

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 26<sup>th</sup> April, 2011

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

PRAYERS

PAPER LAID

The following Paper was laid on the Table:-

Report by the Departmental Committee on Health on the Nurses (Amendment) Bill, 2010.

*(By Dr. Monda)*

## ORAL ANSWERS TO QUESTIONS

**Mr. Speaker:** The Member for North Imenti.

*Question No.836*

### KILLING OF PEOPLE IN TIGANIA EAST CONSTITUENCY

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

(a) whether he is aware that five people were killed in their respective homes near the 78 Tank Battalion Military Camp in Tigania East Constituency on Thursday 24<sup>th</sup> February, 2011 and, if so, what action has been taken to apprehend the armed criminals;

(b) why the Government has failed to mop up illegal guns which are carried by herdsmen in Isiolo openly and have occasionally been used to kill innocent and unarmed citizens; and,

(c) why the Government has discriminated against one community when issuing licences to carry fire arms within the grazing zones in Meru.

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

(a) Yes, I am aware that four people were killed near 78 Tank Battalion Military Camp on 24<sup>th</sup> February at Kisima Village, Ngarimara Location, Muthaara Division of Tigania East District. Following the incident, one suspect, Mohammed Waku, a Borana

male aged 27 years was arrested with gunshot injuries on his right thigh and taken to Chogoria Hospital where he was admitted for treatment awaiting to be charged in court with the offence of robbery with violence. A police criminal case File No.472/84/2011 was opened.

(b) The Government is not aware of any herdsmen who carry illegal firearms openly in the grazing fields. However, the process of mopping up illegal firearms is currently underway and there are security teams deployed at Kambela and Mbataru areas to conduct the exercise.

(c) No person has been denied a firearm licence within the grazing zones. The District Security Intelligence Committee has vetted some locals who have applied to be issued with firearms in Tigania East and the process is ongoing. So far, a total of 17 applicants have been vetted. We are ready to issue the firearms certificates to those who have already been vetted.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead this House by saying that he does not know that there are herdsmen who carry illegal firearms and yet, there are cases where the police have been able to arrest herdsmen in many places, including Mutito? They have been taken to court and charged for carrying illegal firearms. How do you describe such people when you say that you are not aware?

**Mr. Ojode:** Mr. Speaker, Sir, we are talking about Tigania. We are not talking about Mutito. The Question is very clear. It is asking whether I am aware that within the grazing zones in Tigania, there are those who are carrying illegal firearms. I have said that I am not aware because right now, we have a team of police officers who are going to mop up the illegal firearms within the Tigania grazing zones.

**Mr. Ruteere:** Mr. Speaker, Sir, I thank the Assistant Minister for attempting to answer that Question but the situation is that when there is drought as is the case now, the camel herdsmen roam the areas of Meru, including Tigania West, Tigania East and North Imenti with firearms on their shoulders, openly being seen by citizens. They kick away people who are guarding their farms while the camels enter the farms and destroy crops. Why is the Assistant Minister trying to mislead us that these people do not carry firearms yet the District Commissioners (DCs) and the District Officers (DOs) in those areas are aware of this?

**Mr. Ojode:** Mr. Speaker, Sir, it is true that the DCs are aware of those who are licensed to carry firearms. We have two categories here; there are those who are licensed to carry firearms----

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

**Mr. Speaker:** Order, hon. Member for North Imenti! Just hear the Assistant Minister first.

**Mr. Ojode:** Mr. Speaker Sir, there are those who are licensed to carry firearms and there are those who may be having firearms illegally. Those illegal firearm owners will be arrested and taken to court. I have said that there is no single person who is openly carrying a firearm without a license in Tigania.

**Mr. Imanyara:** Mr. Speaker, Sir, I know the Assistant Minister is being informed but he has never visited that area. The area borders three constituencies; Tigania East, North Imenti and Central Imenti. In fact, it is common knowledge that the area is a “no-go” zone because of banditry. Would I be in order to request the Assistant Minister to

join the three Members of Parliament so that we can go and show him the areas he has not visited to confirm that matters of banditry are very rampant in that region.

**Mr. Ojode:** Mr. Speaker, Sir, I am willing to accompany Mr. Imanyara and the other Members of Parliament to take me to where those people are keeping the illegal firearms. In any case, I want to assure this House that if, indeed, there is something like that, I will arrest them on the spot.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, you can appreciate my anxiety about this matter. It is because these herdsmen stretch all the way to the lower Eastern Province like Mwingi, Kitui and Mutitu. Just the other day, one person from my constituency was shot dead by these herdsmen. The person was arrested and taken to Kitui Police Station. That is why I am very disappointed when he says that he is not aware. You have said that you will visit those areas, but instead of visiting, because the visit will do very little, could you organize to have one anti-stock theft unit stationed in Mutitu, the other one in Tigania and along that line, to ensure that these kinds of problems do not recur?

**Mr. Ojode:** Mr. Speaker Sir, let me assure this House that I will visit those areas, but in the meantime, for Tigania, we have the police who are going to mop up the illegal firearms which are there. For Mutitu, if I am welcomed by the hon. Member, I am able to accompany him there. When I go there, I will be accompanied with a squad to arrest those people who possess illegal firearms.

**Mr. Njuguna:** Mr. Speaker, Sir, with the vigorous commitment by the Assistant Minister to execute a disarmament exercise in Tigania East, could he inform this House of the clear steps that he has taken to make sure that innocent Kenyans in that area will not be harassed by the security agents?

**Mr. Ojode:** Mr. Speaker, Sir, I have said and I want to repeat in this House that we are going to mop up all the illegal firearms within this country starting with Tigania. In the process, innocent Kenyans will not suffer any loss. For those who do not want to surrender the illegal guns they are holding, we will forcefully take them.

**Eng. Maina:** Mr. Speaker, Sir, could the Assistant Minister address the issue that one community is being discriminated against when another community is being allowed to carry illegal arms without the police doing anything? Secondly---

**Mr. Speaker:** Order, hon. Member for Mathira! One Supplementary question at a time!

**Mr. Ojode:** Mr. Speaker, Sir, I believe that he knows how the Government works. The Government does not discriminate and the Government will never discriminate against its citizens. I want to assure this House that we are going full length to mop up the illegal firearms.

**Mr. Ruteere:** Mr. Speaker, Sir, from this incident, four citizens died and we hear from the Assistant Minister that there are no people carrying illegal firearms. It is only one suspect who was arrested. How come one suspect managed to kill four people if others did not have illegal guns?

**Mr. Ojode:** Mr. Speaker, Sir, the security personnel managed to get hold of one who is now in hospital. Already, we have security personnel waiting for him to be discharged. We have already finalized the charges and we are charging him with robbery with violence. We are pursuing those who accompanied this man called Osman. So, we are taking care of that problem.

*Question No.657*

TARMACKING OF ROADS IN ENVIRONS OF KITUI TOWN

**Mr. K. Kilonzo** asked the Minister for Roads:-

(a) whether he is aware that all the roads surrounding Kitui town are not tarmacked; and,

(b) whether he could consider tarmacking the roads from the town for at least 5 kilometers, particularly the roads leading to Kyangwithia Secondary School, Tungutu, Wikililye, Kwa Ngindu and Mutune.

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

(a) Further to the undertaking given to this House to ensure that we visit Kitui Town, I wish to respond as follows:-

I am aware that most of the roads surrounding Kitui Town are not tarmacked. Further to the response given to the Floor last week, I have taken note that the above mentioned roads in Kitui have not been tarmacked. This is due to the funds constraints facing the Ministry. Nevertheless, My Ministry is committed to maintaining the said roads in motoreable conditions.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, this is the second time that the Assistant Minister is answering this Question. The last time he was asked by the Chair to go and come with a detailed response. However, looking at it, I am dissatisfied by this answer because it does not say anything tangible. What it says is that he has taken note and this will be done when funds are available. This is not the kind of answer that the people of Kitui County and the Kenyans expect from this Government. Could he give us a concrete response as to when the roads in Kitui Town, which have not been tarmacked since 1963, will be done?

**Mr. Kinyanjui:** Mr. Speaker, Sir, while appreciating the concerns by the hon. Member, I must say that it is not possible for us to give a firm commitment as to when the roads will be tarmacked. However, I would like to assure the hon. Member that for a long time, my Ministry which, at that time was together with the Ministry of Public Works had a budget of about Kshs17 billion maximum for many years. Therefore, we were not able to undertake the road work repairs as would have been necessary. We have an increased budget and we hope that in the next financial year, if we are able to get sufficient money, we will be able to consider some of these roads including the Kitui Town roads.

**Mr. Speaker:** Last question, hon. Member for Mutitu!

**Mr. K. Kilonzo:** Mr. Speaker, Sir, although dissatisfied, the Assistant Minister has given a commitment to go and visit Kitui, could he be specific because the people of Mutitu are watching him so that they can wait for him as he comes to tour these roads and tell them when exactly he is going to tarmac them?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I think in the next 30 days, we will be able to communicate to the hon. Member when we will be able to do a tour of our roads in Kitui, so that he can be able to communicate that to the constituents in that area.

*Question No.823*

TARMACKING OF TENGECHA-EMBOBOS-  
CHEBANG'ANG'-CHANGOI ROAD

**Dr. Kones** asked the Minister for Roads:-

- (a) whether the Tengecha–Embomos–Chebang'ang Road will be tarmacked in 2011/2012 as per previous pledge by the Government; and,
- (b) how much money the Government will spend in the first phase on the road construction.

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

(a) The Tengecha–Embomos–Chebang'ang' Road is currently under design. Once the design is completed, my Ministry will source for funds to construct the road.

(b) The first phase of the road will cover Tengecha–Koyua–Cheptalal–Sotik–Chebang'ang', which is approximately 35 kilometers. The exact cost of tarmacking this section of the road will be known once the design of the road is completed.

**Dr. Kones:** Mr. Speaker, Sir, while thanking the Assistant Minister for that answer, I am a bit worried because he is not very firm on the commitment. Sometime last year, the Ministry wrote a commitment letter that this design would be finalized before the end of this financial year, and that during the next financial year, funding will be done of the first phase of this project. May I know from the Assistant Minister exactly when the design work will be completed? Has the Assistant Minister seen this letter from his Ministry, which they wrote to me confirming that, indeed, in the next financial year they are going to start the construction of that project?

**Mr. Kinyanjui:** Mr. Speaker, Sir, indeed, I want to confirm to the hon. Member that we had plans to complete the design works within this financial year, 2010/2011. However, there were some contentions on the alignment of the roads which delayed the scheduled completion. We are, however, optimistic that we will be able to complete it within the remaining three months, and subsequently within the first part of the next financial year, we will be able to advertise work on the said road.

**Mr. Kigen:** Mr. Speaker, Sir, could the Assistant Minister then confirm to the House that when the design of the road is completed, tarmacking will follow immediately?

**Mr. Kinyanjui:** Mr. Speaker, Sir, that would be the position, if the funds were available. But as you know, given the high number of roads that are not tamacked compared to the funds available to the Ministry, we cannot give that kind of undertaking. However, it remains our desire that once road design work is completed, we should move on to awarding of the contract.

**Mr. Wambugu:** Mr. Speaker, Sir, the issue of roads in this country is quite worrying because every time our dear Minister for Roads tells us that a road is under design and others are awaiting this and that. However, to ease tension in this country and the House, could the Assistant Minister table a list of all the roads he expects to upgrade to bitumen standard before this year's Budget is tabled before this House?

**Mr. Kinyanjui:** Mr. Speaker, Sir, on the 13<sup>th</sup> of April, we gave an undertaking to this House to present the Roads Sector Investment Programme by my Ministry. We will table it here for hon. Members to examine and ask questions on the areas that have been

chosen and the criteria used. One month after the 13<sup>th</sup> of April will be the 13<sup>th</sup> of May; between now and then, we will present it before the House. I think the question asked by the hon. Member will be addressed in that context.

**Mr. Njuguna:** Mr. Speaker, Sir, while acknowledging the response that was given by the Assistant Minister, could he at the same time indicate what interim measures he is taking to make this road motorable to facilitate transport of goods in that area?

**Mr. Kinyanjui:** Mr. Speaker, Sir, in the last financial year, we allocated Kshs50 million for the design of this road, but the hon. Member of the area requested that half of that money be allocated for maintaining the roads in a motorable condition. We have allocated this money and the works are going on.

I am aware that the quality of the work has been questioned by the hon. Member, but we are doing everything possible to ensure that the quality is in conformity with the contract we gave.

**Mr. Speaker:** Last question, Dr. Kones!

**Dr. Kones:** Mr. Speaker, Sir, the Assistant Minister has just said that he is aware that the quality of work there is not up to the standard. In fact, the problem is the capacity of the contractor. Here is a case where I really wanted the substantive Minister to be around. The Minister once visited my constituency at night. He held a meeting with some unknown people, and what came out of that meeting was that he indicated that the work was not going to continue. It is true! Immediately after he left, the works stopped.

The contractor has been on site for the last three months. Initially he had said that it could be done when there was no rain. The rain has come and it is now impossible to go through that road. The contractor is bragging all over that there is nothing that can be done, because it is the Minister who sent him there. Could the Assistant Minister confirm whether it was him who instructed the contractor to stop working?

**Mr. Kinyanjui:** Mr. Speaker, Sir, I am not aware of any instructions to that effect. However, I wish to assure the hon. Member that we will investigate that particular contractor. If he is found to be going against the terms of the contract, action will be taken immediately.

**Mr. Speaker:** Next Question by the Member for Mumias.

#### *Question No.795*

#### RECRUITMENT OF MANAGEMENT TRAINEES BY MSC

**Mr. Washiali** asked the Minister for Labour:-

(a) how many management trainees were recruited in the recent exercise by Mumias Sugar Company and how many of them are from Mumias Sugar Zone; and,

(b) what criteria the company used in identifying trainees; and,

(c) what steps he will take to ensure that the company considers the locals for such opportunities.

**Mr. Speaker:** Assistant Minister, this Question was largely answered except for a part which, perhaps, you want to deal with.

**The Assistant Minister for Labour** (Mr. Ojaamong): Mr. Speaker, Sir, I think the Question was adequately answered. I was only waiting for supplementary questions from the hon. Member for Mumias.

**Mr. Speaker:** Member for Mumias, have you had time to study the list, and do you have any other question apart from the ones you have already asked?

**Mr. Washiali:** Mr. Speaker, Sir, I have had time to go through the list, and it is a very clear case of discrimination. On the list, only two people hired by the Mumias Sugar Company come from the Mumias Sugar Zone. In comparison, you will find that we four people from Vihiga. This is against the Constitution and the company policy, which dictates that they will always be hiring staff from areas they operate in. I am wondering---

**Mr. Speaker:** Come to your question!

**Mr. Washiali:** Mr. Speaker, Sir, what activities do they carry out in Vihiga to warrant employing of four management trainees from there as opposed to two from Mumias Constituency, where they have the factory and the nucleus estate? In fact, the Assistant Minister, who is answering this Question---

**Mr. Speaker:** Order, Member for Mumias! It is Question Time! Assistant Minister, will you respond to that question?

**Mr. Ojaamong:** Mr. Speaker, Sir, indeed, people were hired from Vihiga, Mwingi and even Nyeri. You find that the company policy, as I indicated earlier on, is that it will recruit people who reflect the face of the country. Emphasis was placed on the company policy which says that people from the areas where sugar cane is grown will be given priority. Indeed, almost 30 per cent of the employees were taken from the sugar belt. Seventy per cent of the employees come from the rest of Kenya. We consider that this is fair. You should also consider that there are managers who had been recruited earlier on, and the majority of them are from western Kenya, where sugar cane is grown.

**Mr. Lessonet:** Mr. Speaker, Sir, now that it is clear that this company is biased in the recruitment because it only recruits from western Kenya, could it consider changing the policy so that such recruitments---

**Mr. Speaker:** Order, the Member for Eldama Ravine! Please, take your seat. Obviously, that is a misinterpretation of the answer given by the Assistant Minister. The Assistant Minister did say – and I heard him clearly – that they hired 30 per cent from the sugar belt zone and 70 per cent from the rest of Kenya. So, where is the bias?

**Mr. Lessonet:** Mr. Speaker, Sir, that is why I rose to ask the question. This is because if you consider the sugar-growing area in respect of the percentage of this country, you will find that it is less than 2 per cent. So, when 2 per cent takes 30 per cent, definitely, it is biased.

*(Applause)*

**Mr. Speaker:** Order! The Member for Eldama Ravine, please, resume your seat! This House is not a place where you just have a simplistic approach. The sugar zone, as far as I know – and I speak from the Chair also bearing in mind the fact that my parents live somewhere in the sugar zone – covers parts of Nyanza, Western and Rift Valley provinces. Do you have statistics of population in those areas against the rest of the population in Kenya? You must be factual otherwise we will not allow you to go on that side!

**Mr. Lessonet:** Mr. Speaker, Sir, based on the answer the Assistant Minister has given, I am very sure that when he talked about 30 per cent, he meant western Kenya. He did not mean the other parts of Rift Valley or Nyanza Province, like you have said.

**Mr. Speaker:** Ask the question!

**Mr. Lessonet:** Mr. Speaker, Sir, this is a serious Kenyan company with shareholders and consumers from Kenya. Mumias Sugar Company is there because of us because we buy their sugar.

*(Applause)*

**Mr. Speaker:** The Member for Eldama Ravine, ask your question.

**Mr. Lessonet:** Mr. Speaker, Sir, can this company consider equity in recruiting staff nationally and without any bias?

**Mr. Ojaamong:** Mr. Speaker, Sir, the hon. Member for Eldama Ravine did not understand me because, last week, I tabled the list of the people who were recruited as per districts. If he cared to look at that list carefully, he will find that people were recruited from across the country. Even his people were recruited. Actually, Mumias Sugar Company was looking for people with expertise and that is why they advertized those positions. The recruitment was very competitive. We had 3,000 applicants, 500 were shortlisted and 35 were picked from across the country. I have looked at the list with the Minister for Labour and it was quite fair. I even looked at the list of the current top management at Mumias Sugar Company and I found it to be very fair.

**Mr. Speaker:** Ask the last question, the Member for Mumias!

**Mr. Washiali:** Thank you, Mr. Speaker, Sir. Whereas I want to agree with the Assistant Minister that they considered 30 per cent from the sugar zone, they only considered two positions. I think this is a matter that we really need to look into. They have considered two positions for Mumias and yet it is the main supplier of raw materials and it is the one that provided land on which the company is built. How could the Assistant Minister allow the management of Mumias Sugar Company to hire only two management trainees from Mumias and yet that is where the main operation takes place?

**Mr. Ojaamong:** Mr. Speaker, Sir, as I had indicated earlier on, the company was sourcing for people from across the country with expertise. In fact, Mr. Washiali is very lucky because he got two people from the sugar belt. On casual jobs, small jobs and the staff in the transport department, the company purely employs the locals. It is only in the management that the company recruits nationwide. So, Mr. Washiali must be very happy. All the same, I visited Mumias Sugar, we talked with them and they will be giving priority to people with expertise around there.

Thank you, Mr. Speaker, Sir.

*Question No.747*

FATE OF "PYRAMID SCHEME"  
MONEY HELD BY BANKS

**Mr. C. Kilonzo** asked the Deputy Prime Minister and Minister for Finance:-

(a) what became of the approximately Kshs5 billion held by the Central Bank of Kenya and other commercial banks in “frozen” accounts belonging to “pyramid schemes”;

(b) when the “pyramid scheme” victims will be refunded their money; and,

(c) why the Government has failed to institute criminal proceedings against the directors/proprietors/officials of the schemes.

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance** (Dr. Oburu): Mr. Speaker, Sir, this Question was canvassed in this House on 12<sup>th</sup> April, 2011 and what was outstanding were the reports; and we were to seek opinion from the Attorney-General on whether we could table them or not.

Mr. Speaker, Sir, I have been consulting with the Attorney-General but we have not concluded the consultations. I was requesting your indulgence if you could give me one more week to conclude this matter. I have discussed this with the hon. Member and he has agreed that we can do this. In the same vein, we are considering a legislation to amend the penal code to bring this offence into the books so that the culprits can be successfully prosecuted.

Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** The Member for Yatta, you need to respond just to one part; that is deferment for another week.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I am just seeking your ruling on this matter. I do not know whether you heard what the Assistant Minister has said; that he is seeking the Attorney-General’s opinion on whether he should table the reports which were forwarded by the Banking Fraud Unit to the Attorney-General’s Office to Parliament. If you allow that to happen, then no information will be available from the Government.

Mr. Speaker, Sir, just to remind you so that you can guide the Government, this House has asked, over the last one month, for the names of the owners of Grand Regency – and they are still looking for the names; the names of the people who are trafficking in ivory and that Question has been deferred by none other than the Chair; the names of the people who took Kabila’s gold from Congo and through the Chair, the Question was deferred. This is the case and yet Article 35 is very clear! With your permission, if I can remind the Assistant Minister---

**Mr. Speaker:** Order! I have read it before!

**Mr. C. Kilonzo:** Mr. Speaker, Sir, just to remind the Assistant Minister---

**Mr. Speaker:** Order, the Member for Yatta! You have made your point.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I seek the ruling of the Chair that this House does not need the opinion of the Attorney-General on whether the names should be tabled or not. It is the right of this House and every citizen. So, all we want is the names which were forwarded by the Banking Fraud Unit to be tabled and that is it.

**Mr. Speaker:** Mr. Assistant Minister, from the HANSARD, this Question was deferred on the 12<sup>th</sup> of April so as to enable you to table reports on the pyramid schemes which were forwarded to the Attorney-General by the Banking Fraud Investigation Department, because that is what you had alluded to; that the reports had been forward to the Banking Fraud Investigation Department. You were asked to table those reports in the House. So, what is your position now?

**The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance** (Dr. Oburu): Mr. Speaker, Sir, these were not reports which were tabled to the Banking Fraud Investigation Department. These were reports by the Banking Fraud Investigation Department which were forwarded to the Attorney-General with a view to prosecute.

Mr. Speaker, Sir, I was reluctant to table them because floating names of people who had not been fully investigated, perhaps, would prejudice further investigations and you asked me to seek legal opinion from the Attorney-General on whether I could table them or not. So, those reports were not from outside.

**Mr. Speaker:** Yes, that is right. So, when are you going to be able to table those reports? Why can you not table them, so that I give directions?

**Dr. Oburu:** Mr. Speaker, Sir, I just requested for a few more days to do so. If I am given up to Tuesday, next week, I will be able to table them.

**Mr. Speaker:** Member for Yatta, it does not hurt. We can defer this Question to Tuesday, next week, so that the Assistant Minister comes with a clear position.

*(Several hon. Members stood up in their places)*

Order! Member for Central Imenti, what is it?

**Mr. Imanyara:** On a point of order, Mr. Speaker, Sir. I rise on a point of order on the issue raised by hon. C. Kilonzo regarding Article 35, which you confirmed you have read and are well-versed with. The Assistant Minister is making the production of these reports conditional on the opinion of the Attorney-General. Is this not taking away a right that we have fought so hard for, for so many years, for every citizen to be able to access information that is in the hands of the Government?

*(Several hon. Members stood up in their places)*

**Mr. Speaker:** Order, Member for Yatta! Order, Member for Gichugu!

I am clear on which way to go. I will defer this Question to Tuesday, next week, and the Assistant Minister should come prepared to have a direction, one way or the other. But my mind is clear, you have a constitutional obligation; it cannot be flouted or breached lightly. So, bear that in mind even as you have this one week. Next Question, Mr. Pesa.

*(Question deferred)*

*Question No.837*

#### FEES GUIDELINES IN PUBLIC SCHOOLS

**Mr. Pesa** asked the Minister for Education:-

(a) how much money the Government pays in fees for each student in a public day school and a public boarding school, respectively, how much a parent/guardian is supposed to pay in each of the categories, and,

(b) what measures he has taken to ensure that the fee guidelines are adhered to, particularly in view of the drought/famine being experienced in most parts of the country.

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg to reply.

(a) The Ministry provides a subsidy to all students in public day and boarding secondary schools, under the Free Day Secondary Education (FDSE) programme at annual capitation of Kshs10,625 per student, out of which, Kshs3,600 is for tuition and Kshs6,665 for operational expenses. On the other hand, the allocation of Free Primary Education (FPE) funds are based on annual capitation of Kshs1,020 per pupil, out of which Kshs650 is for tuition and Kshs370 is for recurrent expenses. Parents of students in secondary boarding schools are required to pay Kshs18,625 per annum to cater for boarding related costs such as meals, electricity and water, among others. On the other hand, parents of students in day secondary schools are required to purchase school uniforms, buy lunches, uniforms, develop physical infrastructure, provide transport and pay national examination fees.

(b) The Ministry has instructed the Provincial and District Education Boards to monitor and ensure that schools adhere to fee guidelines and that any extra levies must be charged within the Ministerial guidelines and regulations.

**Mr. Pesa:** Mr. Speaker, Sir, the Assistant Minister has given an answer here. However, it is rather difficult to interrogate this answer because he does not tell us when the Ministry gave these guidelines, so that we can compare them with the increasing cost of living in this country. Could he tell us when these guidelines were given to the schools?

**Prof. Olweny:** Mr. Speaker, Sir, I will not give the date, but I know these have been the guidelines for quite sometime in the Ministry.

**Mr. Chanzu:** Mr. Speaker, Sir, the purpose of Questions in this House is to help the Ministers get information on what is happening on the ground. The Assistant Minister says they have ways and means of ensuring that these guidelines are adhered to and that they vary from one school to another. What is he doing to ensure that these figures are standardized?

**Prof. Olweny:** Mr. Speaker, Sir, the standardized rate is Kshs18,625. However, there are variations depending on what each school considers for maintaining the students within the schools. For a school to vary the fees, it must be allowed by the District Education Board (DEB). Usually, it is the Parents Teachers Association (PTA) and Boards of Governors (BOGs) that comes with additional levies. The PTA usually meets and decides on what additional money should be levied, so as to take care of the cost of running that school. Once they agree on it, they cannot levy until that information is discussed in the District Education Board in which all these Members sit. Members of Parliament sit in the Boards of Governors (BOGs) because they are *ex-officio* members. So, whenever there is any variation in fees in any school, hon. Members are aware. Any variation is discussed in the DEB and it is the DEB that gives the go ahead. The Ministry gives a go ahead to school to vary fees based on the minutes of the DEB.

**Mr. Baiya:** Mr. Speaker, Sir, the main purpose of coming up with this regulation is to standardize and guarantee access to secondary school education. In light of the

current flare up of inflationary pressure, what is the Ministry doing to ensure that these funds are not adjusted to overboard?

**Prof. Olweny:** Mr. Speaker, Sir, for the schools not to go overboard in levying excessive fees on parents, the DEB is there to ensure that that does not happen.

Indeed, I have been in meetings, where we have turned down requests of certain schools when they came up with unacceptable levies.

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

Is the Assistant Minister in order to say that the schools will not be allowed to increase school fees, and yet, he is aware that food prices have already gone up? How does he intend to cushion them?

**Mr. Speaker:** Order! That is not a point of order. It is a question.

**Mr. Mwangi:** Mr. Speaker, Sir, the Assistant Minister, in his answer, said parents are supposed to cater for uniforms, lunches and other items. Having realized that the prices of food have skyrocketed, could he allow students to go to school without uniforms in hard hit areas, so that they access secondary education?

**Prof. Olweny:** Mr. Speaker, Sir, it is the responsibility of parents to provide clothing for their child, whether that child is in school or not. School uniform is clothing. The Government meets the cost of tuition and gives support in form of infrastructure funding, laboratory, *et cetera*. Does it mean that Kenyans cannot provide clothing for their children? Uniforms are part of clothing, which is a parents' responsibility.

Thank you, Mr. Speaker, Sir.

**Mr. Pesa:** Mr. Speaker, Sir, the Assistant Minister is aware that the cost of living has gone up. The cost of fuel has gone up. Production costs have gone up, yet we expect schools not to increase fees. Are we not encouraging students to riot if we allow schools to feed them on food that is inferior to what they expect to be fed on?

**Prof. Olweny:** Mr. Speaker, Sir, it is true that the cost of everything has gone up. The standardised fee structure will be subject to review by the Ministry. However, one thing I know is that should the Ministry come up with a fees structure that imposes higher levies, we, Members of Parliament, will be the first ones to say that the Ministry has allowed schools to hike fees. So, because of the increased cost of living, it is true that school fees will be subject to review.

**Mr. Speaker:** Hon. Members, I will defer Question No.712 to Thursday afternoon, because hon. Sheikh Dor Yakub is indisposed.

*Question No. 712*

NUMBER OF DRUG REHABILITATION CENTRES IN KENYA

*(Question deferred)*

Next Question, Member for Nyakach!

*Question No.816*

LACK OF WATER BOWSERS

IN NYANZA PROVINCE

**Mr. Ochieng'** asked the Minister for Water and Irrigation:-

(a) why the Ministry has not provided any water bowsers in the entire Nyanza Province, and when the service will be provided; and,

(b) whether the Ministry could also provide a bowser to the Nyanza Provincial Headquarters in Kisumu.

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Speaker, Sir, I beg to reply.

(a) The Lake Victoria South Water Services Board used to have two water "boosers", each of which had a capacity of 10,000 litres, until 2008, when they were burnt down during the post-election violence. At the moment, there is only one water "boosers", Registration No. GK A641T, offering services in Siaya County. It is also shared within the area of jurisdiction of Lake Victoria South Water Services Board.

(b) A water "boosers" will be provided to Nyanza Provincial Headquarters, amongst other provincial headquarters, when budgetary allocations are provided.

**Mr. Ochieng:** Mr. Speaker, Sir, you have heard the Assistant Minister say that there is one lorry, while the person in charge of Lake Victoria South Water Services Board says that there is none. We do not have a water bowser to serve us all the way from Isebania, at the border, up to Kisumu. Could he tell us when they will avail at least one water bowser to assist that entire region for the time being?

**Mr. Waititu:** Mr. Speaker, Sir, the two water "boosers" that were burnt down were hardly three months old. Immediately after the post-election violence, our Ministry gave one water "booser" to Siaya County, which has more water problems than Kisumu Town. It is worth mentioning that in Kisumu, our water supply---

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. There is a bit of confusion about what the Assistant Minister is talking about. Is it not in order for him to specify that the Question talks about water "bowsers" and not water "boosers"?

**Mr. Waititu:** Mr. Speaker, Sir, the difference is the same. Either way, it is water "boosers". The water trucks that were---

**Mr. Speaker:** Order, Mr. Assistant Minister! It cannot be either way! You either have it or you do not have it!

**Mr. Waititu:** Mr. Speaker, Sir, I am referring to water "bowsers".

**Mr. Speaker:** Very well! Thank you.

**Mr. Waititu:** Mr. Speaker, Sir, I wanted to tell the hon. Member that the water supply that we have in Kisumu Town right now is 45,000 cubic metres per day against a demand of 44,000 cubic metres per day. Therefore, right now, the water supply in Kisumu Town is more than enough. Therefore, there is no emergency for a water bowser in Nyanza Provincial Headquarters.

**Mr. Ochieng:** On a point of order, Mr. Speaker, Sir. The reason why I asked this Question is that whenever we have power disruption at our water pumping stations, institutions like hospitals and secondary schools in my area always resort to hiring water bowsers to supply them with water. So, why does he say that there is no emergency in this case?

**Mr. Speaker:** Very well, Member for Nyakach! Except that, that is a Question, and you had stood on a point of order. Can you find time to sit with the Member for

Central Imenti? You could still pass that one as a point of order, but it depends on how you phrase it. So, sit with the Member for Central Imenti. You need very little assistance and you will be there.

Assistant Minister, you may respond.

**Mr. Waititu:** Mr. Speaker, Sir, it is true that we need a water bowser for emergency cases arising from power outages. However, I think it would be reasonable for the hon. Member to appreciate the fact that there is enough water in Kisumu Town.

**Mr. Olago:** On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister say that there is more than enough water in Kisumu. Is it in order for him to say so when in actual fact there is not enough water? There is enough water for the lower part of Kisumu but other parts of Kisumu, including Nyahera, Kiboswa and the rest of the hill have no water at all.

**Mr. Waititu:** Mr. Speaker, Sir, two months ago, we went to Kisumu and inspected the latest water treatment plant, on which our Ministry spent Kshs1.4 billion, and which is now in operation. As I speak, there is enough water in Kisumu Town, but we can buy a water bowser in the next financial year for emergency cases.

**Eng. Rege:** Mr. Speaker, Sir, the Question is about the whole of Nyanza Province. Some schools were almost being closed because there was no water at all. Even though we are close to the lake, it does not mean that---

**Mr. Mbadi:** On a point of order, Mr. Speaker, Sir. I have just heard the Member for Karachuonyo refer to some entity called "Nyanza Province", which I am not aware of. Which county is that? Is he in order to refer to some entity we are not aware of?

**Mr. Speaker:** Eng. Rege, do you want to react to that one?

**Eng. Rege:** Mr. Speaker, Sir, I am talking about what is in the Question before us. I was saying that being close to Lake Victoria does not mean that we have water in every part of the province. This summer, some schools were actually closed because they had no water. It is very bad when you see water but you cannot get it. Fifteen kilometres is long enough. We need water bowsers in the whole province. So, can the Assistant Minister assure us that we will have water bowsers?

**Mr. Waititu:** Mr. Speaker, Sir, I assure the hon. Member that when allocations are provided in the Budget, we will buy water bowsers for his district, together with other districts.

**Mr. Speaker:** Last question, Member for Nyakach!

**Mr. Ochieng:** Mr. Speaker, Sir, the two lorries that were burnt down were auctioned by the Ministry. Could the Assistant Minister tell us where the money went to, and why they are not able to use the same money to buy a new water bowser for a particular region?

**Mr. Waititu:** Mr. Speaker, Sir, that is a different Question, which I am willing to answer if he brings it to the House.

**Mr. Ochieng:** Mr. Speaker, Sir, it is not a different Question.

**Mr. Speaker:** Order, Member for Nyakach! That is not the way we conduct business here. If you want to raise a point of order, you do not go to the microphone. You just stand in your position and say "On a point of Order!"

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

**Mr. Speaker:** Proceed.

**Mr. Ochieng:** Mr. Speaker, Sir, is the Assistant Minister in order to say that this is a different Question, yet he is the one who mentioned, when he was responding to this Question initially, that the two water bowsers were burnt down, and we know that they were actually sold?

**Mr. Waititu:** Mr. Speaker, Sir, it is true that the water bowsers and other vehicles were burnt down during the post-election violence.

**Mr. Speaker:** Next Question, Member for Kitui West.

*Question No.828*

LACK OF OPERATIONS AT KU CAMPUS AT KWA-VONZA

**Mr. Speaker:** Member for Kitui West! Question dropped!

*Question No.676*

TRESPASS INTO PRIVATE PROPERTY BY APS

**Ms. Karua** asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that a contingent of Administration Police officers trespassed onto private property that is subject of a court dispute, namely, Narok/Nguruman/Kamorora/1, in April, 2010, and have remained there since, despite protests by the registered owners; and,

(b) whether he could order immediate withdrawal of the police from the property.

**Ms. Karua:** Mr. Speaker, Sir, this Question was deferred for the Minister to conduct investigations following a letter that I tabled.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Speaker, Sir, it is true that this particular Question was deferred to allow investigations to take place. I am happy with the progress of the investigations and I would request the Chair to give me two more weeks for the report to be brought to me so that I can table it.

**Ms. Karua:** Mr. Speaker, Sir, I am okay with that request.

**Mr. Speaker:** Very well, request granted. The Question is to appear on the Order Paper two weeks hereafter.

*(Question deferred)*

That then brings us to the end of Question Time. Next Order!

Any Statement ready for delivery? None! Mr. Minister for Public Works, do you have a Statement? I can see you like making a start.

**The Minister for Public Works** (Mr. Obure): No, Mr. Speaker, Sir.

## POINTS OF ORDER

### ESTABLISHMENT OF KENYA'S OMBUDSMAN OFFICE

**Mr. Imanyara:** Mr. Speaker, Sir, I have been waiting for a Ministerial Statement on the Ombudsman Office from the Deputy Prime Minister and Minister for Finance. Could he indicate to me when I can have this Statement because I have been waiting for it for three weeks now?

**Mr. Speaker:** Deputy Prime Minister and Minister for Finance! Minister for Justice, National Cohesion and Constitutional Affairs, what area is it?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, the learned Member for Central Imeni has consulted me on this and I have requested him to accept that I make this Statement on Thursday. If the House deems it fit, I will do so.

**Mr. Speaker:** Thursday this week?

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

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

### ILLEGAL ACQUISITION OF PUBLIC LAND

**Mr. Karua:** Mr. Speaker, Sir, last week, I requested the Chair, and the Chair agreed that a Ministerial Statement which had been sought on various matters by the Member for Makadara and which had not been answered ought to be answered. The Government side confirmed that it would be answered today.

**Mr. Speaker:** Can you just remind the House the areas that the Statement was covering?

**Ms. Karua:** Mr. Speaker, Sir, one of the areas was public land in New Muthaiga. It had about six or seven aspects. That day, I had the whole paper and I read it through and I think the Clerks-at-the-Table have the Ministerial Statement.

**Mr. Speaker:** Member for Gichugu, would you like to let the House know what has happened to the Member for Makadara?

**Ms. Karua:** Mr. Speaker, Sir, I just rose as a Member whose appetite for the information sought had been wetted. This is a Ministerial Statement that had been sought on 24<sup>th</sup> March, 2011. It was to be answered on 30<sup>th</sup> March, 2011 and we are now approaching the end of April. I remember the Minister for Lands saying that he was seeking information because the Statement was directed at him and he was present. He said that he had been waiting for information which he had received and was ready to deliver the Statement. The parcels of land included the international casino and several other plots including the land at the New Muthaiga by Jamin Properties Limited.

**Mr. Speaker:** Fine! I have heard you, Member for Gichugu and I am reminded, Minister for Lands, even as you give an indication that this Statement was requested for on 30<sup>th</sup> March, 2011, it was with respect to illegal acquisition of public land. So, Assistant Minister, hon. Bifwoli!

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, this Ministerial Statement was sought, but hon. Orenge told the Member last week, and the

facts remain the same, that the parcels that were requested for are not in our records. We are still looking for the information, so that we can come and deliver a proper Ministerial Statement. We have not found the information yet.

**Mr. Speaker:** How much time do you require to offer the information to the House?

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, we are actually looking into the records and some of the plot numbers do not exist.

**Mr. Speaker:** Order, Assistant Minister! I have asked you a straight simple question: How long do you require?

**The Assistant Minister for Lands** (Mr. Bifwoli): Mr. Speaker, Sir, I require two weeks.

**Mr. Speaker:** Very well! It is ordered! In two weeks' time from today, you will have to come with the Statement.

#### STEPS TO PROTECT KENYANS FROM EXPOSURE TO RADIATION

**Mr. Olago:** Mr. Speaker, Sir, on 31<sup>st</sup> March, 2011, I asked for a Statement from the Minister for Energy in respect of safety concerns arising from the recent release of radioactive material into the atmosphere from Japan. Since then, I have had to ask three times for the Statement. Last week, the Minister for Energy himself, hon. Murungi, was present and he asked the Chair to give him more time because the matter was technical. He said that he was going to give the Statement today.

**Mr. Speaker:** This actually is *prima facie*, a very serious matter. I can see the Minister for Forestry and Wildlife here. Can you, in the spirit of collective responsibility, and since you are likely to be seriously affected by this outpouring, indicate when this Statement will come?

**The Minister for Forestry and Wildlife** (Dr. Wekesa): Mr. Speaker, Sir, I would like to take the responsibility of conveying this request to the Minister concerned.

**Mr. Speaker:** Order, Minister! We seem to be taking this matter very lightly, but it is something to do with the outpouring from atomic energy and before we know it, we will all be dead or parts of us dysfunctional. So, it is a very critical matter.

**The Minister for Forestry and Wildlife** (Dr. Wekesa): Mr. Speaker, Sir, I realize that it is a very important matter and I will convey the information to the Minister concerned and ask him to provide the information to this House as soon as possible.

**Mr. Speaker:** Can we deal with this on Thursday this week? Impress on the Minister the critical urgency of the matter. If he is unable to be here himself, he can delegate to any other Minister to do that on his behalf.

#### PERSONAL STATEMENT

##### ATTACK ON EMILY WANJA IN GICHUGU

**Ms. Karua:** Mr. Speaker, Sir, I rise to make a Personal Statement, pursuant to Standing Order No.76. On Saturday, 23<sup>rd</sup> April, 2011, namely, the night of Saturday, which could also be the early morning of 24<sup>th</sup> April this year, the home of Emily Wanja,

one of my key supporters and co-ordinators in Gichugu and the larger Kirinyaga County was attacked. Her house was broken into and she was brutalized. This is in Ngiriambu Sub-location of Gichugu Constituency, Kirinyaga East.

On 26<sup>th</sup> March this year, at a public rally in Murang'a which was hosted by some of the Ocampo Six, certain utterances were made by politicians targeting people they perceived as traitors especially people who come from the former Central Province which now comprises of five counties. They said that those who do not belong to their camp, and I am one of them, we shall be pointed out and our homes will also be pointed out. It could not have been that the homes were being pointed out for banquets to be delivered to us or for visits. These were threats to harm. Is the attack on Emily Wanja, my key supporter and her being brutalized a coincidence or the beginning of political thuggery? I am very saddened that the police have not shown any interest to investigate these threats to injure and harm, which were uttered by some politicians at this rally, including a prominent Minister of Government. I am reviewing the video recording of that meeting with a view to making a complaint against the politicians that are identified in that video. I call on the police to do thorough investigations and see whether those threats to injure are connected with the raid on Emily's home.

Mr. Speaker, Sir, one wonders, of all the homes in the area, how did they identify Emily's home? Very few items were stolen. Her car was taken but was recovered the same night, meaning that the work of breaking grills *et cetera* could not have been just to rob a few personal items. This makes me fear not just for my safety, but for the safety of members of my family, my supporters and friends. I want to state that any harm that befalls any one of them, the first suspects should be those responsible for issuing the said threats. Even today, I firmly believe that the attack on Emily was political thuggery and the police are investigating it. Although her home is three kilometres from Kianyaga Police Station, the police took more than an hour after the incident was reported, probably one of the reasons being that they did not have a functional vehicle and had to borrow a vehicle from the District Commissioner (DC). I was here last week asking about the security situation in Kirinyaga County as a whole, and Gichugu in particular, and also requesting for a vehicle. It appears that there is a deliberate scheme to deny Kirinyaga East, that is, Gichugu Constituency, Government services including vehicles. An Officer Commanding Police Division (OCPD) has never been posted to Kirinyaga East, although the other districts have had their share. It appears that we are being kept in a weak situation to fight insecurity, probably to facilitate this sort of political thuggery.

Thank you, Mr. Speaker, Sir.

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

Next Order!

## POINT OF ORDER

### COMMITTAL OF BILLS TO COMMITTEES

**Mr. George Nyamweya:** On a point of order, Mr. Speaker, Sir. I rise on a point of order under Standing Order No.111 on Committal of Bills to Committees. After the First Reading, a Bill is automatically committed to the relevant Committee. In this case, this Bill ought to have been committed to the Departmental Committee on Justice and

Legal Affairs. I have had occasion before to rise and say that, that Committee is not functional. I seek your guidance on this. If a Committee has no faith in its Chairman and it has been unable to remove him, can a Bill be brought for Second Reading, when the Standing Orders require that the Committee reports to the House its findings? It is one of those Bills which respectfully I say and submit that if we do not get it right, this country will be in very big problems. It is one of those Committees which must adhere to the Standing Orders. Ordinarily, you ruled that we should not rely on the media, but in this case, I have had occasion to gather from the media – attributed to you – that, in fact, we may by-pass a Committee and come straight to the House. If so, perhaps, it is time we got guidance that in future, we will by-pass Committees and that the House itself can do all these things. I think it is important that you give us a clear ruling and guidance on how we will handle these matters. Particularly, on the Departmental Committee on Justice and Legal Affairs, if it stands disbanded, it is only fair that all the Members know that it is disbanded. If the Chairman has lost the confidence of the Committee, then enable the Committee to meet to remove the Chairman, so that we can function.

### CONSIDERED RULING

#### SECOND READING OF THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION BILL TO PROCEED

**Mr. Speaker:** Order, hon. Members! Indeed, Mr. George Nyamweya has previously stood on a point of order I think on two occasions in the past raising and expressing more or less the same sentiments, but the Chair has on both occasions given directions with respect to the operations of the Departmental Committee on Justice and Legal Affairs.

Hon. Members, you are aware that Committees of this House are constituted by the House at the commencement of the relevant Sessions. The House Business Committee brings to this House a Motion which is then endorsed by the House to constitute different Committees. The Committee on Justice and Legal Affairs was constituted in that manner. If the House wishes to disband the Departmental Committee on Justice and Legal Affairs, then the same process will have to be followed. I did give directions to the effect that the Speaker will not disband or reconstitute a Committee. I want this re-emphasized and made absolutely clear. There is a process, precedence, practice, tradition and custom by which this House has constituted Committees and the Speaker will not do so.

Hon. Members, with respect to committal of a Bill to a Committee, I did address this matter as recently as last week. Standing Order No.111(1) provides very clearly and the hon. Member has referred to it, that a Bill after it is read the First Time stands committed to the Committee. That is what has happened in this case. The Bill, even as we speak in the House this afternoon, stands committed to the Departmental Committee on Justice and Legal Affairs. As to whether or not that Committee is functioning, I am afraid, I am a stranger to that position. Until I am informed by the Committee through normal, usual and regular channels that the Committee is dysfunctional, I will not accept that to be the position.

*(Applause)*

With respect to a vote of no confidence against the Chair of the Committee, that is a matter that is clearly provided for and anticipated by the Standing Orders.

Standing Order No.175 provides for a Vote of no confidence in the chairperson or vice-chairperson of the Committee. Standing Order 175(1) states as follows:-

“By a resolution supported by a majority of its Members, a Committee may resolve that it has no confidence in the chairperson or vice-chairperson and such a resolution shall be reported to the Liaison Committee which shall, as soon as it is practicable, arrange for the election of a new chairperson or vice-chairperson as the case may be.”

It says that the vote of no confidence shall be by a resolution supported by the majority of its Members. This, therefore, presupposes that the Committee will have a meeting at which a majority of its members are present and they will resolve that they have no confidence in their chairman or vice-chairman.

What I did receive in my office, just copied to me, was a notice which was addressed to the Clerk of the National Assembly saying that eight Members of the Committee on Justice and Legal Affairs are unhappy and have no confidence in their chairman. It is a notice to the chairman and it is asking the Clerk to convene a meeting of the Committee.

The Clerk went ahead and convened a meeting of the Committee, but the meeting did not conclude. So, there is no resolution of the Committee. There has to be a resolution with minutes indicating that the Committee has so resolved. So, until such time that we have that resolution of the Committee, the chairperson of the Liaison Committee cannot convene a meeting for the election of another chair.

I wanted to bring the House up to speed on this matter because there has been a bit of a blame game and playing of ping pong; you know one person hitting the ball that way and the other hits it the opposite way. That will not do. Let us follow the Standing Orders as they are, indeed, as I have referred to them.

In the meantime, we will proceed to take the Second Reading of this Bill or any other Bill that may come, for that matter, because we have previously done so. It is, therefore, a practice of this House that where a Committee delays in filing its report, then the House will continue with the Second Reading. But the report of the committee will be taken on board as and when it comes before the Committee of the whole House. It is during the Committee of the whole House that Bills are amended. That is the way to proceed because it is practical. The business of this House must continue. As much as possible, all of us ought to co-operate to ensure that this House executes its mandate.

Even the Standing Orders, for that matter, are supposed to be facilitative. They are supposed to be enabling; not obstructive. I urge all hon. Members to please be kind to this nation. Let us do what we must do because Kenyans have entrusted us with legislative authority.

I direct that we proceed with the Second Reading.

**BILL**

*Second Reading*

THE INDEPENDENT ELECTORAL AND BOUNDARIES  
COMMISSION BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, I beg to move that The Independent Electoral and Boundaries Commission Bill be now read a Second Time.

Mr. Speaker, Sir, the Bill seeks to provide for the appointment of an effective operation of the Independent Electoral and Boundaries Commission (IEBC) as established by Article 88 of our Constitution and for connected purposes.

Mr. Speaker, Sir, the specific object and purpose of the Bill is to -

- (a) provide for the operations, powers and functions of the Commission to supervise elections and referenda at County and National government levels;
- (b) provide a legal framework for the identification and appointment---

*(Loud consultations)*

Mr. Speaker, Sir, I beg your protection. This is such an important Bill and I was hoping that hon. Members can control---

**Mr. Speaker:** Order, hon. Members! This is the commencement of the business of the House. I urge all of you, please, give it the requisite attention. Those of you who want to withdraw, please, do so quietly and with the requisite decorum.

Hon. Members, the rest of this nation is listening to you. The rest of this nation is watching you and they know that you are in the process of passing a law that is critical to their governance. If I were any of you, I would be so awake and alert to the fact that Kenyans are watching who is participating in the implementation of the Constitution.

Proceed, Mr. Minister!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, let me begin again. The specific object and purpose of the Bill is to -

- (a) provide for the operations, powers and functions of the Commission to supervise elections and referenda at County and National government levels;
- (b) provide a legal framework for the identification and appointment of the chairperson, members and the secretary of the Commission;
- (c) provide for the manner of the exercise of the powers and functions of the Commission;
- (d) establish mechanisms for the Commission to facilitate consultations with interested parties pursuant to Article 89(7) of the Constitution; and
- (e) establish mechanisms for the Commission to address issues arising out of the first review.

Mr. Speaker, Sir, before I delve into the background and highlight of the Bill, allow me to highlight a few principles of election law and practice which I hope will provide valuable insights in developing the election laws and their management in this country.

Mr. Speaker, Sir, allow me to quote from one of the largest treatise of law on elections and practice published in 2004 in India, from my own research, the largest most

functional democracy in the world. It is called Challa's Election Law and Practice as of 2004. It states as follows:-

“For democracy to survive, rule of law must prevail. It is necessary that the best available men should be chosen as people's representatives of proper governance of the country. This can be achieved only if elections are contested on a positive vote and the comparison is between the merits and abilities of the contestants without the influence of power as opposed to their comparative demerits and the support of money power.”

Mr. Speaker, Sir, in the Kenyan situation I could go further and quote the influence of electoral violence, bribery of voters and very many issues, including corruption and so on, but I will not do so, because it would demean and reduce the efficacy of Mr. Challa's observation. There is little doubt that these objectives cannot be achieved without an independent and a credible electoral management system.

Mr. Speaker, Sir, electoral management has attracted keen attention of both the Executive and Parliament in the recent past. Our recent history teaches us - and we have observed this afternoon - that the entire country is watching us today to determine whether we are serious about setting up an electoral management system that would be able to take the country to the next level, away from the miasma of violence, corruption and the rest of it, of the past. The history of this country in recent years has shown very clearly that electoral management can no longer be left to trial and error. It cannot be left to individuals, one political party or group of political parties, regions or communities.

Mr. Speaker, Sir, we have made our many mistakes, and I will quote a few examples only. The first one being the restriction of political space owing to our single party system that we left barely 20 years ago. We have had an overbearing Executive and it is only in August last year that we brought a mechanism that devolves executive power. Additionally, you will recall, Sir - because you were there and I know - that in 1988, we even attempted something that we used to call, and I notice sometimes people call it; the *mlolongo* system. The long and short of it is that we have completely and outrightly mismanaged our elections.

Mr. Speaker, Sir, in efforts to remedy our electoral system, we have attempted several initiatives, stemming from the re-introduction of multi-party democracy in or around 1991. Though we allowed for many political parties by amending Section 2A of the retired Constitution, our electoral management did not advance even an inch in sophistication as required by a modern democracy. After that, in 1997, through the Inter-Parties Parliamentary Group (IPPG) - and I am happy my brother, hon. Dalmas Otieno is here because he was one of the architects of IPPG - we tried to clarify the functions of the Electoral Commission of Kenya (ECK). We further attempted to expand ECK by incorporating representatives of political parties. Those quick fixes never addressed the underlying problem - that is to say a proper institutional framework. In fact, towards the 2007 elections, it will be recalled that a huge segment of the country was insisting that no single person, however powerful, or institution should appoint the retiring commissioners. That advice was ignored at our enormous price.

Mr. Speaker, Sir, our failure to institute the necessary framework came to manifest itself during and after the disputed Presidential Elections of 2007. We have since established that our legal and institutional framework for managing our elections had all but collapsed. I will always remember because I had the privilege, together with - and I can see here hon. James Orengo - other Kenyans, to serve in what was called the

National Mediation Process under His Excellency, Koffi Annan. I will always remember that during that process, we recommended to the country an independent review commission to review the causes of election violence.

At that point, you will recall that we ended up settling for a South African retired judge known as Mr. Justice Kriegler. That Report forms a lot of what I am going to say this afternoon and I hope, contributions of other Members. The Commission, after the 2007 General Election, filed a report which was published in August 2008 and, in fact, I say so without fear of contradiction. The Report was, without amendment, adopted both by the Cabinet of this country as well as this House. The Report contains the most comprehensive legal and institutional recommendations regarding the electoral management and operations. The Report informed some of the provisions of the current Constitution on this particular topic and I must say that I have found it invaluable in my work in this particular Bill.

Mr. Speaker, Sir, the Kriegler Report found that lack of a dedicated law on electoral management was in stark contrast with the modern trends in many countries and also departed from Kenya's own practice in respect to other independent commissions such as the Public Service Commission (PSC), which has always been constitutionalised since Independence. The Report further supported the exclusive presidential prerogative in appointments of the commission, its large number and ineffective operational systems. The Report noted that Kenya's electoral commission does not seem to conform to any clearly defined appointment principles. Inevitably, the Report continues to say that its credibility suffers since key stakeholders cannot feel a sense of ownership in the structure, nor can they place any faith in its inherent professional competence. I have just read a portion of page 31 of Kriegler's Commission Report.

Mr. Speaker, Sir, to address this weakness, the Bill provides for a competitive, merit-based and transparent appointment procedure of members of the commission. Hon. Members will find that in Clause 5(2) as well as the First Schedule to the Bill. The recent successes of the Interim Independent Electoral Commission (IIEC) are clear evidence that if Kenya followed this model, then we would succeed.

Mr. Speaker, Sir, there is another element that was observed by the Kriegler Commission. They noted that the stakeholders were recommending a form of staggered appointments of the commissioners. This would ensure that the tenure of the commissioners do not lapse all at once or during the election year. I do not need to remind this beautiful country that eight Commissioners retired in 2007 during an election year under the former Kivuitu Commission. You will find that under Clauses 7(4) and 7(5). We have recommended to this honourable House and the entire country that we find a formula for staggering the appointment of those commissioners. For heaven's sake, my dear country, let us stagger those appointments so that the commissioners will not all retire at once, all of them or a substantial number during an election year. If you are dissatisfied with Clauses 7(4) or 7(5), please, honourable Members, you are welcome to tackle the problem and give us recommendations.

Mr. Speaker, Sir, the other element noted by this Commission and which you will find when you study other electoral management systems in the world, is that the Kriegler Report noted, and I quote:-

“Structural weaknesses in the relationship between the Commissioners and the Secretariat in terms of the delineation of roles, bureaucratic procedures and an unwieldy

committed structure. This hampered smooth operation for elections and interfered with staff selection, recruitment, training and deployment.”

Mr. Speaker, Sir, the Kriegler Commission also found out that while the ECK Secretariat evolved considerably between 1998 and 2007, there were conflict of roles between the Commissioners and staff leading to fundamental ineffectiveness.

Mr. Speaker, Sir, one of the reasons I requested that hon. Members consult a bit more quietly is because this is the thrust of this law. We have done our best as a Ministry; we have consulted widely and are recommending without fear, looking you in the eye and saying that the time to clarify the roles between the Commissioners and the Secretariat is now and not tomorrow. I do hope that the House will study these recommendations knowing that we have no property in the recommendation that we have put forth but never again should we have a Commissioner who thinks he is also the one to write and sign letters, never again should we have a secretariat in which the secretary thinks that he is the policy maker for that body. We want to make this very clear once and for all. What the commission found, and allow me to quote. It states:-

“This confusion does not result from ill will on other side but from the conflict of roles bound to occur when commissioners who are used to day to day management of ECK affairs found themselves with a permanent staff cadre including professionals”

In my case, my recommendation is that in the face of a large number of commissioners and micro-managing committee structure, the professional staff was and will be, unless the country changes at this stage, turned to no more than senior assistants.

Mr. Speaker, Sir, in the word of the Report -

“Problems of 2007 General Elections could have been offset by a professional secretariat of election markers with substantially devolved decision-making authority on the management of electoral processes.”

At this point, I would like to say that when you read the book that I have quoted, you will be surprised that India with such a huge democracy and such a huge voting population of more than a half a billion has only four commissioners.

Therefore, to remedy this situation, the view expressly provides that the chairperson and members of the commission shall be non-executive. You will find this in Clause 7(2) and 7(3). Again, my Ministry recommends this without fear of contradiction that they be non-executive so that they know that their work is to make policy and that the work of the Executive through the secretary is to implement that policy. Therefore, the Bill says that the commission secretary shall be the Chief Executive Officer (CEO) of the commission but I do not want to take credit for something that I have not done. Those are not my words but they are in the Constitution.

Mr. Speaker, Sir, when you look at Article 150, it confirms that the CEO will be the secretary. All that we have done is to give this direction so that nobody can confuse the roles. The Bill goes further and makes an express provision in respect of the delimitation of duties between the commissioners as the policy making organ and the secretariat as the policy implementation and administration organ. You will find that in Clause 5(4). This explicit provision captures the spirit of the Kriegler Commission and captures best international practice on elections throughout the world.

The other one is financial autonomy. The Kriegler Report noted that the ECK had comparable financial arrangements to other independent institutions including the Judiciary and Parliamentary Service Commission (PSC). The report, therefore, says:-

“Having considered the practice in other jurisdictions, it was not prepared to recommend a provision amounting to financial *carte blanche*.”

Mr. Speaker, Sir, I agree with that and I recommend it to the House. According to the Report, any blanket measure for financial autonomy should be proportionate.

“While Parliament had authority to vary the commission’s budget, it had not in fact done so in practice”.

The Constitution provides for similar financial provisions in respect to all constitutional commissions and independent offices. Article 249, sub-article 3 provides:-

“Parliament shall allocate adequate funds to enable each commission and independent office to perform its functions and the budget of its commission and independent office shall be a separate vote.”

Therefore, in view of this Constitutional provision with sufficient clarity, part III of the Bill proposes the establishment of the Independent Electoral and Boundaries Commission Fund. You will find that in Clause 17 of the Bill. The funds shall include the funds allocated to Parliament, grants, donations and other endowments given to the commission and such funds as may approve in the performance of the commission’s functions. The secretary of the commission shall, with the approval of the commission, cause to be prepared estimates of revenue and expenditure of the commission.

Mr. Speaker, Sir, the Bill also provides for sufficient accountability mechanisms including audit of the commission’s book by the Auditor-General and inclusion of its financial statements in the annual report. This is in Clause 22. The commission is also subject to Article 254 of the Constitution which provides for reporting by the commission and independent offices, in case any hon. Member is in doubt that reporting is dual to Parliament as well as His Excellency the President.

Mr. Speaker, Sir, a matter that is giving many people concern is the completion of the boundaries review. I want to suggest to everybody to relax and read this Bill very carefully. The first significant test of the new commission will be the resolution of issues arising from the Report of the Interim Independent Boundaries Review Commission (IIBRC). The Report attracted significant attention and consideration by the House. The Departmental Committee on Justice and Legal Affairs prepared a report which was adopted by Parliament. That is history and is accepted. The Report formed the basis of Schedule 5 of the Bill. I want to recommend to hon. Members that Schedule 5 be examined very carefully. I am not an angel nor are the drafters but we have attempted as much as possible to capture the report of Parliament but I stand and accept contributions that add value to this one.

Significantly, the Report provided that in resolving the issues arising from the IIBRC now retired, the commission shall be guided by primarily the IIBRC Report. I have repeated the same words. We have kept faith with the committee report. However, many stakeholders including the assessment report by the Commission for the Implementation of the Constitution noted the apparent unconstitutionality of using straight jacket language in the schedule. Therefore, we are saying to the House, without fear, that do not on one hand establish an independent body but at the same time tie its hands or put it in a straight jacket. Hence my request to every Kenyan to look at Schedule 5 during the debate of this Bill and tell me how it can be improved and not how it can be thrown out because we have worked and we have done a good job.

Mr. Speaker, Sir, therefore, the final Bill while maintaining the spirit of the Committee report revises the language to cure the potential vulnerability with the Constitution. The Bill maintains the requirement that the IIBRC Report shall form the basis of the review and would be the primary document. It also provides that the commission shall publish its report and will consult all the stakeholders prior to the publication of its report.

The Bill has been developed through very large participation of stakeholders, including the Interim Independent Electoral Commission (IIEC) as well as members of the now retired IIBRC and other stakeholders. On 9<sup>th</sup> March, 2011, I presented the Bill to the Attorney-General and the Commission for the Implementation of the Constitution (CIC). After internal review and conducting its stakeholder consultations, the CIC submitted its recommendations on the Bill to the Attorney-General and myself on 21<sup>st</sup> March, 2011. The Bill was also considered by the Cabinet on 4<sup>th</sup> April, 2011 and arising from its approval, I published it on 7<sup>th</sup> April, 2011.

Mr. Speaker, Sir, allow me in conclusion to say, again without fear that the new electoral framework would not be business as usual. The Constitution expands the functions of the electoral management body. The Bill will add meat to that mandate. The Constitution among other things merges the electoral and boundaries mandate to which review is also faithful.

Mr. Speaker, Sir, the first general election under our Constitution will require – I emphasize this to hon. Members – at least eight different elections on the same date, the filling of proportional representation seats and the possibility of a presidential rerun within just 30 days following the general election. These enhanced activities, and the unpredictable political environment require sound legal and institutional framework. The Interim Independent Electoral Commission (IIEC) established following the Krigler Report has made significant incremental improvement, including professionalization of the secretariat, new registration of voters, integration of technology and electronic result reporting. The new Commission must consolidate these gains and make even more significant further gains.

Mr. Speaker, Sir, allow me, at this point, without in any way going back on your ruling made earlier this afternoon, to lay on the Table this document, which is advisory on the Independent Electoral and Boundaries Commission Bill forwarded to the Clerk of the National Assembly by a letter dated 15<sup>th</sup> April 2011 by the Commission on Implementation of the Constitution (CIC).

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

Mr. Speaker, Sir, I do so because, I have kept on saying there is no property in this law. The only property is to produce a law that moves Kenya forward. I table it so that the House can look at what the CIC says. If you find you want to say something, I will not step in your way to block their recommendations.

May God bless you. With those far too many remarks, I beg to move.

My learned friend, hon. Orenge, has kindly agreed to second. There is a huge list of people who wanted to second this Bill.

**Mr. Speaker:** Minister for Lands, please, proceed.

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I thank you and my learned friend, Mr. M. Kilonzo, for giving me---

**Mr. Speaker:** Order, Mr. Orengo! Before you proceed, Minister for Justice, National Cohesion and Constitutional Affairs, you have tabled a document which I am afraid I am unable to authenticate unless you table a covering letter.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Yes, Mr. Speaker, Sir. I have a covering letter also.

**Mr. Speaker:** They have to go together, otherwise this document---

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): I truly appreciate that, Mr. Speaker, Sir.

When I spoke to Mr. Charles Nyachae, the hon. Chairman of this Commission this morning – I had not received the letter myself – he offered to fax it to my office. You may not find signatures on that letter, but the Clerk of the National Assembly will confirm that he has in his possession the signed copies of both the letter and the recommendations.

Mr. Speaker, Sir, kindly, allow the admission of it after you do your thorough homework as usual.

**Mr. Speaker:** I am afraid I cannot rule that this is admissible as it stands now! I will revisit the matter tomorrow after I have had an original letter that bears a signature.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Speaker, Sir, thank you. I will make sure that such a letter and a document with signatures is available.

**Mr. Speaker:** Very well.

Mr. Orengo, please, proceed.

**The Minister for Lands** (Mr. Orengo): Mr. Speaker, Sir, I thank you and thank my colleague, the Minister for Justice, National Cohesion and Constitutional Affairs, for the manner he has prepared this Bill and presented it to the House. For the reasons I will give, I beg to second debate on it.

Mr. Speaker, Sir, we have come a very long way. If the House can remember a little bit of history, in the old monarchies in Europe, particularly what Rumsfeld, a former Defence Secretary in the United States, called “the Old Europe”, it was generally believed that monarchs had the divine right to rule. They did not need their subjects to participate in any elections, let alone run for elective seats. It was an exclusive club of the leadership of any country.

More recently, we have seen what is happening in the world, and this underlines the fact that elections are very important matters. Even in societies where it was thought that divine rule was accepted, in places as remote as Nepal, the Arab world now, people are demanding their fair share in governance and leadership, and to participate in free and fair elections. Elections must not only be free and fair, but must also be seen to be so.

*[Mr. Speaker left the Chair]*

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

Mr. Temporary Deputy Speaker, Sir, I can remember one African leader in South Africa who was the Prime Minister of the Kingdom of Lesotho, Chief Jonathan Leboa. One time after an election in which he had been defeated and the electoral commission had announced the results, Chief Leboa, who was the Prime Minister of Lesotho, said, "Yes, you have declared the results of the election; I even accept that I have lost the election, but I am still the Prime Minister of Lesotho". He accepted that he had lost but continued to be the Prime Minister of Lesotho for nearly eight years, before he was removed through a military coup. In Africa since then there have been such events. There have been sham elections, because either the electoral bodies did not have the independence and autonomy to make the necessary decision, or the electoral process itself or law had internal weaknesses.

Having said that, I would like to talk generally and broadly on this Bill without going to specific provisions. I would, however, say this, we are coming of age. This is because the incidents I have enumerated, either of the old world or of as recently as in the Kingdom of Lesotho, have happened in Kenya in many different ways. I remember of a case of a Returning Officer in a constituency in Trans Nzoia. He counted the votes properly and everybody, including the members of the public, saw who had won and who had lost, but he went ahead and gave the votes for the winning candidate to the loser and those for the losing candidate to the winner. When there was protest, he used the police and told those who were there that they could go to the High Court and it would resolve the matter. So, there was a level of impunity over the years. Not that we have had no proper elections in the past, but there have been incidents which have required of us to come up with a law to ensure that we conduct free and popular elections.

Mr. Temporary Deputy Speaker, Sir, before coming to the issue of the electoral body itself, unless we as leaders are committed to free and fair elections these Bills that we are passing may be of no use. What has happened in the Ivory Coast shows quite clearly that without a leadership which is committed to democracy, passing laws itself is not sufficient. It is the leadership itself which must be committed to integrity and values of democracy. Therefore, I tell those who sit here that the buck stops with us. We are the people who are designing this Bill, we are the ones who are going to enact the Bill and we are the people who are going to provide leadership to ensure that democracy works in this country. Any imagination that the electoral body, by itself, will be sufficient to ensure that there is a free and fair election, will not work.sufficient.

As a lawyer, I have taken part in many election petitions and I think my friend there, Mr. Okemo, who I appeared for in an election petition--- You know, there are some people who believe that election is war by other means; that you must fight elections unto death; that you must fight elections to the finish. That should not be the case. I, therefore, plead that we, as leaders, have this change of mind that this is a contest meant to determine the appropriate leadership in any given country, and now that there are degrees of accountability.

Today, I was really happy when I heard that the old leadership in Egypt is undergoing trial for various reasons. For more than 30 years the leadership in Egypt was winning elections by 99 per cent. In fact, it was more than 99 per cent. Now that the Arab States have risen, all these old practices are being interrogated. Therefore, I cannot over-emphasize the fact that, as leaders, irrespective of our political parties, we should from now on, learn to write two speeches. During every election, you must write two speeches

in advance and carry them in your pocket. When you win, you read the victory speech and, when you lose, you read the other speech. I think that is quite possible and it can happen in Kenya, so that I do not have a confrontation with my colleague, Ms. Karua.

*(Applause)*

Last time, we really spent sleepless nights. We do not want to do that ever again because the announcement made by the electoral body should stand the test and everybody should believe and take into effect, whatever decisions that are reached so long as they are properly decided.

Mr. Temporary Deputy Speaker, Sir, the other thing which makes me talk about the issue about leadership and integrity at the national level amongst political leaders is that, if you go to many old democracies – for example, if you go to India – you will not hear a lot of hullabaloo about the electoral commission because it has become standard practice. They are a few of them and they can deal with electoral disputes in a matter of hours. If you go to the United States of America (USA), you will never hear about electoral bodies. They are bodies you will not hear about as often as you will hear about an electoral commission. This also applies to the UK or Germany. This is because we tend to politicise these processes. It is not that it is wrong to politicise, but we see politics in every process. In the old Electoral Commission of Kenya, I knew they started going wrong when there were nine commissioners from each province; when they said that each commissioner from a particular province should stand and run the elections in a particular province which, in effect, undermined the dignity, authority and integrity of that body.

Mr. Temporary Deputy Speaker, Sir, there are many issues that have been dealt with which were underscored by the Kriegler Commission and some of these have now been dealt with in the new Constitution. The relevant sections of the Constitutions have dealt with the issue of constituencies; their number and delimitation. Largely, it can be deduced from the Constitution on how to go about it although it may not be the best of all possible worlds, but those principles are well articulated in the Constitution. This is not a matter that has to be dealt with in this Bill or legislation. What I would urge hon. Members and as the Minister for Justice, National Cohesion and Constitutional Affairs indicated, is that it is always important that we scrutinize these Bills against the Constitution because at the Committee Stage, we must ensure that the Bill actually reflects what is contained in the Constitution. At the Committee Stage, I will urge my colleagues and the Minister for Justice, National Cohesion and Constitutional Affairs to accept some of the changes in the Bill that seem to go beyond the provisions that are set out in the Constitution.

However, the most important thing is violence and bribing during the elections. Violence during elections makes them a very expensive matter. Sometimes, it makes people get scared of elections. With a new Independent Electoral and Boundaries Commission – and I know there will be enabling legislation – we should implore on the new Commission, working together with the leadership of this country, that we should never have violence in any election. At one time, I witnessed a very scary scene at a by-election in Mombasa where a candidate overturned all the electoral documents and we had a fist fight for about three hours. Of course, the consequence of that was that there

was nothing left to count because the ballot papers were destroyed and the ballot boxes were scattered all over. The fight was not just in the counting hall but it spread outside into the streets and we had to run for cover. Fortunately, my experience with the former regime ensures that I know how to run for cover. So, I was not badly injured in that process. I urge that even with the legislation that relates to meetings, which is the Public Order Act, there is a manner in which public meetings should be conducted. Wearing of uniforms, carrying of weapons and all these things is a new culture with an election; that is required to ensure that we elect the right people and shun violence.

Mr. Temporary Deputy Speaker, Sir, the second thing that we should really shun is bribery during elections, because if elections are a mere lottery, then the country will never get the leadership that it deserves. There are hon. Members who feel that I am speaking too much, but I am still within my time limits. In the old school, we used to speak in this House for two or three days. So, let me continue because I have not spoken here for quite a bit of time. I have the habit of listening to the hon. Members across.

Mr. Temporary Deputy Speaker, Sir, at the end of the day, the elections should create one country with one people united. If the effect of elections creates divisions, new boundaries and brings strife and conflict in the country, then those elections are not worth it and those laws that allow such circumstances should never be in place. So, as we fight over these new electoral bodies we, as leaders, must offer leadership.

What I am happy about the new Independent Electoral and Boundaries Commission is the role that has been alienated between the Commission as a policy making body and in line with the recommendations of the Kriegler Commission that it should not be a large institution but a thin one.

Remember that for many years, we used to have only one supervisor of the elections. The job he was doing was pretty good until the Provincial Administration interfered with the entire electoral process of the Government of the yesteryears. The second thing is that with room to operate, the Secretariat will be able to carry out its functions with an oversight body which then would perform its duties without unnecessary interferences, but knowing that there is oversight over it.

Mr. Temporary Deputy Speaker, Sir, in conclusion, I just plead that the spirit that binds us to come up with these new laws in the implementation of the Constitution should also bind us, as leaders, so that as we bring a new culture; a culture against impunity, a culture against electoral violence, a culture against bribery and proceed ahead to build one democratic country.

With those remarks, I beg to second.

*(Question proposed)*

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I rise in support of this Bill. I notice that the Members have a great interest, which really, is something to appreciate, because having sound electorate system is of paramount importance to this country. If we really want to avoid what we went through, we must concentrate on bringing good electoral laws.

I want to mourn the fact that the Minister has brought only this Bill. The electoral laws should have come as a package, not just the Independent Electoral and Boundaries

Commission law, but we are able to see the new electoral law and any other law that is related. But all is not lost; it ought to come in quick succession.

We need to start asking ourselves; what is new in this Bill that was not in our earlier Bills? We had no Electoral Commission Bill, if I can remember because it was just coming from the Constitution. But what is new in this Bill, which we did not practice before? Having gone through it, the only new thing in this Bill is the mode of the appointment of the Commissioners. I want, therefore, to stand here and say: This Bill is totally inadequate. It is a good effort, Mr. Minister, but is inadequate. It is up to this House to now take it up and make it adequate.

What is the matter with our electoral laws? We have seen the post- Kivuitu period, where we have had by-elections. We have had so many complaints in the by-elections. I, for one, as a party leader, wrote to the Electoral Commission just after the concluded by-election. The lessons learnt were that it does not matter the name of the Commissioner, it does not matter the names of the Clerks, and human beings can always abuse the space they have if the systems are not water tight. If we do not scrutinize this law, we shall be the first casualties of this law. I think that one thing we need to do is to ensure that personal responsibility is assigned to every person in the electoral chain from the Chairman of the Commission, commissioners, to the secretary who will be the Chief Executive Officer, to the clerk, to the messenger and to the driver and to anybody, who collaborates and works with the Commission. If we do not assign that, we are not moving far from the last situation.

What motivates an officer to give indelible ink to one of the contestants, so that they pre-mark the fingers of people to disable them from voting? What will make an officer when counting to try to crook figures for one party? Obviously, they will have been induced by one of the participants. If we do not assign serious responsibility, and criminal responsibility for wrong doing on the individual and not on a body called the Commission, so that anybody who knowingly abuses the position they hold, be it a police officer, who is guarding a polling centre, who is deemed at that time to be under the Commission, be it a clerk or anybody else in the chain, they must face very severe penalties. One of the things that we really must introduce at the Committee Stage is that anybody or any officer of the Commission, who knowingly flouts the electoral code; whether it is in the matter of delineating boundaries, which is a very serious issue, whether it is in the matter of elections, anybody who knowingly, flouts the Constitution, the rules and code should not only have very severe, criminal consequences, they should also be barred from holding any public office for a decade. That will make a person think twice before they agree to be recruited by any person.

Even the laws we had, nothing was wrong with them. What is actually wrong is that we, as human beings, have become sophisticated in our methods of committing crime. So, we are looking for laws that will keep up with the sophisticated mind of the offender. That is why instead of answering, a Commissioner tells you; I have no role in this, it is the Returning Officer. The Returning Officer tells you; it is the Commission, and sometimes, a Returning Officer tells you the devil made me do it. Together with such a devil, such an officer should go to jail for the longest period to ensure that no other devil or officer ever does such an offence again. You can see the chaos that attended the end of the elections in 2007 in this country. The laws of credibility for the electoral process--- We need to take very drastic measures to be able to restore confidence.

I went through some of the legislation from fellow African countries, and in particular, the Ghanaian legislation. I cannot quite remember, whether it was a Bill like this one setting up the Commission or it is the electoral law. They have the good sense of assigning responsibility on the individual and severe penalties. I would want our penalties to be more severe than theirs. That is why I am suggesting, apart from a jail term, fine or both, one should be barred from holding any public office, so that if you are hired by the Commission, your spouse and children will be telling you; please, do not put us off food, for the next decade. Please, act well; otherwise, you are going to affect us. It will weigh on your mind. Nobody will seek a job in the Commission for purposes of rein-seeking and messing the country.

Similar penalties should attach to the participants, who are people like us in the electoral laws. We should have a proper resolution mechanism. My colleague, hon. Orenge alluded to it. We spent a night at the KICC trying to do a retallying, looking at the files, not a retally really, but verifying the figures in the files. I want to say here for all your ears, I wish my colleague was seated here; we found nothing wrong in them, except one, where the votes for Chepalungu were exaggerated in typing, but there was another paper written properly. We concluded that it was an error. It was 400,000 votes instead of forty something. I could have stood out and said; these people were rigging by 350,000. Unfortunately, that is not what everybody else did. So, what we are saying is this: Could we have processes that would lead us to the answers that we are seeking? We do not have to fight. Why I am saying it is a package is that if the electoral law was here, I would be seeking to see whether everything about disputes resolution mechanism is there.

**Mr. Ruto:** On a point of information, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): Ms. Karua, would you like to be informed?

**Ms. Karua:** No; not at this moment, Mr. Temporary Deputy Speaker, Sir.

I was saying that I would be seeking to see whether everything about disputes resolution mechanism is there. We do not need to---

**Mr. Ruto:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Mr. Imanyara): It had better be a point of order! What is it?

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, is it in order for the hon. Member on the Floor not to clarify the exact error that occurred in the case of the Chepalungu vote tally? That error had nothing to do with the parliamentary seat. By an error, the Presidential candidate for ODM was given 400,000 votes, instead of 42,000 votes. That error had nothing to do with the Member of Parliament for Chepalungu.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order! Order! Hon. Ruto, that is not a point of order!

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I did not have the figures but that is exactly what it was, and we accepted it as an error. We could have gone to the podium and said: "Look how they are stealing".

That was not the only error. As a matter of fact, the Kriegler Report showed that there was exaggeration by both sides. We must make it clear that when we stand to contribute, we are not here to start the blame game again. We are trying to say that out of our past mistakes, can we move forward? That, really, is the message.

Mr. Temporary Deputy Speaker, Sir, one way of moving forward is actually having a proper dispute resolution mechanism. Let the announcement of the winner of an election not be a matter of life and death. Can we have a period within which disputes can be resolved before the announcement is firmed? Can it be mandatory for the Commission to entertain a recount, if requested?

The Minister said that we will have eight elections. In actual fact, we will be electing six people because, for the Governor and his or her running mate, the vote will be one. For the President and his or her running mate, the vote will be one. So, those are six elections. I was trying to count. Having six people elected, even if each person takes a minute, it means that a voter will take not less than six minutes in the polling booth. If you count the working day, you will realise that our polling stations will not be able to take more than 200-250 people. Our polling stations have about 700 people on an average. So, this will be an impossible election.

I am very happy to see that in this Bill, they are talking of having appropriate technology. Unless we can vote and tally the votes electronically, electing six people on one day will be mission impossible. These are the things we must start looking out for. Even tallying of the votes will be a huge task because you cannot limit the number of candidates per election.

Mr. Temporary Deputy Speaker, Sir, can you imagine that in the last elections, I was opposed by 12 people? I was the thirteenth candidate. I have six wards in my constituency, which had 64 candidates. In total, we were 77 candidates. Can you imagine tallying votes for all those candidates? We are talking of some places in this country which have more candidates. This needs a lot of careful thought.

It is unfortunate that there are wrangles within the relevant Departmental Committee, which has up to now done a sterling job on many Acts. I am calling upon the Chairman of the Committee on Implementation of the Constitution, which is the closest Committee to this Bill, to take up this role because this matter is very serious. Amendments by an individual or two will not simply do. Could this Committee take up this role, so that we can have appropriate amendments at the Committee Stage, which will have been well thought out by the majority of its Members? That is not to rule out individual amendments, but I am saying that there is a lot of work we need to do here.

Mr. Temporary Deputy Speaker, Sir, I have seen, in Clause 7(2) of this Bill, a proposal that the Chairperson and the Vice-Chairperson of the current Interim Independent Electoral Commission (IIEC) automatically come in. I am afraid that this proposal is against the spirit of the Constitution. We want competitiveness.

**An hon. Member:---**(Inaudible)

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, it is here, and I will read it, unless it has been removed, or I am having a wrong Bill. I am saying that nobody should have a free ride. If we want two Commissioners out of that Commission, let them go for competitive recruitment, so that we can take two of the best.

I want to urge my colleagues that when it comes to vetting the names that we will finally be given, let us vet knowing this: You may think that you are close to the powers that be, and that it is somebody else you will oppress. May I advise you that you will start by oppressing yourself and jeopardising the future of your children, yourself and everybody else? Let us do this in a manner that befits this nation, and with such integrity as has never occurred in this House before.

Mr. Temporary Deputy Speaker, Sir, the Committee will also deal with boundaries review. You remember the tag of war we had over boundaries. We started calling each other names. If we put penalties as I am suggesting, nobody will dare mess up the boundaries or the criteria given because we can take them to task. So, the issue of the courts becomes very crucial. Who will do dispute resolution? Where shall we go when we disagree with the processes that are happening, so that elections are not matters of life and death? So that you know that you can get relief before someone runs away with victory, we need credible courts. We are going through the process now. Please, let us think about it. It is not just about elections or criminal cases or civil cases. It is about our lives. An electoral process is intertwined with the courts.

In 2007, I said; “go to court” because I could not tell you: “Pick machetes and clear each other or sort it out.” The court was our leaking roof, and still is. I know of no man or woman who, when their roof is leaking, leaves their beds and go to sleep outside in the rain. I know that everybody hurdles in the corner where it is not raining. Even if your feet are being rained on and your head is safe, you wait until you can build another house or correct the leakage. My saying; “go to court” in 2007 was the leaking roof situation. Even if you wrong me today, even though we have not corrected the courts, I will take you to court.

Mr. Temporary Deputy Speaker, Sir, I have taken the Registrar of Political Parties to court, on behalf of NARC-Kenya, for tampering with our money. So, we have to use the court process as it is now, pending the reform of the Judiciary. So that we do not pretend that it is the courts or the laws which are bad, can we now get down to business and do some serious work? The Minister has done his part. It was not his duty to do everything. The legislation is before us. It is ours. Let us move forward and do something credible.

With those very many words, I beg to support.

**The Minister of State for Immigration and Registration of Persons** (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, I thank you for seeing me. This Bill is a new law we have never had before, and it is coming a little late in the day, but it is good that it has come. We disbanded the last Electoral Commission of Kenya (ECK), and we have no regrets about disbanding it, because we had no confidence in it for many reasons.

When you join a game, and let me use football because that is the most popular game in Kenya, first of all, you must know the rules of the game because if you do not know the rules of the game - offside and many other rules; do not join the game. But everybody who plays a game expects that the umpire or the referee will be fair and will follow the rules of the game. If the umpire punishes you because you have broken the rules, you do not feel offended because you know the rules and you have broken them. When Gor Mahia and the AFC, the most popular clubs, are playing wherever it is, whether it is in Nyayo Stadium or in City Stadium, which is the home of either, you expect that the referee must come from somewhere else other than from Gor Mahia supporters or from the AFC supporters. If the AFC was to see that the referee actually comes from the Gor Mahia supporters, they would spleen. There would be no game. In fact, they will tell you: “We are sorry that because the referee comes from the Gor Mahia and we are playing with Gor Mahia, we are just not going to play”. But if the referee insists that the game must go on, the other party which feels offended will break many

rules. Then they will say: “Well, you broke the first rule. You brought somebody from the Gor Mahia and so, we can also bring whatever person we want to bring in”.

This means that every participant in any game and the electoral game is now the biggest game in this country, must feel satisfied that the umpire is neutral. This idea that somebody can control the Electoral Commission, and I see it in the papers every day that people are fighting so that they can control the Electoral Commission, is dangerous talk. Any time I think that the team of hon. Kioni is controlling the game, I will destroy the game. It is real, true and a fact. Immediately hon. Kioni sees that the team of hon. Kajwang’ is controlling the game, he will riot. I know that. So, let us go into this thing, first of all, accepting the rules of the game will be followed and when somebody breaks the rules, the umpire’s word will be final, but fair. That is the only way we can have good elections.

You do not just make a law. A law is made to deal with some mischief and we are making this law because there is serious mischief that happened in 2007. We almost destroyed ourselves because of the same things that I have talked about, namely; the rules of the game, the umpire whom some people thought, and rightfully, that he may not have been fair. Why? The rules of the game were that the captain of one of the teams is the one who would appoint the Electoral Commission. The captain of one of the teams, single handedly, nominated 27 Commissioners. We complained earlier during the other Government and at least, hon. Dalmas Otieno managed to negotiate some settlement where some people brought half, some parties brought something and people said: “Okay, now our people are in, now we are okay”. But on this one, we were told by the last speaker in this House that it is the prerogative of the President to appoint the Commissioners at will. Of course, that was the law. That was the law that broke the country. We were told that the agreement that we had the previous time was a gentleman’s agreement, which some gentleman had broken and we had no recourse.

The 27 Commissioners turned themselves into an executive Commission; this means that each one of them had powers to manage the election at will, everywhere. If you came from Kisii, you managed the elections in Kisii. If you came from South Nyanza, you managed the elections in South Nyanza. If you came from Kwale, you managed the elections in Kwale. How can you have a Commission where each member of the Commission is executive and is managing elections in their own power and whim? That is the law that we had; a terrible law by this same House. They were made by people who believed that power must originate from somewhere. That is why we are revising this law. That is why we invited some foreigner called Kleigler here. We did not need to. We are now saying that when you appoint the umpire and the referee, let everybody believe the referee will be fair. His appointment itself will be transparent and everybody says that they are going into this game and if they lose, they lose and if they win, they win. That is the only way we can have a civilized country. These other things of trying to get power through hook and crook will destroy this country.

Mr. Temporary Deputy Speaker, Sir, look at this; if you go to play the same football that I referred to, the playing ground must be level. There must not be holes, tree stumps and things which can destroy the game. That is exactly what was in that election. We looked at it and saw that the playing ground was uneven and then we were always being reminded: “Well, if you are dissatisfied, go to the court”. But look at the court also. Who was nominating the judges? The same captain of one of the teams was the one

appointing the judges. I remember that one of the judges was appointed to the High Court and another judge to the Court of Appeal, I think, a month to the elections. We said: "Really, if this is the court we are going to go to, then we have no justice". Whether it was going to be just, was not important, but the perception that it was likely not to be just was what brought the war.

So, if people lose confidence in the electoral rules, the umpire and the courts, then they go to the streets and look for *rungus*, *pangas* and stones and, of course, the Government responds with guns. That is where we were and that is why we are making this law. This is not the electoral law, but the law about the umpire. It is the law about who will run the electoral process. This is not a one day affair because elections are rigged, sometimes two years before it is done. It is a process and we must have confidence in the process. It is important that this country faces the facts as they were.

I was amazed at how the election results were coming in and that will come in, in the electoral law, but let me refer to it because other Members have referred to it. The returning officer was the last person in law to announce the results of the wards and the constituencies. That is the law up to now. We have not changed it. Of course, after the returning officer announces the results, nobody has power to change that result. Nobody has power to question that result. That is what the law is. But what happens is that immediately after it is announced, the result becomes public property and it can now be announced on radio and television. The radios and televisions were bringing the results as they were coming in from the polling stations and all of a sudden, somebody said: "Now, the results must come from one source, namely; the Kenyatta International Conference Centre (KICC). We said: Why?"

The law is clear that once the result has been announced in Mbita, that is it. The only result that was announced in Mbita but carried to the Kenyatta International Conference Centre (KICC) was the presidential results because the Returning Officer for the Presidential results was the Chairman of the then Electoral Commission of Kenya (ECK). However, everything went into darkness. We were told that if you announce, you will go to jail and all radio stations went dead, except one radio station called "Kiss 100" which defied the ECK rightfully and lawfully. This is because the result, once announced by the ECK is the result. However, to my surprise, the ECK was now purporting to read the election results at the KICC and what they were reading was quite different from what had been read in the village. We asked: "Who is the Returning Officer?" That was just impunity.

I am a bit angry because I know that these are the rules and I have participated in elections ever since I was an adult. I have also gone to electoral courts to represent people who had electoral problems and I know the rules. So, if we make this law and let me repeat this; we need people who can enforce the law. We need men and women who can enforce the law without fear or favour so that this country can go to sleep and say: "So long as So and So is in charge of the results, let us wait and hear the final results." We do not need to go to war or burn each other. We do not need to fight. Of course, anybody who is aggrieved, feels robbed and has no recourse to any other court will look for a panga. It did not only happen in 2008, but it will happen again unless we find men and women who will enforce this law.

Mr. Temporary Deputy Speaker, Sir, let me end by saying that the appointment of these ladies and gentlemen will be a bit contentious. The names will come to this House

and we will vote, argue and debate, not about their capacity, but more about: “Is he likely to support my side of the game?” Please, it is not good for you; it is not good for the country or anybody. If the names come here and you are satisfied that they have the integrity, please, vote for them. Let us hold them responsible for the actions that they take. I loved what Ms. Karua said and I think that will come in the Electoral law because it is not likely to be here. We must hold somebody responsible when he knows after counting that Kajwang has won - as I usually win - he just says that now Kajwang has lost, when everybody who is in the village was counting and adding and knows the different result. Immediately Kajwang’s supporters start yelling, they are beaten up and told to go to court.

This is the case and yet they know that in the electoral courts in this country, you are not likely to get justice. There are cases which have been thrown away not because they were not good cases, there were no witnesses or evidence, but because somebody went underground and was not served personally with the papers. We know all these things. So, if somebody stands up and instead of doing his work, says the opposite and causes chaos unnecessarily, we must give him a jail term. In fact, there should be no fine for such a fellow. There should be a long jail term, so that people know that when you are sent to oversee an election, you do a good job. You take an oath that if you joke, you go to jail. Hon. M. Kilonzo, you would have done this country a good job if you eventually take somebody in for ten or 50 years. You give him a sentence that will make sure that he dies in jail because they are the ones who have now taken us to The Hague.

This is irresponsibility, recklessness and abuse of office. They have now made Kenya a pariah State in front of everybody else. You are given a job, you are even paid for it, you took an oath and know the truth, but you just messed it. You should go to jail for a lifetime so that this country can be a superpower in elections. We were almost a superpower in elections. If we got the last elections right, Kenya would have been a superpower in elections. Everybody respected our Commission all over the world. I travelled to many countries and every time they wanted to come to Kenya to see how Kenya does it. However, now nobody wants to talk about Kenya, because we messed ourselves. Even the United States of America (USA) messed up itself during the time of Bush and Al Gore. So, we are no longer looking at the USA.

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

**Hon. Members:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Minister of State for Immigration and Registration of Persons** (Mr. Kajwang): Thank you. I do not want any point of order. I have finished. God bless you.

*(Laughter)*

**Mr. Kioni:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. I have listened to Mr. Kajwang’ and I think he should have been making that speech, perhaps, back in the year 2008.

Mr. Temporary Deputy Speaker, Sir, having said that, I rise to support this Bill. From the outset, I know that we were given some guidance by the Speaker on the issue of the Departmental Committee on Justice and Legal Affairs. I do not want to go back to it because our Standing Orders do not allow us to do that. However, as we dispense the Bill that is before us, it is also important that we ask ourselves at what point will the public

have an input in this Bill. This is because in my understanding, members of the public are able to fit into the Bill or inform the process at the Committee stage. Now that we have a Committee that is not functioning, we seem to have denied the public that opportunity to give their thoughts to this process. I do not want to challenge the ruling of the Speaker, but it is important that we move quickly and deal with it. However, it is also important that we make sure that in doing this we do not promote any perceived level of impunity of whatever nature. It is important that this Committee is also sorted out quickly, because it will not be possible for us to move since the Constitution requires that the Committees are involved in this process after the transition period. That way, then it is upon the House to ensure that whenever a Committee has a problem, like it is the case with the Departmental Committee on Justice and Legal Affairs, it is resolved as quickly as possible. I hope that will happen to this Committee because Members are there and we respect them.

Mr. Temporary Deputy Speaker, Sir, it is this House that disbanded the former ECK for the good reasons that have been adduced by many before and, perhaps, a little bit earlier. It is us who have the responsibility to quickly put in place an electoral body, in the name of the Independent Electoral and Boundaries Commission as per the new Constitution, so that we can address the issues or ills that befell this country.

However, allow me to also recognise the work that has been done by the Interim Independent Electoral Commission (IIEC) up to where we are. They have conducted quite a number of by-elections and whichever way we would like to look at it, have won the confidence of the majority of Kenyans. Perhaps, it is the only Commission that has continued to win the confidence of Kenyans and in a big way, restored the confidence of this country in the eyes of the international community. It is important to recognize that.

Mr. Temporary Deputy Speaker, Sir, I want to thank the Minister for Justice, National Cohesion and Constitutional Affairs for bringing this Bill to the House. There is a proposal that the appointment of commissioners be staggered. It is important that we stagger it, so that they also do not go home at the same time. When we come to the Committee Stage, it will be important that we look at the proposed way of staggering because I think it may require some bit of improvement which we can propose at that stage.

Mr. Temporary Deputy Speaker, Sir, secondly, the Bill says the Commission will be drawing their funds from the Consolidated Fund. However, there is a provision that allows them to get funds and resources. This is captured under Clause 16. It states that this Commission can also get any grants, gifts, donations and other endowments given to the Commission.

While we do not want to close the doors on these kinds of grants, it is important that we, as a House, ensure that this Commission is not left to be run by the international community or foreigners because we may end up giving them more money that can come from our Treasury. This is a problem that we can already start seeing with the commissions that are in place.

It is for this reason that when we do an analysis, we find that the commissions have had opportunities to sit with ambassadors or diplomats from other countries. Embassies are able to sit 10 of 15 times, but have no time to sit with Kenyans. In any case, Kenyans take long before they give them any money to run their institutions. That, I think, is a loophole that we need to deal with at the Committee Stage.

Mr. Temporary Deputy Speaker, Sir, the appointment of the CEO is something that we also need to look at. This Bill shifts the management of the process from the commissioners to the secretariat. If that is happening, it is actually that the secretary to the Commission will be the one running the elections in this country. It is my opinion that if that is where authority and power will rest, that office also needs the approval of this House. That is the person who will be running the elections and it is important that he also gets our approval. I think we can look at that at the Committee Stage.

One of the functions of this Commission is to register voters. It will be important that even as we encourage them to embrace modern technology, we should also encourage them through a provision in the statute that registration of voters be done electronically. I want to make it clear here. I am not talking about voting electronically. It is registering every other Kenyan electronically. This has been tried in 18 constituencies and I think it is a success story. This will help us to avoid cases where we have a voter turnout of 102 per cent as was the case in 2007 in some places. When we register voters electronically, then we are saying that the ballot paper can only be generated because we used your thumb print; if that is what I have understood it to mean. This means that if you do not show up during the voting day, stuffing of ballot boxes becomes a thing of the past. In so doing, we will have moved the process very far or way ahead to avoid the rigging and even the perceptions.

Mr. Temporary Deputy Speaker, Sir, I want to agree with Mr. Kajwang' that the difficulties that we occasioned to ourselves in 2007/2008, had a lot to do with perceptions. It was the thinking of the majority that since we were not involved in this process from the beginning, therefore, we could not agree with the end result. This is where I am concerned that this Bill will not receive contributions from the public. We also needed to hear the public during the Committee Stage. That is why I think the Speaker and the Clerk still have the responsibility to bring that Committee to order as quickly as possible so that every other person has an opportunity to contribute to this process. This will ensure that we deal with this issue of perception that cost us all that we had done before.

Mr. Temporary Deputy Speaker, Sir, we, as leaders, must deal with the issues of perception. Even as we deal with the issues of perception, it is important that when we look at Schedule 5, we may be tempted to think that that process is not giving us adequate opportunity to deal with the boundaries. In passing this Constitution that we now have for this country, I want to submit that there was a lot of selflessness on the part of the Members of Parliament of this Tenth Parliament. I think it is important that we carry on with that spirit. I know that you may want it to the point where you can determine your own boundary, but that may never be the case. It is important that we allow this process to move on.

The Commission needs also to be given some room to deal with the media. When the campaigning starts, the media needs to regulate it to the point where parties are allowed to bring out ideologies. What is it that you are offering the country? The media should regulate the amount of time available to a party, but the party would then need to address itself to the content if it needs to remain relevant.

As it is today, we are competing for space. We are not competing for any ideologies. We are just competing for rhetoric and how much we can bad mouth the other. That seems to be given credence in our country. If we empower the Commission to

ensure that the time that is allocated to parties is for them to espouse on their ideology; on what they want to do for Kenyans that is different from the others, then we will reduce the number of parties in the country. We cannot have 10 parties talking about 10 different ideologies. It is not possible in an electioneering period. We may have two, three or four competing ideas. By so doing, we will also have raised the level of competition and the kind of politics that we want to do.

Personal responsibility has been talked about. It is important that we do not give a blanket cover to staff at the Commission. Where we will not hold them personally responsible for the ills that they occasion to us; most of the petitions that have gone through in court, more often than not, we hear that the persons being blamed and the reasons why we have had many of our colleagues sent back to the electorate, is because the staff and the clerks at the defunct Electoral Commission of Kenya (ECK) messed up the process. They have not suffered at all. The person who has suffered is the Member of Parliament and, perhaps, some fines imposed to the ECK.

We need this personal responsibility to the individual who occasioned this misbehavior because, perhaps, at the inducement of somebody, or they do not like your face, they decide to do things in the wrong way. There were instances where they did not even volunteer to show you the areas where you needed to have signed. It was really their responsibility to assist you. It was not the responsibility of the person vying for a position to know each and every form that he must sign. There was a person who was paid to tell you, not until you had signed that form, it was not valid. It is important that personal responsibility is also taken to the people responsible for this.

The Bill proposes speedy releasing of results. We saw what they did with the referendum results and the recent by-elections. This should reach a point where even you as a candidate, it really should be of no consequence whether you are at the tallying hall or you are seated in your own sitting room. When we get our process to that level where we do not need to come to another KICC, unless you want to go and console your people there--- We can monitor this process from the comfort of our sitting rooms. This issue of trying to create the perception in the country, we will have dealt with it. So, it is important that we encourage the Commission through legislation that they embrace systems that will allow speedy release of results and also to ensure that the tallying is done at the polling station and relayed properly.

Mr. Temporary Deputy Speaker, Sir, I do not want to talk about the mischief. I believe that the mischief that is being dealt with or cured by this Bill is not the one that occurred because of the 2007 elections. We have had these difficulties running for a long time, only that we did not address them in good time. I think it is important that we pay attention to the provisions of this Bill so that we no longer give a person an opportunity to tell the people - as hon. Kajwang has said - that the only way out is to go to the streets or to take a *rungu* and clobber a person that you have always wanted to. I think it is important that we look at this Bill properly, especially at the Committee Stage, so that we can be able to inform it at that level. We should allow it to move with speed. We do not want to drag it. It is actually for that reason that I do not want to drag the issue of the Committee of Legal Affairs into it because time is of essence. But, ideally, if we had more time, we would have wanted that to happen. It is also important that even as we continue with this process, as leaders from where I stand and from the political platforms, we must build confidence among our own Kenyans and also to the international

community, of our own institutions. I do not believe it helps anybody to go out there and talk ill about our Judiciary forever. Certainly, like hon. Karua has said, it may have been having a leaking roof and, maybe, it is still leaking, but that is our Judiciary. We need to encourage one another to work with it, improve it from time to time and make sure that Kenyans have confidence in our own institutions. Once we have no confidence in the institutions, whatever kind of laws that we will come up with, will serve no purpose. It will start with us and it will be us who will make Kenya to move on. We have this statute and, however, good it is going to be, our own utterances must also help to make sure that it is also a statute that Kenyans can believe in.

With those few remarks, I support the Bill.

**Mr. Ruto:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity to contribute. I wish to go straight to the issues that have been raised in the Bill as opposed to dwelling heavily on the justifications and all that. That is because all is well known. It is in the public domain.

Mr. Temporary Deputy Speaker, Sir, notwithstanding all the mistakes, there can never be enough reason for us to destroy our country. It is incumbent upon us to resolve problems in a civilized manner. At this stage, three years down the line, we have got no reason and justification whatsoever to try to justify the killing of over 1,000 Kenyans and the near destruction of our country for whatever reasons that we are trying to advance. Nevertheless, it is never too late for us to sort out the problems that took us there. However, I think Members of Parliament should not chest-thump here that there were mistakes and that is why we did what we did. I think it is only fair that we become more remorseful in the mistakes we have visited this country. I really sat here and tried to tolerate some of the contributions that I have heard before.

Mr. Temporary Deputy Speaker, Sir, I want to go straight to the issues. This Bill was done with a lot of consultations. But I am a little bit surprised that a lot of what was inputted into the Bill at various stages was washed away by the Office of the Minister for Justice, National Cohesion and Constitutional Affairs. We will recall that it was the discussion around a Bill of this nature that kept us here throughout December – in fact, from late November up to the end of December. Reading through this Bill, everything we did in the Committee on Justice and Legal Affairs has been washed away. I do not know whether this is not the beginning of the same impunity that led us to the problems that we are talking about. I was not here but I am told that the Committee on Justice and Legal Affairs is in limbo. It may be so but it is more to do with the leadership by the Office of the Chairman of the Liaison Committee. That matter should have been sorted out and it is a shame that, up to this hour, we have not resolved the problems in the Committee on Justice and Legal Affairs. That Committee is capable of working and delivering to this House as it has always done.

Mr. Temporary Deputy Speaker, Sir, I want to look at the preliminaries in Article 2 on definitions. At the end there, it talks about the “first review”. It says:-

“The first review means the delimitations of boundaries of constituencies and wards occasioned by the coming into force of the Constitution on 27<sup>th</sup> August, 2010.”

Mr. Temporary Deputy Speaker, Sir, there has been a first review which is recognized by the former Constitution and part of the present Constitution and, in fact, we are alive to that. We have been alive to that. I am shocked to find that the Minister can

purport to redefine what the first review can mean. I do not know whether he was not aware of this.

I can also see a few other issues. When you go to the next page, it talks about the meaning of the Fund: The Independent Electoral Boundaries Commission Fund.” Maybe, it is a typographical error, but it should be the Independent Electoral and Boundaries Commission. But it cannot just be an Independent Electoral Boundaries Commission. That would be a different thing that we will be talking about in this Bill.

Mr. Temporary Deputy Speaker, Sir, if we were to go ahead, when you talk about Article 4(c) which is on the delimitation of constituencies and wards using appropriate technologies and approaches, there needs to be very clear understanding of where we are heading to when we talk about this. I believe the entire process is subject to new technologies and approaches. It is not just the delimitation of the constituencies and wards. If you go through this Bill, I do not know whether we have sufficiently discussed and agreed on what is on Article 4(j) when it says:-

“We are now giving the powers of prosecution to this Commission.”

I do not know whether that has been sufficiently debated. I do not know whether this one does not contradict the powers of the Director of Prosecutions in the current Constitution. I thought that is where we have vested the prosecutorial powers. However, in this Bill, we have given it the power to investigate. It reads:- “The investigation and prosecution of electoral offences by candidates, political parties or their agents.” I do not know how far our electoral commission will be bogged down by these types of new assignments.

I am also not satisfied - and I think we need to debate further - matters to do with the Chairperson. It is in Article 5(4). It states:-

“The chairperson and members of the Commission shall respect the delimitation of duties and its secretariat as the policy implementation.” I think that is okay. But when you say the chairperson and the vice-chairperson are the only ones who are full-time and the rest can be called any time--- Maybe, the Chief Executive Officer (CEO) wants them to attend a board meeting. I think we are reducing this Commission to the same status as a board where certain members may be called to attend a meeting and others may conveniently not receive letters. If we are coming up with a commission, I think in God’s name, we should come up with one and not a board. I can see an attempt, throughout this Bill, to reduce the Commission to an ordinary board of directors or something like that. It is a board and it ceases to be a commission which, in my view, runs counter to the spirit of the Constitution. I do not know what kind of wisdom the Minister for Justice, National Cohesion and Constitutional Affairs used in coming up with this.

Mr. Temporary Deputy Speaker, Sir, I also do not support the staggering at the first stage of commissioners. I know that it is important for us to retain certain expertise at the end of their six years. But how do we stagger? Are we going to start this process with about four commissioners and then later on we get another four? How do we ensure that there is regional representation with just four commissioners? I do not know whether we are starting on the right footing.

I am a little bit worried about the entire Article 7 for a variety of reasons. It says that the chairperson and the vice-person shall be non-executive but shall serve on a full-time basis but the other seven members of the commission shall be non-executive and shall serve on a part-time basis. Now, we are dividing the Commission into two. I do not

how much power the remaining two commissioners and the Chief Executive Officer will wield on this Commission.

Mr. Temporary Deputy Speaker, Sir, I have heard arguments by one of the hon. Members who contributed earlier about the beauty of ensuring that commissioners are non-executive. Well, I believe that the entire Commission is essentially executive. It must give supervisory powers over the CEO. If you hand over the management of elections of this country to just one individual on the basis that if you have eight commissioners being full-time, then they will mismanage elections, then how worse can an individual be if he chooses to be arrogant? I am not persuaded that we can just have one individual running an election. I have seen in this Bill that he can communicate, and that communication from him must be obeyed, even if he does so by short messaging service (SMS), faxes, electronic communication and so on. That means that he can then instruct the returning officer on what not to do and what to do. We are over-concentrating powers on the Office of the Secretary to this Commission. I am also a little bit worried when you say that four other members of the Commission shall be appointed not more than 12 months. I had mentioned this before.

Mr. Temporary Deputy Speaker, Sir, reading through this Bill, I am a little bit worried at the speed with which we are trying to rush through it. This is not an ordinary law that we are passing. It is a matter that all reforms hinge around. If we are unable to carry out our elections in an orderly and credible manner, I think we would have failed our responsibility as leaders of this country. I will be suggesting several amendments to this Bill when we come to the Committee Stage but I hope the Office of the Chairman of the Liaison Committee will ensure that the Committee of Justice and Legal Affairs and Administration of Justice is in place tomorrow. There is nothing else and there is no other reason stopping it. It is just some carelessness on the part of that office. I know I am treading on dangerous grounds. If you would interpret this to mean that I am challenging the earlier ruling by the Speaker but I was not there.

Mr. Temporary Deputy Speaker, Sir, one of the people who is interfering with the Committee on Justice and Legal Affairs and Administration of Justice is Mr. Mbadi because he attends our meetings and purports to be a Member when he knows that he is not and he becomes a heckler in that meeting. I think there should be order.

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

**Mr. Ruto:** I think there should be order. I think it is my time and I would like to be allowed to continue.

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for Mr. Ruto, who decided to be absent in this House when the Speaker made a clear ruling to cast aspersion on the Chair when the Chair said very clearly that the mistake is with the Committee which has not followed the Standing Orders? Is it in order for the hon. Member to imply that it is the failure of the Liaison Committee and the Speaker yet it is that Committee which has failed to do what is required by the Standing Orders?

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, I am prepared to come with a statement on what we have done as a Committee to try to resolve this issue. I am prepared to even bring a substantive Motion to discuss this matter.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the hon. Member in order to deliberately mislead this House? The ODM, as a

party, has removed Mr. Ruto from that Committee. He is the one who is not a Member of the Committee. The *bona fide* Member is Mr. Mbadi. Is he in order to mislead this House? He is not a Member of the Committee on Justice and Legal Affairs. He is the one who is derailing us because when we call a meeting, he comes and yet he is not a member.

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, you can see the level of mediocrity that is being exhibited by the hon. Member, because she knows the Standing Orders.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, I withdraw the word mediocrity and apologize to Mrs. Odhiambo-Mabona so that she can allow me to finish my contribution.

Mr. Temporary Deputy Speaker, Sir, I have an issue with entire Schedule 5. There is a completely new schedule which ignores the entire negotiations which we did in December. I will be proposing that it be returned unless there is fresh renegotiation of the same.

Otherwise, I want to say that I support the Bill, subject to a variety of amendments.

**The Temporary Deputy Speaker** (Mr. Imanyara): Hon. Members, the Chair has to be mindful of party representation.

**Mr. Affey:** Mr. Temporary Deputy Speaker, Sir, thank you very much for giving me the opportunity. What we are discussing today is a very important matter for this country. Perhaps after the Constitution that we have accepted as a country, this is the second most important issue that the country must discuss. So, we must get it right. This House has a unique opportunity in history to do what Kenyans expect to be done legally. We are now discussing a Bill which is supposed to establish the new Commission and I want to thank the Minister for bringing it forward.

We intend to establish a new Commission. First of all, we need to congratulate and thank the current IIBC. I think this Commission has done well and if it were not for the politics and the anxiety surrounding elections generally in this country, the right thing that the Minister could have done was to renew their mandate and we move forward. This Commission that we intend to establish under this law, the Minister needs to review this one mainly on terminology of what he considers to be part-time commissioners. I think if currently the Commission has served us well and we thank them for the manner in which they have conducted the referendum and the by-elections, in my view, there is no need to have a part-time Commission. The Minister can as well retain the Commission on a full-time basis and retain the number to eight.

In terms of staggering, I agree that the Minister needs to stagger the commissioners but where politics is involved, we are concerned with the issue of appointments. We should appoint all commissioners and give them appointment letters, then give others five year terms and others a six year term. I have a problem with Schedule 5.

*(Mr. Mbadi consulted loudly with other Members)*

Mr. Temporary Deputy Speaker, Sir, could I be allowed to contribute? Mr. Mbadi is too loud.

**The Temporary Deputy Speaker** (Mr. Imanyara): Order, hon. Members!

**Mr. Affey:** Mr. Temporary Deputy Speaker, Sir, my concern in this Bill and generally the emotions that we see being exhibited in this country is about fairness. My concern is about the boundaries and that is captured in Schedule 5. I am glad that in terms of interpretation, the Minister was very careful in terms of defining what a first review means. This matter was so emotive that it almost divided the country in the middle.

Mr. Temporary Deputy Speaker, Sir, we require a Commission that is going to reconcile us. Of course, we have accepted that population quota, which is given in the Constitution, becomes the basis. However, there were certain important definitions that go with that quota; what is sparsely populated area, what is the population of this country? What is densely populated? Where do we have a city? This has not been captured. I thought the Minister was going to be fair enough to cover the definitions in this law. What I am very impressed about, and has been captured here, is absolute consultation. This consultation is what we have lacked. You can imagine that when the disbanded Interim Independent Boundaries Review Commission (IIBRC), which was a disgrace, provided us with a Report, Mrs. Beth Mugo complained that her constituency was not split. Within hours, somebody went to the office of the Government Printer and inserted a new constituency for her. This was done within hours! This was because there was no consultation. There was rush. However, this law has provided the cure.

Mr. Temporary Deputy Speaker, Sir, we need to do two things once the 80 constituencies are created. These 80 constituencies will be created now and there will be no review for ten years. It is so important that when you are creating these 80 constituencies, fairness becomes the basis of creating them. One way of acquiring fairness is absolute consultation. If we pass this law, it will mean views will be collected for a whole month on how the Commission will arrive at certain figures and certain constituencies in certain areas. They will then go to the county headquarters.

Mr. Temporary Deputy Speaker, Sir, this brings me to an amendment that I intend to give to move at the Committee Stage. It should be based on county population, so that if you have a certain county, add the total figures of the people who live in that county, use the formula and then consult the people in that county on where a constituency will be created. In that case, I am sure the protest that you see will be reduced quite considerably. The aspect that has been reflected in this Bill, which is consultation--- The Minister must be congratulated because now he has got it right. There is no need to rush. Consult Kenyans and all the stakeholders. Let the people feel that when these constituencies are eventually curved out, it will be because everybody will have been consulted and people will be satisfied. We require constituencies, but we require them out of thorough consultation.

Mr. Temporary Deputy Speaker, Sir, a matter that is reflected in this law, which is also very critical— the provisions relating to the delimitation of boundaries of constituencies and wards in Schedule 5, where the Minister is suggesting to the new Commission that they will use the Ligale Report as a primary material. They will also use the Report of the Committee on Justice and Legal Affairs. The danger of that is that we would be taking away the independence from this Commission. This Commission must be absolutely independent. The only material it must use as a primary source is the

Constitution. For the rest, they should have a choice. There should be no requirement that they must use this or that. The moment you are seen to guide the Commission, which you say is independent, you will be reducing its authority.

Mr. Temporary Deputy Speaker, Sir, I know that hon. Members would wish to contribute to this Bill. I would like to support it, of course with amendments.

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

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

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry):  
Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity. I stand to support the Bill. In doing so, I would like to congratulate the Minister for bringing this very important Bill.

Instead of us lamenting what happened in 2007, we need to look for solutions to future problems. In establishing this new Commission, we need three critical things. The issue of integrity is very important. Any citizen occupying any position in the proposed Commission should be a man and woman of integrity. We do not want to go back to where we came from in 2007. I have never, from my background--- I was dismayed at what happened in 2007.

Mr. Temporary Deputy Speaker, Sir, as you realize we have never had the opportunity to celebrate the swearing-in of a new Executive of the Republic of Kenya. It was because of the former Electoral Commission of Kenya (ECK) which bungled the elections. We do not want to go back to such a situation in future. In Africa, there are several examples of bad governance. This bad governance is brought about by electoral commissions. If the electoral commissions do not comprise of men and women of integrity, they will always take us back to the dark ages.

In forming this Commission, we need credibility and commitment to this nation. Never again will we fight because of one individual who is going to occupy State House. It should be that Commission which should tell Kenyans who won the election. This is what we intend to establish by passing this very important Bill.

Mr. Temporary Deputy Speaker, Sir, the functions and tasks of this Commission are articulated in the Constitution, Article 88, and in Clause 4 of this Bill. I find there are some anomalies in the Bill, especially when you look at Clauses 9 and 23. I quite agree with my colleagues that you cannot have a secretary of the Commission being overall. He or she should be just the accounting officer. However, the decision maker is the Commission, the Chairman and the commissioners. The secretary is just an accounting officer. He should not be the chief executive of the Commission. He should be the chief executive of the secretariat. I think we must separate these two by cleaning this Bill.

As regards to the staggering of the appointment of commissioners, I have no problem with it. However, when you look at the time--- As we pass this Bill, Kenyans are anxious and holding their breath regarding when this Commission will be established. There are very serious challenges which will face this Commission.

Mr. Temporary Deputy Speaker, Sir, when you look at the Fifth Schedule, one of the challenges is the delineation of the new Constituencies. This is a big challenge. The sooner we establish this Commission, the better. I congratulate the Minister, because when you look at the Fifth Schedule, Section 2, he has specifically said that the primary material is from the former IBRC.

If we go back to politicking when establishing new units, we will hold this country back from having an electoral commission. This is a primary material. The raw material is there and this Commission should just pick from there and move forward. Ten years down the line, we can always change. Instead of going back and going round in circles as politicians which will take us back--- All of us cannot get everything every time. Some people will get something while others will not. Some will get this time while others will not. So, we cannot bring politics again to an issue which has already been established or which has already been clear.

**Mr. Chachu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to argue that the Independent Electoral and Boundaries Commission which is clearly stated in the Constitution should be gagged or mandated to use a certain report without giving it the necessary leeway? Is he in order?

**The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry):** Mr. Temporary Deputy Speaker, Sir, I am not restricting the new Commission to that. I said that the primary material should be from the former Electoral Commission.

*(Applause)*

I think the hon. Member should be attentive because it will be very important for us to--- I am bringing out these issues because I want us to pass this Bill and establish this Commission immediately because there are serious challenges.

The second challenge is the timeline of the Constitution. There are several timelines which are dictated or determined by the current Constitution, and one of them, which is a big challenge even to hon. Members, is the election date. Will it be on 14th August, 2012? In the same Constitution, the current Parliament should serve its full term. So, how can you merge the two? This will be addressed by the electoral laws which will be brought by the Minister so that this Commission has a clear timeline on what to do. That is a big challenge which we need to dispose of.

Mr. Temporary Deputy Speaker, Sir, the other very big challenge is the issue of dispute resolution. As we talk about delineation and the election date, how will we resolve the disputes which will arise?

We said that you have nothing to fear with integrity. This is a House of integrity and we should have nothing to fear because we have nothing to hide. This House can deliberate and pass this Bill if this fear is removed so that it becomes law in order to move forward and give our Kenyan citizens hope that, never again in this country will we have a coalition Government which does not function; never again should we fight because of an election; never again should we, as a nation, be gagged by particular individuals! This Commission will liberate this country.

Mr. Temporary Deputy Speaker, Sir, with these very many remarks, I beg to support the Bill.

**Mr. Chanzu:** Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill.

Mr. Temporary Deputy Speaker, Sir, the Minister has come up with this Bill, so that Kenyans can read and make comments. The more we are frank with ourselves, the more we will help this country. It makes no sense, or it does not pay for us to conceal what we have gone through in the 2007 elections. We have kept a lot of things to ourselves. There were issues in 1992 and 1997 elections. I believe this was so, because we were not frank with ourselves. As we deliberate on these very important issues, we must always bear in mind that we are talking on behalf of every Kenyan, who has a right to belong to this country. We talked about credibility, and we have many Kenyans of integrity but we have not asked ourselves what happens after they are appointed. All these people, when they get into positions, even the appointments we have had, people start off very well, but at some stage, something happens.

If we can get out of the issue of ethnicity in this country, we can do better. I do not know how long this will take. A country like Rwanda learnt from genocide. Even for them to register their people, they do not base it on tribes. I do not know whether Kenyans want to get into that kind of situation to get out of ethnicity. Ethnicity and corruption are very big problems in this country. I do not know what we mean by men of integrity; whether they are professors or what. Maybe one day the Minister will define for us the kind of integrity we need in Kenya. We have had all calibre of people, we have had professors in mathematics, engineering and education, among other fields. However, these are the areas we find a lot of corruption and ethnicity.

Mr. Temporary Deputy Speaker, Sir, I have listened to the contributions by my colleagues and I failed to understand what we can do to fight ethnicity and corruption. But I think if the people we appoint to this Commission are people of integrity, we can do better. We need to change the wording of the oath, because it has been standard and people have taken it for granted. I do not know what should happen. I heard an hon. Member say that people should be given life sentence, but, to me, that is not a solution. This Parliament should make a deliberate effort to fight this vice and make sure that what we talk in this Parliament must be what we talk outside. We must not go and incite people. I see some people talking here very well, however, when they go to public places, they talk differently. Some people want to appear to be heroes to their communities. If we want to be heroes, we must be national heroes. We are elected here as national leaders. We leave backgrounds wherever we came from and come here as national leaders. We must support this Bill, but we must discuss it and make amendments.

I wish the Committee which was supposed to deal with this Bill did its work. We should avoid a tag of war on a serious matter like this one. We must avoid appearing to be more combative than others in a matter like this one, which is supposed to take care of the interest of all Kenyans.

With those few remarks, I beg to support.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this opportunity to also make my contribution to this very important Bill.

This Bill was arrived at as a result of very extensive consultations. I remember that there were consultations at Windsor Hotel. There were consultations in Parliament when the Ligale Report was brought, and it is part of this Bill. There were very extensive consultations in Naivasha for over two days. That particular workshop was attended by Members of two Committees of this House, namely, the Committee on Justice and Legal Affairs and the Constitution Implementation Oversight Committee (CIOC).

In that particular workshop, we had representatives of the Kenya Law Reform Commission, the Office of the Attorney-General and the Law Society of Kenya (LSK). The Interim Independent Electoral Commission (IIEC) was represented by the Chairman, a few other Commissioners and the Secretary. The defunct Interim Independent Boundaries Review Commission (IIBRC) was also represented by the Chairman and one other Commissioner. The Office of the President and the Office of the Prime Minister were also represented.

Mr. Temporary Deputy Speaker, Sir, what I am trying to allude to is the fact that this Bill was arrived at as a result of very extensive consultations. Therefore, what one would expect are very few negative comments on this particular Bill. As one of the people who attended the workshop and participated in the deliberations, I want to report that all the issues that were agreed upon in Naivasha were as a result of consensus. We never voted on any issue. Therefore, the Bill enjoyed extensive and wide support.

However, I have gone through the Bill before the House, and I am uncomfortable with a number of the provisions contained therein. I want to highlight some of those issues, so that they can be looked into, first, by the Committee since I believe that there will be a Committee which will look into this Bill. I am confident that the Chair of the CIOC will call for a meeting to look at this Bill. It does not have to be the Committee on Justice and Legal Affairs, if the Committee's membership has refused to behave. If the Committee's membership has refused to take this country forward, other parliamentarians will do so.

**Mr. Baiya:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is in order for hon. Mbadi to refer to the Committee as having failed to behave? Can he substantiate that statement or withdraw it?

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I am willing to substantiate that the Members of this Committee have failed to behave in the manner we had expected them to behave. The membership of this Committee has admitted in this House that the Committee has failed to function. What other substantiation would the Chair of that very Committee expect from an hon. Member like me? I have done as much as you would have wanted me to do.

Mr. Temporary Deputy Speaker, Sir, let me now go to the issues that I feel are critical, and which have not been addressed properly. We did agree in Naivasha that this is a very important Commission. We looked at the practice, traditions and customs elsewhere. Examples were given of South Africa, Ghana and Brazil, and even of this country, which show that the Chair of this Commission must be someone who is qualified to occupy the office of Judge of the Supreme Court, because that is the highest court we have in this country. I do not know at what stage this provision was changed to someone who is qualified to be appointed a judge of a superior court.

We all know that there is a difference between "superior court" and "Supreme Court" as defined in our Constitution. "Superior courts" include the Supreme Court, the Court of Appeal, the High Court and the courts that are mentioned in Article 162. Therefore, we have lowered the qualification of the Chairman of this Commission. I find that there is no justification. There is an example in Brazil of the Justice of the Supreme Federal Court, who chairs this Commission. That is an issue that needs to be looked into.

Mr. Temporary Deputy Speaker, Sir, this House will recall that when we came here, there was the issue of the boundary review by the Ligale Commission. It did its

work and concluded. The first review is constitutional. The Constitution gives the first review to no other commission except the Ligale Commission. This House adopted the Ligale Commission Report and also the report of the Committee on Justice and Legal Affairs.

**Mr. Ngugi:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Member to say that the Ligale Commission concluded its report and we adopted it when we said that they did a shoddy work? We could not accept that report, but we only said that it forms the basis of a report that was done by the Committee on Justice and Legal Affairs.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, sometimes I wonder whether my colleagues really attend Parliament sessions. The report was brought to this House by the Committee on Justice and Legal Affairs which adopted the Ligale Report. This is not an issue that we need to debate about. I would urge my colleague to wait for his time and contribute.

I want to go further and say that the definition of the first review has to be changed. It must be recognized that the first review is the one that was done by the Ligale Commission. That is what we agreed on. I want to urge---

**Mr. Muthama:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the Member to keep on saying that the report was adopted when Kenyans are listening? It is very clear that the report came here, it was pushed back and that is why the new Commission is coming in to deal with this.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I have a lot of respect for my colleague, but sometimes, you find it a bit---

**Mr. Keynan:** On a point of information, Mr. Temporary Deputy Speaker, Sir. I want to inform, through hon. Mbadi to the Chief Whip, the House and the Kenyans that, indeed, through the Parliamentary Committee on Justice and Legal Affairs, this House on its own wisdom decided to adopt in totality the report of the Ligale Commission. That remains a fact on the record of this House. It does not change. Any other whims and expressions, do not change that. That fact must be a reality.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I want to thank hon. Keynan. Let me now proceed with my contribution. I would urge my colleagues to wait for their time and make their contributions. What they are raising are actually points of argument.

*(Mrs. Mugo stood up in her place)*

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Members! Order, hon. Mbadi! Order, hon. Mugo! You do not purport to be seeking the attention of the Chair by just standing up! These are not points of order. They are difference in opinion. Let us hear the Member and every other person will be at liberty to make a contribution.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, as I was saying, the definition of the “first review” should read: “Delimitation of boundaries of constituencies undertaking by the IIBRC”. We need to be very clear on the issues arising that are mentioned here. I want to add that the resources that this Commission is supposed to employ are primarily the Ligale Commission Report and secondly, the report of the Committee on Justice and Legal Affairs. We need to remove “any other” because this brings ambiguity. We need to be very categorical. If you look at the Constitution, there is

no other Commission that is given the mandate to carry out the first review. It is the Ligale Commission. That is why I urge my colleagues that this is a fact that we need to accept and move forward.

Mr. Temporary Deputy Speaker, Sir, I want to go to my third point. When we discussed the Draft Bill, we did recognise that, first, Kriegler was very categorical on some of the issues which brought problems in the electoral process. He did say that we need to give capacity to the Secretariat. So, when I hear my colleagues condemning the Minister for giving more powers to the Secretariat, then it comes to my mind that probably we have not read the Kriegler Report properly. This is the case and yet we adopted the Kriegler Report in this House, which suggested that we should establish an efficient and effective Secretariat. It suggested that we should make a Secretariat that is executive. The Commissioners come and go. In order for us to retain continuity and expertise within the Commission, we need to give more attention to the Secretariat. In that respect, I support this Bill for giving more powers to the Secretariat, because that was a requirement by the Kriegler Report.

Secondly, when we were discussing the issue of continuity, we did agree in Naivasha – and I want to repeat again – that we need to save and transit the Secretariat. Why am I saying this? If you look at Section 41A of the former Constitution, you will find it very clear. The role of the Interim Independent Electoral Commission (IIEC), among the seven proposals, was to set up a strong Secretariat. Having done that, we cannot again throw away the Secretariat. Therefore, we need to carry forward the employees of the IIEC, because we have employed most of them on permanent basis. We should not be a country which employs people to conduct elections and even without reason, they are removed. I want to dissuade this House from over-relying on personalities. Remember before the 2007 elections, the Kivuitu Commission carried out the 2002 General Elections and the 2005 Referendum and people were satisfied. However, what happened in 2007? We were all up in arms that this Commission had done a shoddy job. Therefore, we need to put structures in place that can stand the test of time.

Mr. Temporary Deputy Speaker, Sir, I want to talk about the selection panel. Some colleagues have said that commissioners should not be appointed by one person. However, if you look at the way the selection panel is supposed to be appointed, you will find that it has given powers exclusively to the President. This is not what we discussed. In Naivasha, we said that this is a political process and let us be as inclusive as possible. We gave this function to political parties based on their strength in the House. Let everyone feel involved. Let the PNU Coalition as well as ODM feel involved. This is because even if you tried to exclude them, you will not do it in a way that will satisfy everybody. Therefore, the best way to have everyone feel that they are involved is by bringing everybody to participate in appointing the selection panel. In the first appointment of the selection panel, this Bill talks about the President in consultation with the Prime Minister, but it is silent in cases where there is a vacancy before the next general election. Will the President still consult the Prime Minister? That is not here. We need to include that even in subsequent vacancies. Before the next general election, the President needs to consult with the Prime Minister.

Mr. Temporary Deputy Speaker, Sir, my second last point is with regards to the appointment of employees. If we look at schedule 10(3), the employment of employees is

pegged on the approved budget. I have an issue with that. This should be based on an establishment because the Constitution is clear that all constitutional commissions shall be allocated adequate resources to undertake their functions. Therefore, we should not peg appointment of employees to this Commission on the approved budget. We should have an establishment and the Commission should ask for allocation of the budget.

Finally, there is the issue of how these commissioners will be remunerated if in case, they are put in office before the Salaries and Remuneration Commission is in place. There is a suggestion that we involve the Public Service Commission. This is one way of interfering with the independence of this Commission. The Public Service Commission is a commission just like any other commission. Therefore, to me, because this is just a commission that is just acceding another, why do we not recommend that before we have the Salaries and Remuneration Commission in place, the commissioners earn the same remuneration as the current commissioners of the Interim Independent Electoral Commission, so that we do not subject the remuneration of these commissioners to control of another commission which should not actually be above this particular Commission.

I want to conclude by asking that as we think of coming with an electoral law, because this actually was just laws governing the appointment of the Independent Electoral and Boundaries Commission and how they carry out their work, we need to think seriously of how do we discourage the security apparatus of this country from participating and influencing the electoral process. This is where we have a problem. That is why many Kenyans had a problem with the Provincial Administration. It is not because the Provincial Administration was not desirable, or it was useless or that it was an enemy of our people. It is because the Provincial Administration was misused in many cases to rig elections. I still hear complaints even though we say the by-elections were conducted in a good way and that we are praising the Interim Independent Electoral Commission. I have heard complaints that at this by-election, the Provincial Administration was used; and that the security apparatus were used as polling officials and so on. This must stop. We must come up with laws that would stop this from happening.

With those many remarks, I support the Bill.

**Mr. Lessonet:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me this opportunity. As I stand here to contribute to this Independent Electoral and Boundaries Commission Bill, one question keeps ringing in my mind, which is: Why did we fight after the last elections? We fought because we did not believe the results as declared by the Commission which conducted elections. After I had read this Bill, I asked myself the same question: Are Kenyans going to believe the results of the elections when we do them next time, whether 2012 or 2013?

Some doubts as to whether we will be able to believe the results of that election as it comes, start from number one, how we will constitute the commissioners. You will realize that the constitution of the commissioners as per this Bill requires one selection panel to be in place. Just like the speaker who has spoken before me indicated, this election panel actually will be appointed by one individual. In the case of these first commissioners, they will be appointed by the Prime Minister and the President. You realize that it is very obvious that one of them will be with us in the ballot come the next elections. In one way or the other, he will have succeeded in nominating those who will

be in the selection panel which is very important in appointing the next commissioners of this Commission.

Mr. Temporary Deputy Speaker, Sir, I want the Minister to note that he still has time to look at how we will get this selection panel which will be independent of any candidate or anybody---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Lessonet. It is time to interrupt the business of the House. You have a remainder of 17 minutes and you will proceed next time the matter is on the Floor.

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, it is, therefore, time to interrupt the business of the House. The House, therefore, stands adjourned until tomorrow, Wednesday, 27<sup>th</sup> April, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.