country. The Internally Displaced Persons (IDPs), Ndorobos and Ogiek have been displaced for ages, and this court will have the first major responsibility of addressing their issues. Land disputes triggering murders in certain families will also be addressed. We have land grabbing mania in Athi River. I recall that the Office of the President issued a directive to people not to continue buying land in that area. Therefore, this new court will go to Athi River to address some of those concerns.

Madam Temporary Deputy Speaker, the ecosystem, which has been destroyed in this country, will be a key issue to be addressed by the new court.

With those few remarks, I fully support the establishment of this court.

Mr. Koech: Madam Temporary Deputy Speaker, thank you for this opportunity that you have given me to contribute to this very important Bill. Listening to my colleagues and reading this Bill, I am tempted to say that I wish that it was even assented to yesterday and not tomorrow. This is because issues of land and environment have been with us, and have been a great problem to this country.

Madam Temporary Deputy Speaker, we have been talking about land grabbing in this country; people grab land because they know they can easily run away with it. When we will have courts that go up to the county dealing specifically with land issues, some of these people will actually not dare try to grab land. The land dispute cases are so many in this country, and there is a lot of backlog that has led most Kenyans today to go to their local people and try to agree at that level; in most cases this attracts a lot of corruption.

Madam Temporary Deputy Speaker, we have been empathizing and sympathizing with the Minister for Environment and Mineral Resources, that he has to go personally to each part of this country to clean rivers. With this law in place--- The truth of the matter is that people in this country misuse, or abuse, the environment because they think they can get away with it. When you go to our courts today, you are expected to be there as a witness for one year, two years, three years and four years, to the extent that many Kenyans run away from wanting to volunteer to be witnesses. This Bill contemplates that you need not be a witness even if you are the one who has reported the case. If we go that

direction, the hon. Michuki will not be running up and down. Kenyans will be responsible and they will be able to protect the environment.

Madam Temporary Deputy Speaker, with regard to the issue of environment in this nation, we have seen a lot of charcoal burning. Many Kenyans watch helplessly because they do not wish to be part of the witnesses. We have seen Kenyans cutting trees for timber. These people collude with the police officers on the way and they end up delivering all these to various destinations. Yet, we are talking of issues of climate change which are very serious in this country where we need as a nation first to protect what you already have as we talk of planting more. I want to indicate here that going by this Bill and correcting the few amendments, I believe we can have a wonderful nation. We can even produce more to the extent that we shall not be relying on importations for this nation.

With those few remarks, I beg to support.

Mr. Kiuna: Madam Temporary Deputy Speaker, as I support this Bill, I do not have much to celebrate in my constituency because all the forests have been destroyed. There is virtually nothing left. Rivers that used to flow from Mau Forest have dried up. These are Molo, Njoro and Bagaria. These rivers used to drain into Lake Nakuru. It is a pity that the southern part of Molo is turning into a semi arid.

Madam Temporary Deputy Speaker, as I support this Bill, I wonder where we will get committed people to preserve our environment. We want people like hon. Michuki and hon. Wangari Maathai who have relentlessly protected our environment.

Madam Temporary Deputy Speaker, there were plans to settle the Ogiek community in Mau Forest. However, some land grabbers during the previous regime allocated themselves a large chunk of Mau Forest and messed up the environment. This community was displaced. They are now roaming all over the country fighting for their rights, but nobody is willing to assist them. I urge the Government to settle them so that they do not become IDPs in their own land. They have been moving from one court to another looking for justice.

With those few remarks, I beg to support.

Mr. Wambugu: Madam Temporary Deputy Speaker, I stand to support this Bill. The Bill we have in front of us is another document which will mark a big step in our country, especially in protection of our environment. I would like to congratulate the Minister for Lands and the Minister for Environment and Mineral Resources for the good work they have done in this country.

Madam Temporary Deputy Speaker, going straight to the point, you are aware that in this country, we have had issues of climate change and degradation issues. We have had a lot of issues, especially on the eastern side of the Aberdares with most of the rivers drying up because of people planting eucalyptus trees which is very dangerous and takes up all the water. We did not have anywhere to go because any one time we ever tried to handle that issue, there was a lot of resistance from *wananchi* who did not want to uproot their eucalyptus trees which are very dangerous. Now a court will be set up very soon that will be dealing with that.

If you can remember, in the old days, Kenya was self-sufficient in food. Maize, wheat and dairy products used to come from the Rift valley. As you are aware, most of the land which was producing food for this country within the Rift Valley has been subdivided to such small portions that the output from these small gardens cannot sustain this

country. Now we have a court that we can go to that is going to regulate land use and planning in this country, so that we can leave some of the agricultural productive land for that purpose. This is also a court where we can rush to especially in matters of human settlement and ask for protection and advice on how the land is going to be planned, especially for habitation.

Madam Temporary Deputy Speaker, the beauty of this Bill, like was mentioned by one of the Members is that, we have Clause 23(2) which is giving some good provisions. Clause 23(2) states:-

“Notwithstanding Subsection (1), in all appropriate cases, the Court shall facilitate the use by parties of indigenous languages, Kenyan sign language, Braille and other communication formats and technologies accessible to the persons with disabilities”.

This is the only Bill which has given us that facility.

With those remarks, I beg to support.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Speaker, I rise to support this Bill. As I contribute to the Bill, let me at the very outset recognize the contribution that has been made by the Members between yesterday and today. We have surprised ourselves that after we pass this one, this will be the ninth Bill in two days. It is a record, not just for this House, but on a group or scale. I do not think that other Parliaments have done the kind of work that we have done. For the Members, had we even got another Bill on the Order Paper, I am sure we would still have dealt with it. I am sure tomorrow there will be more success.

The first job that I did in the Government was to be a Minister for Lands in 2003. That is the first time I worked in a Government office as an Accountant, getting straight into land issues. I know the frustrations that *wananchi* have been going through. I saw elders coming into the office and crying over their land. I saw people coming and saying how brothers and sisters had fought and killed one another and how women had been chased away. Between 2003 and 2006, you got into the office and you were not sure what depressing moments would come in because of land issues.

I am happy that, at last, the journey that we started, in terms of the reform in this sector, and setting in motion some justice mechanism to sort out that very emotive issue, has come to fruition. I congratulate my successor, hon. Orengo, for spearheading this process to its final stage.

Madam Temporary Deputy Speaker, land issues can be very sensitive. I got myself into a lot of trouble when I tried to prescribe what should be the minimum sizes of land; I was trying to sort out issues to do with our forests. I am now happy that there is a better mechanism to sort out our future land issues.

I had the problem of having to sort out the Land Dispute Tribunals and disbanding them all nationwide. I would then receive delegations saying: “My case was just appearing. I have been on that case for the last 20 years, and you have just disbanded the team that knows the history of this case. We are going to get new people on the tribunal, and there will be new extortion”.

Madam Temporary Deputy Speaker, it reached a point when I could not even announce that I was going to Kipipiri for meetings, because the people I would find in those meetings would have come from all over Kenya; they would know that the Minister for Lands had gone to a place where they could see him.

It was basically the DCs and PCs who would tell us what the people were going through. I am very happy that we are now going to have some formal mechanisms of resolving these issues, and also sort out issues relating to our environment. Hopefully, the recent famine and the climate change that we have all witnessed are a wake-up call for us – that the faster we tackle some of these issues, the better for all of us.

Madam Temporary Deputy Speaker, I do not want to belabour the point. I once again want to record the thanks of the Government panel to hon. Members for having stayed behind to perform this national duty. We look forward to having more energy tomorrow as we continue with these record-breaking sittings that have today seen the passage of seven Bills, and yesterday two Bills, by this House. Probably, we will pass ten Bills tomorrow and *wananchi* will see that Parliament works.

With those remarks, I beg to support.

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, I beg to support this Bill.

This Bill is a wonderful idea because it is going to bring sanity in the minds of Kenyans. For several years, Kenyans have mismanaged the environment. Today, we have floods. Whenever it rains, we have so much flooding, which we never used to have before because of a lot of surface water run-off. This is as a result of mismanagement of our environment. That is one of the major factors which have led to reduced agricultural production. Reduced infiltration of water into the soil results in so much surface run-off. As hon. Mututho said, a lot of erosion is taking place. All this has reduced our land to barren land. In many parts of this country, where we used to have productive land, there is very little that comes out of it these days. Sometime back, when you travelled around Eldoret, you would see so many pieces of plastic paper scattered all over the place. You would find plastic bags attached to every small shrub all over the place. This was because we did not care about our environment. We pollute our environment so much.

As regards land which is also taken care of in this Bill in the Land Court, the normal courts that we have had have taken too long to sort out issues relating to land. You find that you have a small issue to handle but it takes too long. Therefore, if we set out a court whose role is mainly to deal with land issues and the environment, it is my assumption and I believe such issues will be handled much faster and sorted out more amicably.

The Temporary Deputy Speaker (Dr. Laboso): I call upon the Minister to respond.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, I want to thank the House.

In general terms, what this House has done is really wonderful. The bell rings at 9.00 a.m. and Members are here. I do not find that even at the law courts. You go to courts; and Dr. Khalwale knows when he had his petition in Kakamega, sometimes the judge is not there. This House, when it comes to duty, you are here at 9.00 a.m. This House, when occasion demands, you sit until midnight like yesterday. You were really burning the midnight oil for Kenya. This House, when it comes to building a church, you dig deep down into your pockets. I am saying this knowing that Mr. Mutava Musyimi is here and I saw the Vice-President here and they really belong to another category in Christendom. You give all that money to build the church but instead of prayers you get condemnation. So, we have to congratulate ourselves if other people do not appreciate the

work we are doing. This is like a crescendo for me because it is the last published Bill that we are debating and there has been so much interest. There was the excitement of Dr. Otichilo and when you were speaking I thought you should have been the one to move the Bill. I believe that all you have said has gone on record.

Mr. Mwaita who was the Commissioner of Lands really brought out the question that this Land Disputes Tribunals must go and they have been so repealed. As we thank ourselves for working so hard, I really want to thank Mr. Michuki because wisdom and experience put together, you end up with a beautiful Bill like this. I part myself a little bit on the back because with the industry and foresight you end up with a Bill like this. I also thank the teams we have at the Ministry of Environment and Mineral Resources and the Ministry of Lands.

Last but not least, you are aware that His Excellency the President has been calling several Cabinet meetings over the last few weeks in order to drive this process to enable us go on overdrive. The Principals; the President and the Prime Minister have been behind this great process of carrying out reform. Somebody said something I think is very important. Sometimes we tend to punish our people when we should be punishing ourselves. Now we have produced a very good Bill but if we get the wrong judges, probably our work will be in vain. I hope that those judges that are going to be appointed will live up to our expectations so that the desires and objectives of this Bill are carried through.

Madam Temporary Deputy Speaker, sometimes when you overfly Lake Victoria on the Kenyan section, even where the rivers are feeding the lake, and you look at the colour of Lake Victoria and then go to Tanzania and look at the colour of Lake Victoria as the rivers on the other side feed the lake, the colour of the lake on our side speaks volumes; that there is something wrong we are doing with our environment. I cannot say this with the same strength that probably Mr. Michuki would say it. It is because of just how much we are destroying our environment. If we use this Bill to its full effect, have the right people in court, I think Kenya will be a different place and I hope that is what this Bill is going to do.

With those few remarks, I beg to move.

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, I will add my voice to the enthusiasm and the commitment that you have shown this evening and wish that you show the same tomorrow and the next day as we complete the exercise.

Hon. Members, that concludes the business on the Order Paper. Therefore, the House stands adjourned until tomorrow, Thursday, 25th August, 2011 at 9.00 a.m.

The House rose at 10.00 p.m.