

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 23rd February, 2010

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

QUESTIONS BY PRIVATE NOTICE

DISMISSAL OF EMPLOYEES IN MINISTRY OF EDUCATION

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

(a) Could the Minister clarify whether persons recently employed by the Government in the Ministry of Education are set to be dismissed from service and, if so, what are the reasons for the decision?

(b) What is the Government doing to cushion the affected employees, considering that many of them left previous employment and have also lost out on other employment opportunities?

Mr. Speaker: The Minister for Education is not here? We will come back later to this Question.

Next Question by the Member for Kuresoi!

PRIMARY SCHOOL LEARNING PROGRAMME AFFECTED BY HOSTING OF IDPS

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

(a) Is the Minister aware that from the beginning of 2011, learning activities in 11 primary schools in Kuresoi have been adversely affected as a result of hosting an increasing number of pupils occasioned by Government evictions in South West Mau Forest?

(b) What steps has the Minister taken to help the schools cope with the increase in pupil population?

(c) Could the Ministry, as a matter of urgency, post teachers to the affected schools while arranging to construct more classrooms?

Mr. Speaker: Minister for Planning, National Development and Vision 2030, what is happening to your colleagues?

The Minister of State for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, sincerely, I do not know where they are. But I hope maybe they are on the way coming.

Mr. Speaker: Can you do something about them in the next five minutes?
The Minister of State for Planning, National Development and Vision 2030
(Mr. Oparanya): Mr. Speaker, Sir, give them five minutes. They will be here.
Mr. Speaker: Next Question by Private Notice by Mr. Outa!

KILLING OF TOBIAS OTIENO ONUNG'A BY POLICE

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

(a) Under what circumstances did police officers kill Mr. Tobias Otieno Onung'a near Rabuor District Officer's Camp along Kisumu-Nairobi Road on 11th January, 2011?

(b) What disciplinary action has the Minister taken against the officers involved and what measures is the Government taking generally to curb killings by police officers?

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

(a) On 11th February, 2011 at about 5.00 p.m., three gangsters armed with AK-47 rifles were being pursued by police officers from Chiga area towards Rabuor on foot. On reaching an area between Ahero and Rabuor, they started shooting motorists randomly and as result, the following persons were shot dead: Tobias Otieno Onung'a, aged 45 years, Anthony Waithaka aged 41 years, Muchiri Waweru, aged 40 years and Joseph Nyamolo aged 33 years. The mentioned were killed by the gangsters and not the police officers. Further, during the shooting, another motorist, Ken Agendo was robbed of his motor vehicle, registration No.KBH 770R, which the gangsters used as a gate away car to an area where they abandoned it and escaped on foot. The gangsters are still at large and investigations are still on vide police case File No.CR62A/56/2011 and police Inquest File No.7/2011

(b) Police officers were not involved in the shooting and, therefore, no disciplinary action is contemplated against them.

Mr. Outa: Mr. Speaker, Sir, on this very day I was at my home. At around 5.00 p.m., police officers were engaged in a shootout with some of the thugs that they were chasing from Kisumu Town. Mr. Tobias Onung'a was a driver, who was posted by the Government to the District Office at Rabuor Division. Mr. Onung'a was driving and was not among the thugs. The police officers ordered Mr. Onung'a to stop a tractor. Upon stopping the tractor, they shot him in cold blood. Could the Assistant Minister explain why Mr. Onung'a, who was not among the thugs that the police were chasing, was shot in cold blood? I was at the scene.

Mr. Ojode: Mr. Speaker, Sir, the briefing I got is that Mr. Onung'a, who was the driver, was asked to stop by the gangsters because they wanted any vehicle which they could use to escape from the police. Mr. Onung'a was seated on a tractor and he had surrendered to the gangsters. He then put his hands down looking for his identification card to show them. The gangsters thought that maybe he had a gun. So, he was shot dead by the gangsters, and not by the police officers.

Mr. Mwangi: Mr. Speaker, Sir, if you listened carefully to the Assistant Minister, he said four persons were killed by the gangsters while the police were in pursuit of them. Does this show inefficiency in the police force? When they are chasing people, innocent Kenyans are killed by gangsters. This is an indication of insecurity in this country. We

have had cases in this House where people have been killed all over this country. The Assistant Minister has given the same excuse that the police were not able to handle the gangsters because they were armed. Could he tell us who is in control of security? Is it gangsters or the police?

Mr. Ojode: Mr. Speaker, Sir, it is the police. I mentioned that these gangsters were shooting randomly, and they killed four people. We are trying to get hold of them. I want to assure this House that we will get hold of the gangsters.

Mr. Olago: Mr. Speaker, Sir, from the answer given by the Assistant Minister, the thugs were being pursued by police officers from Kisumu Town. Indeed, around this time, there has been a spate of robberies in Kisumu particularly around the airport, Kogweny and Nyameda. Allow me to commend the Assistant Minister with regard to the confidential action that they have taken to bring down the spate of insecurity around Kisumu. That aside, what steps has the Ministry taken definitely to ensure that thugs are not just taken out of Kisumu or killed but also arrested and made to face the law?

Mr. Ojode: Mr. Speaker, Sir, we are combing that area and my police officers have done very well especially in Kisumu where we had many insecurity cases. I am very happy with the work the elite squad has done since we deployed it in Kisumu. It is not just in Kisumu. Once they are through with the work, we will take them elsewhere where there is insecurity.

Mr. Njuguna: Mr. Speaker, Sir, while accepting the answer given by the Assistant Minister, you will note that four breadwinners were brutally murdered and the affected families have no people to sustain them. What will the Ministry do to make sure that the education of the children of the families affected is not interrupted?

Mr. Ojode: Mr. Speaker, Sir, the four were murdered by gangsters. The Assistant Minister for Education is here and he can handle that bit because education does not fall under my docket. The hon. Member has asked what we will do with the families of those who were killed and have school-going children.

Mr. Wambugu: Mr. Speaker, Sir, from the explanation given by the Assistant Minister, it is gangsters who shot Mr. Onung'a. However, the explanation is not enough. He has said that Mr. Onung'a was shot while he was trying to remove his identity card from his pocket to identify himself to the gangsters. Could the Assistant Minister explain whether there was any other person within that area who identified or who listened to the conversation between the thugs and Mr. Onung'a or is it the police who had asked him to remove his identity card from the pocket?

Mr. Ojode: Mr. Speaker, Sir, I mentioned earlier on that the gangsters were shooting randomly and when they stopped the driver, he surrendered by raising his hands. In the process, he thought that if he removed his identity card, then he will be spared. When he was trying to remove it, according to the brief that I got, the gangsters thought that he was removing a gun and they eventually shot him.

Mr. Speaker: Yes, the Member for Migori although you were hesitating that way. You do not catch the Speaker's eye easily.

Mr. Pesa: Mr. Speaker, Sir, the Assistant Minister still insists that it is the gangsters who shot Mr. Onung'a but he has not told this House and Kenyans that he has done enough investigations to confirm that none of the policemen fired a bullet at anybody. Has he confirmed that?

Mr. Ojode: Mr. Speaker, Sir, I have said here that the police officers were looking for these gangsters. Actually, they were chasing them from Kisumu Town to Rabuor. They did not use their guns because they did not see where the gangsters were. In the process, the gangsters were firing randomly in order to get the vehicle to escape.

Mr. Outa: Mr. Speaker, Sir, Mr. Onung'a happened to come from where my mother comes from and the way he was killed leaves a lot to be desired by the Assistant Minister's officers. I was at home on that very day. Mr. Onung'a was killed, as the Assistant Minister has confirmed to this House as he reached to his pocket to bring out his identity card to the police officers to confirm that he was not a thug but a Government driver. Those guys did not even hesitate but shot him instantly.

Mr. Speaker, Sir, because the Assistant Minister is not really sure, could I be in order to request that this matter be referred to the relevant Departmental Committee? I was at home and the Assistant Minister is trying to avoid answering the question. I am not saying that he is not doing a good job in Kisumu but this was an innocent person who was just a Government driver.

Mr. Speaker: Order, the Member for Nyando! This is Question Time and I have given you an opportunity to ask the first question and other hon. Members complemented your effort and asked a number of supplementary questions. As is our practice, I have given you the last opportunity which you have chosen not to use. So, you will be out of order to ask me to refer this matter to the Committee. Mr. Assistant Minister, you need not respond. The Member for Nyando, the way I would have acted if I were in your shoes is if I had evidence to challenge the answer of the Assistant Minister, I would have tabled that evidence. So, you have not prosecuted the Question that effectively.

INSECURITY IN VIHIGA COUNTY

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

(a) Is the Minister aware of the increased wave of insecurity in Vihiga County over the last one month?

(b) What urgent measures is he taking to stem the dangerous trend?

Mr. Speaker: Hon. Members, the Member for Vihiga is away on Parliamentary business with official permission. So, this Question is deferred to tomorrow afternoon. Is that okay with you, Mr. Assistant Minister?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I have five questions tomorrow afternoon. I would prefer this one to be deferred until next week.

Mr. Speaker: Then it will be deferred to Tuesday next week at 2.30 p.m.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Most obliged, Mr. Speaker, Sir.

(Question deferred)

Mr. Speaker: Let us move on to the next Question by the Member for Maragwa!

ORAL ANSWERS TO QUESTIONS

Question No. 650

FAILURE TO EMPLOY YOUTHS AS CHIEFS/ASSISTANT CHIEFS

Mr. Speaker: Hon. Members, the Member for Maragwa is bereaved. He lost his brother who is being buried today. So, we will defer this Question to Tuesday at 2.30 p.m. because of the circumstances in which the hon. Member is.

(Question deferred)

Question No.534

YOUTHS UNDER KKV PROGRAMME IN BURA CONSTITUENCY

Dr. Nuh asked the Minister for Youth Affairs and Sports:-

(a) whether he could provide a list of names of youths who worked under the Ministry's *Kazi kwa Vijana* Programme in June and July, 2010 in Bura Constituency, indicating that location of work, number of days worked by each person and amount of money owed to each one of them;

(b) whether he is aware that the said youths have not been paid their dues; and,

(c) what occasioned the delay in payments and when they will be paid.

Mr. Speaker: Anyone here from the Ministry of Youth Affairs and Sports? The Minister for Planning, National Development and Vision 2030, again will you hold brief for your colleague?

The Minister for Planning, National Development and Vision 2030 (Mr. Oparanya): Mr. Speaker, Sir, I will do so. I hope he is on the way.

Mr. Speaker: Very well! Let us move on to the next Question by the Member for Mosop.

Question No.492

CONSTITUENCIES COVERED BY LAKE
VICTORIA NORTH WATER BOARD

Mr. Koech asked the Minister for Water and Irrigation:-

(a) which constituencies are covered by the Lake Victoria North Water Service Board;

(b) which projects have been undertaken by the Lake Victoria North Water Services Board; and,

(c) whether she could also provide details, including implementation progress of specific projects in each of the constituencies, undertaken by the Board, particularly in Mosop Constituency.

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

Lake Victoria North Water Services Board covers 40 constituencies in Kakamega, Busia, Bungoma, Trans-Nzoia, Uasin Gishu, Elgeyo, Marakwet and Nandi counties. This is attached under Annex A.

(b) The list of projects undertaken by Lake Victoria North Water Services Board in the last few years is also attached under Annex B.

(c) Mr. Speaker, Sir, my Ministry has undertaken Lelmokwo, Chepterwai and Sarora water supplies and Kabiyet, Ndalat Gaa, Laboret School, Kipchunu Primary School and Cheptil Dams in the last two financial years at a cost of Kshs17,348,000. In the current financial year, the Ministry has spent Kshs8.1 million to rehabilitate Kabiyet Urban, Ndalat and Lelmokwo water supplies and construct Kabiyet Sewerage Works ponds.

Mr. Koech: I want to thank the Assistant Minister for the answer but I am shocked that the Ministry has spent over Kshs17 million on projects in my constituency and out of all these projects, it is only the Ndalat Water Project that has actually served the school. It does not extend to the shopping centre. Lelmokwo, Chepterwoi, Sarora and Kabiyet are yet to serve the people despite the fact that the Ministry has spent up to Kshs17 million. Lelmokwo and Mosoriot areas have never seen a drop of water and yet the Ministry has been spending money year in, year out. What assurance can the Assistant Minister give to the people of Lelmokwo that they will get water from the projects that he has spent money? This will enable us to say that he is serving the people of Kenya.

Mr. Waititu: Mr. Speaker, Sir, this project appears to have been a very big project. So far I have been talking with the Member and there are some issues he wanted to clarify from the same people. According to details I have, there a lot of work that has been done. I think the hon. Member has not confirmed properly.

Mr. Koech: On a point of order, Mr. Speaker, Sir. I know my constituency. I have specifically asked about Lelmukwo. Lelmukwo Water Project was done 20 years ago. It used to serve the people of Lelmukwo but it broke down. Today, as I speak, it has never been rehabilitated. The money the Assistant Minister is talking about was actually for rehabilitation. However, the people there are yet to see and even utilize that water.

Mr. Speaker: Anyone else interested in asking a question? Mr. Assistant Minister, you need not respond to that. Member for Mosop, you stood on a point of order. I have not heard it, as hard as I try!

Member for Mumias, please, proceed!

Mr. Washiali: Mr. Speaker, Sir, Mumias happens to be one of the constituencies that fall under the Lake Victoria North Water Services Board. There has been a project which was funded by the World Bank from the year 2008 and the Assistant Minister has been saying that work on this project will begin soon. However, up to today, nothing has happened. What is he doing to make sure that the project starts immediately, so that the people of Mumias can benefit from this water?

Mr. Waititu: Mr. Speaker, Sir, according to me, that is a different Question.

Mr. Speaker: You are entitled to that. However, if you want to answer it, you may.

Mr. Waititu: Mr. Speaker, Sir, I have the list of all the projects that have been undertaken by our Ministry in the last two financial years. If the Member wants to go through the list, he can do so.

Mr. Washiali: On a point of order, Mr. Speaker, Sir. Question No.492, part “c” reads, “Could the Minister also provide details including implementation, progress of specific projects in each of the constituencies in that region”. Mumias Water Project is, therefore, covered by the Question he was supposed to have responded to.

Mr. Waititu: Mr. Speaker, Sir, as I have said, I have the list of all the projects with me here. The hon. Member can specify the particular project he wants to know about.

Mr. Washiali: Mumias Water Project!

Mr. Speaker: Order, Member for Mumias! Anybody else interested?

Mr. Chepkitony: Mr. Speaker, Sir, I would like the Assistant Minister to tell this House how they select the projects. Do they involve the local communities? Is Keiyo North Constituency one of the 40 constituencies under the Lake Victoria North Water Services Board?

Mr. Waititu: Mr. Speaker, Sir, the projects are selected through the District Development Committees (DDCs), where the District Water Officer (DWO) is a member, and the communities at large have members. Those projects are normally channeled through the Water Services Board (WSB) to the Ministry headquarters.

Dr. Kones: Mr. Speaker, Sir, it appears as if, generally, there are problems in prioritization of projects in the WSB. This is particularly so with those next to Lake Victoria. We have Lake Victoria North and Lake Victoria South Water Services Boards. Each seems to give the impression that these boards only serve areas around the lake. Could the Ministry consider renaming these boards to give the correct impression that it serves a wider area than the area around Lake Victoria?

Mr. Waititu: Mr. Speaker, Sir, our Ministry is in the process of restructuring some of the boards, especially this one, which is too big, so that it can cover a smaller area.

I also want to tell the hon. Member that recently we issued some circulars, copies of which we sent to the DWOs, so that all constituencies can form a water body which will have members who are representatives of the CDF Committee. We know that there is a breakdown of communication between Members of Parliament and DWOs. That is why we want to form those committees.

Mr. Kutuny: Bw. Spika, nia kubwa ya Halmashauri ya Ziwa Viktoria ni hukakikisha kuwa Wakenya wengi wamepata maji kwa matumizi ya kila siku. Ni mipango gani halmashauri hii imeweka kuhakikisha kwamba watu ambao ni wakaazi wa chemichemi za maji wamepata maji ili wazihifadhi chemichemi hizo? Ninasema hivyo kwa sababu kuna bomba linaloelekea Mkoa wa Magharibi, lakini chemichemi iko katika Eneo Bunge langu. Bomba hili linapitia Taarafa ya Kaplamai, lakini kwa sasa wengi wa wakaazi hawaoni manufaa ya maji hayo. Sasa imekuwa ni kama wale wakaazi kazi yao ni kushika ng’ombe pembe na wengine wanakamua wakiwa upande wa chini. Wizara ina mipango ipi kuhakikisha kwamba wakaazi wa tarafa hii, ambao wanahifadhi chemichemi hizo, wanapata maji ya kutosha?

Mr. Waititu: Bw. Spika, tulienda na Mheshimiwa mwenyewe kwa mradi huo na nikaagiza Wizara itoe Kshs5 milioni. Kwa wakati huu *AIE* inatengenezwa na kabla wiki ijayo atapata pesa za kuweka maji katika eneo bunge lake.

Mr. Koech: Mr. Speaker, Sir, my main concern has been the expenditure without ensuring that people actually end up benefiting from it. The Assistant Minister has indicated that there is Kshs8 million in this financial year to rehabilitate Kabiyet Urban Centre and Lelmokwo Water Project, and also construct the Kabiyet Sewerage works. My fear is that next year, we shall be facing the same project. Can the Assistant Minister assure the people of Kabiyet that the Kshs8 million will enable them get the water and that the sewerage shall be completed within this year?

Mr. Waititu: Mr. Speaker, Sir, I want to commit myself that I will ensure that Kshs8.1 million that has been set aside this financial year to construct Kabiyet Sewerage works will be provided for. This will enable the consumers to get water.

Mr. Speaker: Next Question, Mr. K. Kilonzo!

Question No.656

ESTABLISHMENT OF TREE NURSERIES IN
NZAMBANI/MUTITO DISTRICTS

Mr. K. Kilonzo asked the Minister for Forestry and Wildlife what plans he has to establish tree nurseries in Nzambani and Mutito districts.

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I beg to reply.

The Ministry of Forestry and Wildlife through the Kenya Forest Service has established nurseries in the two districts. It is, therefore, not in order to say that there are not tree nurseries.

The nurseries are established as follows: In Mutito District and in Mithika Division, a tree nursery is located at Mutito Forest. There are also over ten farm built school tree nurseries named Nithinathayuu Tree Nursery, Kako Tree Nursery, Kiema Tree Nursery and Ithusya Tree Nursery. In Mutito Division, we have Miambani Tree Nursery, Musioni Tree Nursery, Green Valley Tree Nursery and Mutiee Tree Nursery. However, in Nzambani District, there are ten tree nurseries which include Nukuni Tree Nursery, Amos Tree Nursery, Waiyani Tree Nursery and Wendo Kangangatu Tree Nursery.

Mr. K. Kilonzo: Mr. Speaker, Sir, I wish to thank my good friend, the Minister, for this answer. However, I want to inform him that it appears some of the information he has been given is a bit misleading. For instance, Miambani is actually in Kitui Central. It is not in Mutito District. I know the Minister is very cooperative, I will request him to visit my constituency and see the inadequacy of tree nurseries there so that we can see how we can help to establish proper tree nurseries to help that area which is a semi-arid.

Dr. Wekesa: Mr. Speaker, Sir, I have no problem accompanying my good friend to his district to actually see these projects. On that visit, we can see how else to assist him.

Mr. K. Kilonzo: Mr. Speaker, Sir, like I said, I know the Minister is very cooperative. Since the rains are just about to start, is he in a position to give me an

indication when we could visit the district so that I can also prepare the ground? Is it this week or next week?

Dr. Wekesa: Mr. Speaker, Sir, I will discuss with that issue with the hon. Member at tea time.

Mr. Speaker: Very well! Next Question by the Member for Kisumu Town West!

Question No.684

HYACINTH MENACE IN WINAM GULF OF LAKE VICTORIA

Mr. Olago asked the Minister for Environment and Mineral Resources:-

(a) whether he is aware that Kichinjio, Usoma, Ngege, Paga and Ogal beaches in Winam Gulf of Lake Victoria have been sealed off by an influx of hyacinth;

(b) what urgent steps he is taking to encourage the manual removal of the weed at nominal remuneration; and,

(c) what policy framework, in conjunction with the other East African partner states and donors, the Ministry has put in place to create employment through manual removal of the weed, as is the practice on Ugandan shores.

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

(a) I am aware that the water hyacinth has drifted back and has temporarily paralyzed transport and fishing operations in Lake Victoria, particularly Kichinjio, Usoma, Ngege, Paga and Ogal beaches in Winam Gulf of Lake Victoria. It is known that the weed drifts back and forth during the December to March period. I am also aware that the Winam Gulf was cleared from 6th January 2011 and the weed has drifted away.

(b) My Ministry is in the process of engaging manual and physical removal of water hyacinth at the Winam Gulf by invoking the former East African Commission Plan of Action on water hyacinth removal that was adopted by the Lake Victoria Environment Management Project Phase I and also adopted by Kenya, Uganda and Tanzania. During the project period from 1997 to 2005, as a long term measure, the Lake Victoria Environment Management Project Phase II is in the process of developing a water hyacinth management strategy, expected to be completed in a year's time at the regional level. This is developed by a consultant and coordinated by the Lake Victoria Basin Commission on behalf of the five partner states; Kenya, Uganda, Tanzania, Rwanda and Burundi.

During the Eighth meeting of the Central Council of Ministers for Lake Victoria Basin on 21st January 2012, the issue of water hyacinth was deliberated upon and a directive on the matter was issued. My Ministry initiated action to implement the directive by engaging the youth through the *Kazi Kwa Vijana* initiative with the manual removal of the weed. This is a short-term intervention as a long term solution is being sought through the development of regional water hyacinth management strategy.

Mr. Speaker, Sir, we also need to appreciate risks associated with manual removal of the hyacinth. Such risks include harm that can be inflicted through snake bites,

exposure to water related diseases and water borne diseases. My Ministry will, therefore, apply physical removal from the interior of the lake and allow manual removal from the shores.

(c) My Ministry has a specific policy within the framework of Lake Victoria Phase II in which manual removal of the water hyacinth is one of the methods that the project will employ in the control of water hyacinth in Lake Victoria. It is expected that this will create employment for the local communities. Other methods include biological and mechanical. These are in-grained in the proposed Water Hyacinth Management Strategy. The project in its four year period, under Adjustable Programme Lending (APL I) has a total budget of Kshs182,704,000.000 to control this menace. Out of this, Kshs121,600,000 will be used for manual removal of the hyacinth. Part of this money will be used for short-term interventions to address the current situation in the lake. It is expected that by the conclusion of the project, the water hyacinth and other infestations will have been eradicated.

Mr. Speaker, Sir, allow me to remind the hon. Members that for effective and sustainable control of water hyacinth and other infestations of the water bodies in the lake region and, indeed, the entire country, it is the responsibility of every leader to encourage their constituents to jointly participate in the protection and conservation of the environment.

Mr. Speaker, Sir, for the benefit of this House, I have detailed information in the form of a write-up which I want to table. It gives the long-term programme.

(Mr. Kajembe laid the document on the Table)

Mr. Olago: Mr. Speaker, Sir, Winam Gulf of Lake Victoria is surrounded by the following constituencies: Nyando, Nyakach, Kisumu Town East and Kisumu Town West. In Kisumu Town West, the beaches that are affected are Kichinjio, Usoma, Ngege, Paga and Ogal. Water hyacinth is wrecking havoc in Kisumu Port on lake navigation and fishing. It is becoming impossible to do fishing. That is why I would like this answer to be thoroughly interrogated. I wish to take issue with the answer the Assistant Minister has given particularly where he says:

“During the eighth meeting of the Central Council of Ministers for Lake Victoria Basin on 21st January, the issue of water hyacinth was deliberated upon and a directive was issued that the authority engages youth groups through *Kazi Kwa Vijana* (KKV) initiative for the manual removal of the weed.”

Mr. Speaker, Sir, since that time up to now, what effective steps has the Ministry taken to ensure that the Constituencies Development Fund (CDF) in these constituencies are involved with the Lake Basin Environment Programme officers?

Mr. Kajembe: Mr. Speaker, Sir, as a Ministry, we approached all the groups which operate at the lake, especially from these areas. We started giving jobs through the KKV Programme, but later on, we were able to secure Kshs182 million from the World Bank. Out of this, Kshs121 million is going to do what has been recommended by the Council of Ministers from East Africa partner states. The sum of Kshs61 million will now go to intervention measures, especially to educate the beach boys on how they can go about it.

Eng. Rege: Mr. Speaker, Sir, I would like to thank the Assistant Minister for giving this House a very comprehensive method of eradicating water hyacinth in Lake Victoria. Whereas Kisumu Town West, Nyakach, Kano and other areas are affected by water hyacinth, Karachuonyo is even worse. Karachuonyo is affected by algae to the extent that you cannot even get water until you go more than one kilometre into the lake. I would like to request the Assistant Minister to kindly also look into this impediment for the fishermen to be able to do their fishing adequately. If the East African Community and the Ministry are going to eradicate the algae and hyacinth, they should also look into the issue of the bridge in Mbita which is stopping fresh water coming from---

Mr. Speaker: Order, Member for Karachuonyo! This is not debate time! You caught my eye to ask a question, but you have told us a long story and no question is coming.

Eng. Rege: Mr. Speaker, Sir, I beg your pardon. Could the Assistant Minister assure this House that the bridge at Mbita will also be removed?

Mr. Kajembe: Mr. Speaker, Sir, the hon. Member is very right that, that bridge is in a very bad state. The issue of the bridge and other things which were to be renovated was raised in our Council of Ministers from East Africa meeting and it has been included in this package for renovation.

Dr. Otichilo: Mr. Speaker, Sir, is the Assistant Minister aware that we had an elaborate programme under the Lake Victoria Environmental Management Programme that was supposed to work on this problem of water hyacinth. Under the programme, money was provided but no work was done. Now, under Phase II of this project, money has been provided. I want the Assistant Minister to assure this House that this time this money is going to be used to eradicate the water hyacinth in Lake Victoria and not in workshops and seminars.

Mr. Kajembe: Mr. Speaker, Sir, let me disassociate myself from that allegation that in the first phase, money was misappropriated. I am not aware of that. The running of the Lake Victoria is a responsibility of five partner states; that is, Kenya, Uganda, Tanzania, Rwanda and Burundi. As I said earlier, we have set aside Kshs182 million to be distributed to the beaches. This is the only time the beach boys will be told what to do and they will---

Mr. Olago: On a Point of Order, Mr. Speaker, Sir. The Assistant Minister has referred to beach boys. I know that beach boys are found in Mombasa and other coastal areas. Around Lake Victoria, we do not have beach boys, but beach management units. Is he in order to refer to beach boys instead of units?

Mr. Kajembe: Mr. Speaker, Sir, hon. Olago is right. That is the term which is used there. As I said earlier, we have set aside Kshs61 million for intervention measures. We are going to distribute this money to beaches and each one of them is going to benefit.

Mr. Speaker: Last question, Member for Kisumu Town West!

Mr. Olago: Mr. Speaker, Sir, the hon. Assistant Minister has said that they will engage *Kazi Kwa Vijana* initiative to eradicate water hyacinth from the lake. I think the best approach is to involve the Ministry of Fisheries Development, Ministry of Youths and Sports and the Ministry Environment and Mineral Resources. It should be an inter-Ministerial approach. Could he tell the House how they will engage all these Ministries

concerned, so that *Kazi Kwa Vijana* Programme is effected properly through the CDF in these constituencies?

Mr. Kajembe: Mr. Speaker, Sir, my Ministry is co-ordinating eradication of the hyacinth in the lake. However, we have other nine lead Ministries which are engaged in these activities. I want to assure the hon. Member that we have the capacity and funds to eradicate hyacinth in the lake. I would like to invite hon. Members whose constituencies are surrounding the lake to play a more active role in this exercise. We want to make decisions together.

Question No.746

REHABILITATION OF
KIMENDE-KAGWE-GITHUNGURI ROAD

Mr. Njuguna asked the Minister for Roads:-

(a) whether he is aware that Kimende–Kagwe–Githunguri Road is currently immotorable,

(b) how much money has been set aside for the repair of the road;
and,

(c) when the road will be repaired.

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

(a) I am aware that Kimende-Kagwe-Githunguri Road is in need of urgent repair. I am also aware that the Constituency Roads Committee, where the Member is a member has set aside Kshs1 million for routine maintenance of the said road.

(b) In addition, my Ministry intends to carry out major works under Road 2000 Programme for the repair and services of the road. This will come after the ongoing negotiations with development partners are concluded.

(c) The works for routine maintenance are expected to begin in April, 2011, while those under Road 2000 Programme and subject to the negotiations, are expected to commence in September, 2011.

Mr. Njuguna: Mr. Speaker, Sir, while acknowledging the very satisfactory answer given by the Minister, could he consider increasing the fund for the routine maintenance? This is a very important road in my constituency because it links Lari and Githunguri constituencies.

Mr. Bett: Mr. Speaker, Sir, I appreciate the crucial nature of that road and we will consider to top up what the Constituencies Roads Committee (CRC) has allocated to it.

Mr. Ochieng: Mr. Speaker, Sir, up to now, the Kshs27 million that was appropriated by the Government to various constituencies in order to undertake repairs of some rural roads has not been released in full. Could the Minister confirm to us when that money will be released in full, so that we can undertake repairs before the rains set in?

Mr. Bett: Mr. Speaker, Sir, I want to assure the House that as of now, we have released Kshs13 million. Before the end of this week, or earlier next week, hon. Members will have received a further tranche of Kshs7 million. That will make the amount, so far, released, Kshs20 million out of the Kshs27 million.

I hasten to urge Member to utilize the funds because as of 31st January, rounding up all the accounts across the country, I have over Kshs5 billion in the bank accounts unspent. I want to urge Members to expedite works and payments, so that those are done as quickly as possible.

Mr. James Maina Kamau: Mr. Speaker, Sir, most of the roads that are in the rural areas that do not form part of the main highway usually have no funds for repairs. Could the Minister tell us how much money is set aside by the Government for the general maintenance and repair of such roads?

Mr. Bett: Mr. Speaker, Sir, I am not clear as to which roads the hon. Member is referring to. However, if these roads he is referring to are classified as “B” and below, they will be repaired under the Kshs27 million during this financial year. The other roads under the Kenya National Highways Authority have their own allocations for the Roads A, B, and C.

Mr. Njuguna: Mr. Speaker, Sir, could the Minister assure my constituents that this road will get started as he has indicated in this House in September, 2011?

Mr. Bett: Yes, I assure the people of Lari that we will move as I have put in my statement.

QUESTION BY PRIVATE NOTICE

DISMISSAL OF MINISTRY OF EDUCATION EMPLOYEES

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

(a) Could the Minister clarify whether persons recently employed by the Government in the Ministry of Education are set to be dismissed from service and, if so, what are the reasons for the decision?

(b) What is the Government doing to cushion the affected employees, considering that many of them left previous employment and have also lost out on other employment opportunities?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, I would like to begin by most sincerely apologising to you and the House for coming late. It is a failure on my part.

Mr. Speaker: Apology accepted. Proceed!

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

(a) No, my Ministry will not dismiss any of the recently employed persons as long as they met qualifications for the posts they were recruited for.

(b) Part “b” of the Question which seeks to find out how the Government will cushion the affected employees does not arise considering the answer that I have given in “a” above.

Mr. Pesa: Mr. Speaker, Sir, the answer sounds very humane. If that is what the Assistant Minister intends to do, Kenyans will be happy. However, could he define to me, what he means by meeting qualifications?

Mr. Mwatela: Mr. Speaker, Sir, the advertisements for these posts stated exactly what requirements were needed such as grades and particular qualifications; if it is a

driver, what class of driver; if it is certificates, what kind of certificate was required. If the recruited persons hold those qualifications, then they will not be dismissed.

Mr. Ogindo: Mr. Speaker, Sir, employment is a contract. Under contract law, a third party is under no obligation to know whether he complied with internal rules or not. Under what circumstances will the Ministry employ unqualified persons?

Mr. Mwatela: Mr. Speaker, Sir, as I said, I know the Member's concern is very genuine. However, if we wanted somebody with "O" level certificate, but whoever was recruited does not have that certificate, he will have to tell us what kind of qualifications he has. It is just like if an individual is hired to treat people, he must have a medical certificate. If he does not have qualifications for a doctor or a nurse, he cannot be employed to work in a hospital or dispensary, for that matter.

Mr. Mungatana: Mr. Speaker, Sir, the genesis of this Question comes from the fact that a member of the Government specifically a Permanent Secretary from the Ministry of State for Public Service was quoted extensively saying that the recruitment that was done in the Ministry of Education did not meet the standards and, therefore, the people will be fired. Was this statement true? Who is the Government spokesperson on policy, is it the Permanent Secretary or the Minister? By what words should we go? We want him to tell us and the country. We are tired of this confusion!

Mr. Mwatela: Mr. Speaker, Sir, I beg that Mr. Mungatana should not get confused. I am speaking for the Ministry of Education. I have said that we will not dismiss the employees as long as they meet the qualifications.

Mr. Speaker: Very well!

Amb. Affey: On a point of order, Mr. Speaker, Sir. Is the Assistant Minister in order to mislead the House that he is not going to dismiss anybody when, in fact, he is preparing them for dismissal? The Question was: "Can you confirm whether, in fact, the people who have been recruited already qualified to be recruited in the first place?" We just need that confirmation. If they are preparing to dismiss them, then he should tell the country.

Mr. Speaker: Order, Amb. Affey! I am afraid that you have not passed the test of a point of order. You have only asked two additional questions and I am afraid the Assistant Minister will not respond.

Mr. Olago: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister to hide behind well crafted words in saying: "No, my Ministry will not dismiss any of the recently employed persons as long as they meet qualifications for the post they were recruited for", when we know that some of the persons who were employed had to resign and take up those jobs?

Mr. Speaker: Mr. Mwatela, if you are able to respond to that, please, do so.

Mr. Mwatela: Mr. Speaker, Sir, I really do not understand the concern from the hon. Member. I have said - and I want to repeat - that we had to recruit according to the qualifications stated. If they meet the qualifications, they will stay.

(Mr. Olago stood up in his place)

Mr. Speaker: Order, Mr. Olago! That answer, to me, is clear!

Mr. Pesa: Mr. Speaker, Sir, if the Assistant Minister undertakes that all Kenyans who got appointment letters from the Ministry of Education and have qualifications will retain their jobs, I am satisfied.

Mr. Speaker: Just remember that you had given that undertaking!

PRIMARY SCHOOL LEARNING PROGRAMME
AFFECTED BY HOSTING OF IDPS

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

(a) Is the Minister aware that from the beginning of 2011, learning activities in 11 primary schools in Kuresoi have been adversely affected as a result of hosting an increasing number of pupils occasioned by Government evictions in the South West Mau Forest?

(b) What steps has the Minister taken to help the schools cope with the increase of the pupil population?

(c) Could the Ministry, as a matter of urgency, post teachers to the affected schools while arranging to construct more classrooms?

The Assistant Minister for Education (Mr. Mwatela): Mr. Speaker, Sir, again, I apologize because the Questions were following one another.

However, I beg to reply.

(a) Yes, I agree with the hon. Member that the eviction of families from Mau Forest has resulted in the increase of learners in 11 schools in Kuresoi District. That situation has led to overcrowding and over-stretching of school facilities.

(b) We carried out a needs assessment study as a result. We have provided a total of Kshs6 million as an emergency grant to the 11 schools to cater for books, desks, classrooms and toilets. I would like to table the list of the schools that have benefitted.

(Mr. Mwatela laid the document on the Table)

We have posted 11 new teachers to the affected primary schools and we have updated the data on enrolment for the 11 schools for disbursement of free primary education funds for this year, so that the extra enrolment is catered for. We will conduct capacity building for school management committees to assist the schools in developing school infrastructure and development plans to ensure proper utilization of development funds. This activity will be carried out in April 2011, which is in the next two months. My Ministry will provide the District Education Officer with a utility vehicle with immediate effect. It will be available next week.

(c) The Ministry undertakes to provide additional teachers to the affected schools in the next recruitment exercise.

Mr. Cheruiyot: Mr. Speaker, Sir, I want to commend the Assistant Minister for his timely answer and ask him whether he can speed up the---

(Loud consultations)

Mr. Mwatela: Mr. Speaker, Sir, the consultations were a bit loud and so, I did not get the question by the hon. Member.

Mr. Cheruiyot: Mr. Speaker, Sir, I asked whether the Assistant Minister could release the funds in March so that classrooms can be provided in good time.

Mr. Mwatela: Mr. Speaker, Sir, yes, the funds will be in the accounts of the schools in March.

Mr. Mwathi: Mr. Speaker, Sir, I have listened to the answer and I am satisfied that the Assistant Minister is doing very well. But the same problem remains in areas that have internally displaced persons (IDPs) and the students are going to schools in those areas. What arrangements does he have to deal with the situation while he is dealing with the other one? Of course, half of the areas that were seriously affected included my constituency, and I have not seen that kind of initiative.

Mr. Mwatela: Mr. Speaker, Sir, the concern by the hon. Member is very genuine and, as much as the Ministry undertakes to assist every area, it should also be understood that there is a process of resettling IDPs. So, I would like the hon. Member to specifically bring a Question for that particular area and we will address the matter.

(Mr. Ogindo stood up in his place)

Mr. Speaker: Order, Mr. Ogindo! I think the Assistant Minister is clear. I can guess where you want to go and I think for specific areas--- For instance, in case of Rangwe, please, just liaise with the Assistant Minister. Mr. Mwathi, do the same! Otherwise, there is a policy to assist all those schools. The Assistant Minister has said as much!

Dr. Kones: Mr. Speaker, Sir, in the answer by the Assistant Minister, he has indicated that there is a camp called Kusumet which has volunteer teachers. There is also another camp which is not indicated here, probably because it is within Kuresoi. But there are pupils who also fall under the same circumstances; who are also studying in another school called Chebuken Primary School. All those fall within my constituency, which neighbours Kuresoi. So, what is the Ministry doing? Has the Assistant Minister also undertaken to allocate similar provisions to those schools; that is Chebuken and the volunteer teachers at Kusumet Camp?

Mr. Mwatela: Mr. Speaker, Sir, again, I will repeat the same thing. We are dealing with a Question in a particular area but I will be ready because the children of this country deserve to be treated well. So, we will be ready to extend the same treatment.

Mr. Cheruiyot: Mr. Speaker, Sir, the Assistant Minister has given a very commendable answer. I hope I am in order to recommend to the Prime Minister to promote him.

ORAL ANSWERS TO QUESTIONS

Question No.534

YOUTHS UNDER KKV PROGRAMME IN BURA CONSTITUENCY

Dr. Nuh asked the Minister for Youth Affairs and Sports:-

(a) whether he could provide a list of the names of youths who worked under the Ministry's *Kazi Kwa Vijana* Programme in June and July, 2010, in Bura Constituency, indicating the location of work, number of days worked by each person and amount of money owed to each one of them;

(b) whether he is aware that the said youths have not been paid their dues; and,

(c) what occasioned the delay in payment and when they will be paid.

The Minister for Youth Affairs and Sports (Dr. Otuoma): Mr. Speaker, Sir, I want to apologize for coming late. I wrote to your office saying that I will be out of the country and my Assistant Minister was to answer this Question. As you are aware, you already gave her permission to travel also outside the country. So, I was not aware,

Mr. Speaker: Very well. Resume your seat for a moment because we have run out of time. We are actually out of Question Time by 10 minutes. We still have the Prime Minister's Time. So, I want to defer this Question to tomorrow at 2.30 p.m. The Member for Bura, please, note that the Question has been deferred to tomorrow, 2.30 p.m., because we are moving to the next business.

(Question deferred)

That then brings us to the end of Question Time. We will move to the next Order.

PRIME MINISTER'S TIME

PRIME MINISTERIAL STATEMENT

MOBILE TELEPHONY SECTOR

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I did undertake last week to address more comprehensively this week various issues around the mobile telephony sector. I also informed the House of a planned meeting with all mobile phone operators to discuss trends within and prospects for the sector.

I am pleased to report to the House that I did have a meeting yesterday with all mobile phone operators together with all the Government Departments concerned in the sector. The meeting established a task force that will deal with the following seven issues and report back in two weeks.

- (i) The grand path for call termination charges;
- (ii) Universal access fund;
- (iii) Mobile number portability;
- (iv) Infrastructure vandalism, including fibre cuts;
- (v) Money transfer platform outside the banking system;
- (vi) Spectrum/frequency charges; and,
- (vii) Sharing of infrastructure facilities.

Mr. Speaker, Sir, I will address these issues in some depth later in this Statement.

Mr. Speaker, Sir, mobile telephony has removed the barriers of time and distance to commercial activities. Access to affordable communication has enabled millions of Kenyans to create real wealth in their businesses. This has been made possible by increasing affordability of mobile telephony services.

The average core tariff was Kshs17 per minute in 2002. Today, it is Kshs3 per minute. The cost of a handset in 1997 stood as high as Kshs150,000. Today, it is as low as Kshs1,000. In 2000, airtime usage charge stood at Kshs60 per minute. Today, it is between Kshs1 to Kshs3. These factors have increased the adoption of mobile telephony technology by a greater majority of our people. Mobile penetration has grown from 15,000 users in 1999 to 24 million users in 2011, with our national penetration now standing at 60 per cent.

Mr. Speaker, Sir, let me turn to the issue of price wars amongst the four operators. In doing so, allow me to first distinguish between market segments that are regulated by market forces of supply and demand and those regulated by their dysfunctional nature have to be regulated by a regulator.

A market segment is competitive if innovation and efficiency is a function of supply and demand supported by multiple players. However, in a market that exhibits natural monopoly tendencies or market failures, lack of competition, such as the wholesale mobile call termination market, incentive regulation by the regulator remains the only viable tool to eliminate barriers to competition.

In the mobile telephone sector, termination is a monopoly market. The calling party pays the network of the receiving party for using the infrastructure of the latter. For example, a Safaricom subscriber calling a Yu subscriber will pay the latter a termination charge for using Yu's infrastructure. The price to be paid is not determined by market forces of supply and demand, but is set by the operators. If not regulated, this scenario leads to monopoly rate and market distortion by a dominant telephone operator.

Termination charges are payable for using another operator's infrastructure. Termination charges are not payable in respect of calls made within one network. If termination charges are high, subscribers find it expensive to call outside their network. Incentive to join another network is also limited. Competition is, therefore, curtailed.

Mr. Speaker, Sir, the Communications Commission of Kenya (CCK), after a participatory expert study, developed a grind path for the gradual reduction of termination charges from Kshs442 in 2009 to Kshs221 in 2010; then to Kshs1.44 in 2011 and Kshs1.15 in 2012 and Kshs0.99 in 2013, respectively.

How has the industry performed since the 50 per cent reduction of the inter-connection rates in September, 2010? I wish to table the quarterly statistics report of the CCK published in January, 2011, which illustrates the following in respect of the fourth quarter of 2010 after the reduction.

(Mr. Raila laid the document on the Table)

Mr. Speaker, Sir, there were 1.9 million new mobile subscriptions representing a growth of 9.5 per cent. This is the highest growth recorded over the last three quarters of 2010. There was an increase of subscriptions after the prices went down.

Secondly, mobile tariffs have continued to decline with prepaid subscribers being charged at an average of Kshs2.65 on net calls per minute against Kshs2.50 for postpaid

subscribers. This is a 33.4 per cent reduction for prepaid subscribers and 55.5 per cent for the postpaid subscribers.

Mr. Speaker, Sir, voice traffic and voice mobile networks increased from 187 million minutes to 405 million minutes. Roaming out voice traffic increased from 19.8 million minutes to 24.3 million minutes, while roaming in voice traffic increased from 4.4 million minutes to 7.4 million minutes.

Mr. Speaker, Sir, as I said last week, VAT and Excise Tax collections on airtime have declined with reduced tariffs. However, that is compensated by other macro-economic variables such as enhanced access and affordability of communication services by the poor, reduction in inflation, reduction in the cost of doing business and increased attractiveness. Globally, the industry's trend shows that calling prices tend to decrease as volume and rate exchange increases. Revenue in the mobile telephony sector tend to decline from voice and increase in data and value addition services as the market matures. Kenya is no exception.

Mr. Speaker, Sir, the case of Sri Lanka was raised in the House last week. Sri Lanka is a country with a population of 20 million people and a subscriber base of 16.3 million or a penetration rate of about 81 per cent. Mobile operators in Sri Lanka are five - Mobitel, Electoteks, Airtel Sri Lanka, Hutch and Dialog. In a country where penetration is very high compared to Kenya's 60 per cent, driving penetration is not one of the regulator's key focus. In Sri Lanka, there is no paid mobile termination regime where revenues are kept by the originating network. This is called "center keeps it all." With no mobile termination payments in place, there is no compensation for operators or calls terminated in their networks by others. In light of the above, operators threatened to stop inter-connection and hence, the Sri Lankan regulator intervened and introduced paid mobile termination regime and a floor on retail prices. The scenario is very different in Kenya which has been having a paid interconnection regime for a very long period. Operators get paid for interconnection for all calls terminated on their networks by other operators.

Another issue regarding outsourcing of customer care services by Safaricom was raised last week. Safaricom has invested heavily in its own call center with 1,200 employees. Its competitors, on the other hand, have outsourced their customer care services to Kencell, a Kenyan Company; Horizon, a Kenyan Company; and, Spanco, an Indian Company that is setting up a branch in Kenya. It is clear that outsourcing does not necessarily lead to job losses as the call centers are in Kenya and the employees are also Kenyan.

Mr. Speaker, Sir, let me now turn to the future of the sector. On 1st April, 2011, mobile number portability will be launched in Kenya. This will allow customers to freely change networks without changing numbers. The taskforce will advise on the reasonable mobile number portability charge as well as the off- air periods to effect such portability.

With regard to mobile money transfer services, each operator currently operates his own unique platform with an independent settlement mechanism, all outside the banking system. The taskforce will recommend how mobile banking platforms can be integrated to allow for inter-operator transactions and networking with the banking system. However, this must not undermine the speed and low cost by which consumers are able to liquidate the e-value of their mobile handsets.

Presently, mobile operators largely own and operate independent infrastructure assets such as towers. Sharing of such infrastructure facilities will reduce the cost of providing services to the consumers and translate into low tariffs. The taskforce will make recommendations in this respect. Spectrum charges are presently set by the Communications Commission of Kenya (CCK) at the point of entry. The Government has steadily been reducing spectrum charges. The Government is considering placing such charges on a revenue sharing formula. The taskforce will also review the proportionality of the 0.5 percent charge on the annual gross turnover of each operator for universal access fund. How to make management of the Fund more inclusive, transparent and accountable will be explored.

Finally, the law is being reviewed to instill stiffer penalty, including custodian punishment for persons found guilty for infrastructure vandalism such as theft of copper wires and cutting of cables. The Kenya Police has been sensitized on the problem. The local authorities who grant way-leaves have been instructed to ensure the security of the cables.

Thank you.

Mr. Speaker: We will take a maximum of seven clarifications. We will begin with the hon. Member for Yatta.

Mr. C. Kilonzo: Thank you, Mr. Speaker, Sir. I wish to thank the Right Honourable Prime Minister for coming up with a more comprehensive response to this matter. I need him to clarify, with your permission, the following three issues. One, whether the Government believes on the principle that price wars must make business sense to the extent that people should not lose employment and that the Government should not lose revenue. Secondly, he should clarify whether the Government considers telecommunication sector as a vital and strategic sector in which it should have a share and that local ownership is vital to ensure that we are not dependent on foreign companies. Finally, to avoid mobile operators setting up cartels as it has been in the oil sector, could he clarify whether there is a policy by the Government to ensure that the same mobile companies do not set up cartels later on?

Mr. Ethuro: Mr. Speaker, Sir, I wish to commend the Prime Minister for that in-depth touch of the subject. However, I would like him to clarify the following. One, what is the Government doing in terms of infrastructure sharing so that new players can still access the new markets? In terms of the universal fund service, the Prime Minister has said that 60 per cent penetration has taken place. Most of those operators concentrate on urban areas because of money. The Government must make sure that the other areas, particularly in northern Kenya, which have been inaccessible in the past, are brought to the same position as the rest of the country. What will the Government do to ensure that all those areas are covered by mobile telephony?

Mr. Mungatana: Mr. Speaker, Sir, I am surprised that concerned the this task force will miss out on the question of e-waste based on the Terms of Reference (ToRO). The Prime Minister has said that we have over 20 million users of the mobile handsets. Nobody is talking about what happens when it comes to the disposal of these mobile handsets. We are being given newer handsets every other day and yet there is no disposal system in place. We all know that these handsets have materials that are dangerous to human safety. I want the Prime Minister to tell us what the Government is doing about e-waste, particularly with regard to the handsets. If it is possible, could he undertake to tell

this task force to add, as one of the ToRs, how to dispose of these handsets? In fact, can they look at the possibility of creating a fund that will deal with this menace? We are dealing with a dangerous time bomb!

Mr. Washiali: Mr. Speaker, Sir, I want to join my colleagues in thanking the Prime Minister for the Statement. However, I do not know whether the Prime Minister is aware that this gadget has enhanced cheating. The users of mobile phones cheat a lot especially with regard to location. I do not know what the Prime Minister's Office is doing to curtail that. In Uganda, for example, if you are in Bugiri, the handset will tell you that you are in Bugiri. The same applies to other locations in Uganda. What is the Government doing to ensure that this gadget is not used to cheat with regard to the location one is?

The other problem I have is about---

Mr. Speaker: Order, Member for Mumias! The only person we allow more than one clarification is the owner otherwise, the rest normally would do one clarification per hon. Member.

Mr. Magwanga: Mr. Speaker, Sir, allow me to thank the Prime Minister for the elaborate Statement.

There is a policy in place that all mobile phone users must be registered. This came as a result of misuse of phones in this country. Could the Prime Minister state whether the registration exercise is on or it has been stopped?

Dr. Nuh: Mr. Speaker, Sir, while I laud the Prime Minister for the efforts they are making, we all know that the mobile telephony industry relies on markets. Mr. Ethuro talked about places in northern Kenya where the mobile phone service providers may not venture. This is because those areas have a low population density. What is the Government doing about this matter? It is the sole responsibility of the Government to ensure that these people are connected. What incentives; not only in terms of infrastructure, but also waivers, is the Government giving to mobile phone service providers to venture into areas with low population density?

Mr. Speaker: The Member for Lari is the last one!

Mr. Njuguna: Mr. Speaker, Sir, while thanking the Prime Minister for the political statement he issued yesterday concerning the prevailing situation in the country, I would like him to indicate to this House what is happening to the Safaricom network. This is because after the retirement of Mr. Michael Joseph, there has been poor reception or networking in our areas of operation. This is likely to compromise security matters in those areas.

Mr. Speaker: Prime Minister, you may now respond.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, the hon. Member for Yatta was concerned about price wars. He said that they should not lead to the collapse of companies or loss of jobs or both. As I mentioned last week, competition is generally healthy for as long as the playing field is level so that all the actors compete fairly. This is really the role of the Government in this particular market. Since this competition started, costs have gone down for the benefit of our people. Now the people are able to talk much more frequently at longer times than they could before. The hon. Member can actually confirm that the number of people calling him to tell him, "*Mheshimiwa* call me back, I have no money" have actually reduced because of this price war. So, there are greater benefits.

I know that all these companies are in business and they know how far they can go. I had a very healthy discussion with them yesterday and I can assure the hon. Member that his fears, as of now, are not justified. I agree with him that the telephone sector is vital. The telephone sector is vital and crucial to our economy. Indeed, it is a very strategic sector because it affords connectability with our people. It has made transfer of money from one destination to another much easier; and it has made our economy much more efficient. It does not, therefore, mean that because it is strategic, the Government must own it. The days of public ownership of assets, or means of production, or what they called, “the commanding height of the economy” are long gone. We have now allowed the private sector to be the engine of growth and development. That is why we are trying to attract more investment in our country.

Mr. Speaker, Sir, we are also inviting our own people to participate much more effectively in our economy through, for example, the stock market. Our stock exchange is very vibrant. It is the avenue through which our people access ownership of the economy. Indeed, that is a very liberalized sector. I invite the hon. Member to canvass his constituents and other Kenyans, generally, to participate more effectively in the stock market.

The hon. Member will remember that just recently, Safaricom floated its Initial Public Offer (IPO) and many people enlisted, I being one of them. As I said, when you do so, you know that you are gambling. It can pay handsomely or you can lose.

Mr. Speaker, Sir, about the cartels, that is something which should be left to history. The Government does not encourage the formation of cartels. That is why there is a regulator to ensure that there is competition. We do not want to create cartels. We are actually trying to break cartels, so that the market forces of supply and demand can be able to allocate resources in our country.

Hon. Ethuro and the Member for Bura later on asked the same question. Hon. Ethuro, first, talked about infrastructure sharing and, secondly, penetration, particularly in the remote areas of the country. One of the restricting factors has been lack of co-ordination or co-operation amongst the various operators. That is the reason as to why part of the work of the task force is to look at the possibility of infrastructure sharing, so that the operating costs for all the operators can be reduced. Where an operator has already led the way by putting up, say, a mast, another operator does not have to duplicate. The operator who has put up the mast can allow the operators to use the existing infrastructure. So, infrastructure sharing is one of the tasks we have given to the task force.

So, as I said, the Government is playing its role of trying to regulate the sector and make it easier for mobile phone operators to reach far-flung parts of the country, where it would be uneconomical for a single operator to operate.

Mr. Speaker, Sir, hon. Mungatana was concerned about what he called “e-waste” or disposal of assets, particularly old telephone handsets. This does not only refer to telephone handsets. It includes computers and other things and the way we dispose of them. Even plastic is another area. Therefore, the issue of waste disposal is being addressed by the Ministry of Environment and Mineral Resources, for example, how to dispose of used computers in a way that they do not spill the poisonous components or chemicals that are in them. This is an issue which is being addressed elaborately by the Ministry of Environment and Mineral Resources.

Mr. Speaker, Sir, there is a question by hon. Washiali, which you ruled out of order---

Mr. Speaker: Order, Prime Minister! I allowed one question. So, give clarification to one question.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, on the issue of the settings of mobile phone gadgets, let me clarify that the position of a handset is known, except that those handsets do not have GPS to show clearly where they are. So, the police are able to track your mobile phone handset and locate you, as you make phone calls. That is how they are able to arrest most of the thieves who use mobile telephony. So, we have the capacity to track and locate you very accurately.

Mr. Speaker, Sir, on hon. Magwanga's question, I would like to confirm that the registration of users is ongoing.

I have answered the question by Dr. Nuh. On the question raised by the MP for Lari, I do not want to associate the problems that Safaricom is having, in terms of network connectivity, to the retirement of Mr. Michael Joseph. These are technical problems which any company can be experiencing. I know that Safaricom is working towards eliminating the frequencies of network breakdown.

Eng. Rege: On a point of information, Mr. Speaker, Sir.

Mr. Speaker: The Rt. Hon. Prime Minister, do you want information from Eng. Rege?

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, I accept the information.

Mr. Speaker: Very well! Proceed, Eng. Rege.

Eng. Rege: Mr. Speaker, Sir, I want to join other hon. Members in congratulating the Prime Minister for the elaborate information on competition in mobile network in Kenya. I just wanted to give information on the---

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. This is the Prime Minister's Time, and the Prime Minister has given the Government's position on the issue at hand. Is it in order for Eng. Rege to be informing the Prime Minister of the Republic of Kenya?

(Eng. Rege remained standing as Mr. Ethuro raised his point of order)

Mr. Speaker: Order! Order! Member for Rachuonyo, you are actually out of order to the extent that after the Member for Turkana Central caught the Chair's eye, you should have resumed your seat. So, apologise for that one and then you may proceed to give the information, because the Prime Minister has accepted that information.

Eng. Rege: Mr. Speaker, Sir, I apologise profusely.

Mr. Speaker, Sir, I would like to give information on the---

(Mr. Ethuro stood up in his place)

Mr. Speaker: Order, Member for Turkana Central! I have rationalised this matter. The Member for Rachuonyo can very well give information to the Prime Minister as a friend of the Government. There is nothing wrong with that.

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

Mr. Speaker: Proceed!

Mr. Ethuro: Mr. Speaker, Sir, I stand directed. If that appreciation is there by the Prime Minister, then it is only fair that he appoints the Member for Rachuonyo his Minister for Information and Communications!

(Laughter)

Mr. Speaker: Proceed, Member for Rachuonyo.

(Mr. Raila stood up in his place)

Mr. Speaker: Prime Minister, please, just hold your horse, unless it is very interesting and important.

The Prime Minister (Mr. Raila): Mr. Speaker, Sir, for the hon. Member's information, Eng. Rege is also the Chairman of the Departmental Committee on Energy, Communication and Information.

Mr. Speaker: Very well!

Eng. Rege: Mr. Speaker, Sir, on the issue of cheating using mobile phones, there is a feature on a mobile handset, which is either turned on or off by the owner of the handset. This feature can also be activated by a mobile phone operator. An operator can have a card in his network with that kind of feature. As a user passes near a base station, if the GPRS feature on his handset is on, he will be informed that he is passing on Ngong Road or something like that. So, this is not something which can be relied upon by the equipment itself.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Very well! The matter must rest there.

Hon. Members, we have to take requests for Ministerial Statements.

STATEMENTS

MINISTERIAL STATEMENTS

VIOLATION OF HUMAN RIGHTS OF SOMALI NATIONALS AT JKIA

Amb. Affey: Mr. Speaker, Sir, I rise to seek a Ministerial Statement from the Minister of State for Immigration and Registration of Persons regarding three Somali nationals, namely, Abshir Jama, Abdirahman Mohamed and Hassan Shatok, who have been stranded at Jomo Kenyatta International Airport (JKIA) for the last five days.

In his Statement, the Minister should confirm whether these three Somali nationals possess Zambian residential and business permits. Noting that the rights of these Somali nationals are being violated on Kenyan territory, the Minister should outline the steps being taken by his Ministry to address this dehumanising act, ensure that their rights are not further infringed, and that they are returned to Zambia to rejoin their distressed families.

Finally, the Minister should confirm whether, in fact, JKIA has become an attractive airport where kidnapped foreigners could be transited through to other countries.

Mr. Speaker: Yes, Minister for Immigration and Registration of Persons! Dr. Wekesa, can you hold brief for your colleague?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I undertake to convey the information to the Minister for Immigration and Registration of Persons.

Mr. Speaker: When will the Ministerial Statement come?

The Minister for Forestry and Wildlife (Dr. Wekesa): Mr. Speaker, Sir, I really would not speak for him.

Mr. Speaker: What about Tuesday, at 2.30 p.m.?

The Minister for Forestry and Wildlife (Dr. Wekesa): It is okay, Mr. Speaker, Sir.

(Amb. Affey stood up in his place)

Mr. Speaker: Order, Amb. Affey! Let somebody else have your place.

Amb. Affey: Mr. Speaker, Sir, the matter I have raised is very critical; we have three Somali nationals who have been stranded for five days at the airport. Tuesday next week is a far away. I would like the Minister to bring it tomorrow, so that this matter is addressed. I am sure the Minister will get the information.

Mr. Speaker: Order! You have made your point! Let us make an attempt. We will try tomorrow at 2.30 p.m. due to the urgency of the matter. Minister, these persons are unlawfully detained. Any other request? Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

THE JUDICIAL SERVICE BILL

Clause 2

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We are in the Committee stage. I wish to propose that Clause 2 be part of the Bill. Minister, do you have an amendment?

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

THAT, Clause 2 be amended by:-

- (i) deleting the definition of judicial staff and substituting therefor a new definition “means persons employed in the Judiciary and in the Commission but without power to make judicial decisions”;
- (ii) deleting the word “Minister” in the definitions clause and substituting therefor the words “Cabinet Secretary”.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I have another amendment to Clause 2. Do we dispose of the Minister’s first?

The Temporary Deputy Chairman (Mr. Ethuro): The one before us is a proposal by the Minister. So, we dispose of his and then we proceed.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I support.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Odhiambo-Mabona, we are just debating whether to allow your amendment because there is no notice of your amendment to the Chair. Is your amendment to amend the Minister’s amendment, or it is a different amendment to the clause?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, my notice is the Committee’s. There is an amendment to Clause 2 by the Committee, and it is on the Order Paper.

The Temporary Deputy Chairman (Mr. Ethuro): Then let us dispose of the Minister’s amendment.

(Question, that the words to be left out be left out, put and agreed to)

*(Question, that the words to be inserted
in place thereof be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Mungatana, do you have an amendment?

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, if you look at the amendment I have proposed, the amendment proposed by the Minister and the amendment proposed by the Committee, they seem to have the same sense.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mungatana, we will guide you. We just wanted it formally on the record because you are the one who brought the amendment. But it has already been overtaken by the Minister’s amendment.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, you see there is the other one by the Committee. I will withdraw mine.

The Temporary Deputy Chairman (Mr. Ethuro): Well done. Hon. Odhiambo-Mabona!

Clause 2

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 be amended –

(a) in the definition of the term “judicial officer”, by deleting the words “other than” appearing immediately after the words “Act of Parliament” and substituting therefor the word “including”;

(a) by numbering the existing provision as subclause (1);

(b) by inserting the following new subclause immediately after the newly numbered subclause (1) –

(2) “Until after the first elections under the Constitution, any reference to a Cabinet Secretary shall be construed to mean Minister and any reference to a Principal Secretary shall be construed to mean Permanent Secretary”.

(Question of the amendment proposed)

The Minister for Justice, Constitutional Affairs and National Cohesion (Mr. M. Kilonzo) : Mr. Temporary Deputy Chairman, Sir, I welcome the amendment as long as it can be collated, so that it does not collide with the one we have already made; the sense and the value are the same. I welcome it to that extent.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 2 as amended agreed to)

Clause 3

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 3 be amended-

(a) by deleting the words “secure provisions therein that shall, among other things”;

(b) in paragraph (j), by inserting the words “administration of justice and the protection of vulnerable children” immediately after the words “gender equity”.

I also wish to propose a further amendment to paragraph (j) as per the order paper so that it reads “facilitate the promotion of gender equity and protection of the vulnerable in the judiciary and administration of justice”.

The Temporary Deputy Chairman (Mr. Ethuro): Members, it is Clause 3 on page 2146 of the Order Paper.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I am proposing a further amendment to the amendment.

The Temporary Deputy Chairman (Mr. Ethuro): So, you are proposing 3(a) and 3(b) as already on the Order Paper?

Mrs. Odhiambo-Mabona: Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Is there anything else that you want to add?

Mrs. Odhiambo-Mabona: Yes, Mr. Temporary Deputy Chairman, Sir, It is Paragraph (j). I want to propose a further amendment to our amendment to Paragraph (j) so that it reads: ‘facilitate the promotion of gender equity and the protection of the vulnerable in the Judiciary and in the administration of justice’.

The Temporary Deputy Chairman (Ms. Odhiambo-Mabona): Order, hon. Odhiambo-Mabona! The way we dispose amendments is that we start with what you already have, and then you get another Member to move a further amendment to the amendment which is acceptable; you cannot do all of them at a go.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, then in that case I wish to propose amendments to Clause 3 as per the Order Paper.

(Question of the amendment proposed)

The Minister for Justice, Constitutional Affairs and National Cohesion (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I accept and welcome this amendment. It will add value to the Bill.

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place therefor
be inserted, put and agreed to)*

(Clause 3 as amended agreed to)

Ms. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, I just wanted direction as to how we can move it.

The Temporary Deputy Chairman (Mr. Ethuro): We are already past Clause 3.

(Laughter)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I just wanted direction as to when we can move the amendment.

The Temporary Deputy Chairman (Mr. Ethuro): We are already past Clause 3. I took the “liberty” to express it. We are in the Committee of the Whole House and this House has procedures and rules. The Chair has even facilitated you enough by allowing you a chance.

Mrs. Odhiambo-Mabona: Much obliged, Mr. Temporary Deputy Chairman, Sir.

(Clause 3 as amended agreed to)

(Clause 4 agreed to)

Clause 5

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended by-

(a) renumbering Sub-clause (1) as Sub-clause (1A);

(b) inserting the following new Sub-clause immediately before the renumbered Sub-clause (1A)-

“(1) The Chief Justice shall be the head of the Judiciary.”

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I welcome and accept this amendment because it adds value to the Bill.

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): We will come to your amendment Mr. Mungatana. Yours is already recorded. The Chair will be charitable to you.

*(Question, that the words to be inserted
be inserted put and agreed to)*

(Clause 5 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): There is another amendment by Mr. Mungatana.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended-

(a) in Sub-clause (1), by deleting the word “President” and substituting therefor the expression “Lord Judge”;

(b) in Sub-clause (2) by-

(i) deleting the word “President” appearing in paragraph (a) and substituting therefor the expression “Lord Judge”;

(ii) inserting the words “and cause the report to be published in the Gazette , and a copy thereof sent, under the hand of the Chief Justice, to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption” immediately after the word “justice” in paragraph (b);

(c) in Sub-clause (3), by deleting the expression “Vice-President” and substituting therefor the expression “Deputy Lord Judge”.

Mr. Temporary Deputy Chairman, Sir, just as we said during the Second Reading, this is basically to create terminologies that will distinctly clear issues of separation of power.

I beg to move.

The Temporary Deputy Chairman (Ethuro): I have some difficulties as the Chair but I would like to give the first bite to the Minister.

(Question of the further amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I would like to draw the attention of my very good learned friend. While I respect the views he has in this amendment that this amendment will violate the Constitution, the definitions of the key officers of both the Supreme Court, the Court of Appeal and the High Court is already contained in the Constitution. For example, if you look at Article 164 on page 104 of the Constitution, you will find that it says that there shall be a President of the Court of Appeal who shall be elected by the judges of the Court of Appeal from amongst themselves. For the High Court, there is Article 165 on page 105. Sub-Article 2 of Article 165 says that there shall be a Principle Judge of the High Court who shall be elected by the judges of the High Court. With regard to the Supreme Court, the position is already provided for in Article 163 which says that there is established a Chief Justice who shall be the President of the court. Therefore, I would like to plead with my learned friend to reconsider this amendment.

I oppose the amendment.

The Temporary Deputy Chairman (Ethuro): Mr. Mungatana, it only needed to be pointed out.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I withdraw that amendment to the clause but I wish to say that I concede on the bits that the Minister has addressed. So, I will not insist on replacing the president. However, there is Clause 5D(2) that is specific on the report. I am sure the Minister has seen that. We wanted the report under the hand of the Chief Justice to be send to each one of the two Clerks of the two Houses of Parliament to be placed before them for debate and adoption. As I said during the Second Reading, we wanted the report on the performance of the judiciary---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Mungatana. I will give you the chance. Let us dispose of the clauses first.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, let me just withdraw the other ones.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, since the hon. Member has withdrawn the proposed amendment to Clause 5A, 5D(1) and 5(c), he is left with amendment to Clause 5D(2) which I invite him to propose.

Mr. Minister you do not need to add more. Let him now propose what is acceptable.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5b(ii) be amended by inserting the words “and cause the report to be published in the Gazette, and a copy thereof sent, under the hand of the Chief Justice, to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption” immediately after the word “justice” in paragraph (b);

Mr. Temporary Deputy Speaker, Sir, I was just proposing that this report be debated by both Houses. I am sure that the Minister has no problem with that.

The Temporary Deputy Chairman (Ethuro): I, therefore, wish to propose that Clause 5b(ii) be amended as proposed by Mr. Mungatana on the Order Paper.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I welcome this very much. I think this country deserves this kind of approach and I want to salute the thinking that the hon. Member has brought to bear. I support, accept and welcome it for the country.

*(Question, that the words to be inserted
be inserted put and agreed to)*

(Clause 5 as amended agreed to)

Clause 6

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

THAT, Clause 6(1) be amended by deleting the word “three” and substituting therefor the word “five”.

During the Second Reading, the House proposed that we increase the number of years from three to five.

I beg to move.

(Question of the amendment proposed)

*(Question, that the word to left out
be left out, put and agreed to)*

*(Question, that the word to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 6 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): There is a further amendment by Mr. Mungatana.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 6 be amended-

(a) in subclause (1), by deleting the word “President” and substituting therefor the expression “Lord Judge”;

(b) in subclause (2), by deleting the word “President” and substituting therefor the expression “Lord Judge”;

(c) in subclause (3), by deleting the word “Resident” and substituting therefor the expression “county”;

(d) in subclause (4), by deleting the word “President” and substituting therefor the expression “county”;

Mr. Temporary Deputy Chairman, Sir, however, I wish to withdraw the proposed amendment on (a) and (b). We can dispose of these ones so that I can go on with the others like we did before. So, I withdraw those two.

(Amendment to part (a) and (b) withdrawn)

Mr. Temporary Deputy Chairman, Sir, I wish to propose that sub-clause 3 be amended by removing the word “Resident” and substituting therefor the word “county”. The reason for this, as we said before is that we need to introduce the position of county judge.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, first, I wish to acknowledge the withdrawn amendment by Mr. Mungatana and propose the ones that have remained.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I want to thank Mr. Mungatana for withdrawing (a) and (b). I welcome (c) and (d) because they add value to the Bill.

(Question, that the words to be left out be left out put and agreed to)

(Question, that the words to inserted in place thereof be inserted, put and agreed to)

(Clause 6 as further amended agreed to)

Clause 7

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 be amended by deleting the words “research assistant” and substituting therefor the words “legal researcher”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Minister, sometimes if you have nothing serious you can only nod and we will be happy.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): *Sawa*; then I will do so.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof)

be inserted, put and agreed to)

(Clause 7 as amended agreed to)

Clause 8

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 8 be amended in sub-clause (2) by inserting the word “of” immediately after the word “execution”.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, how will you record my nod?

The Temporary Deputy Chairman (Mr. Ethuro): You are at liberty to open your mouth, but not always. I am sure there will be better opportunities when you will wish to open it even wider.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I have further amendment to Clause 8.

The Temporary Deputy Chairman (Mr. Ethuro): You can move them once we dispose of this one.

*(Question, that the word to be inserted be inserted
put and agreed to)*

Minister, you have a further amendment to Clause 8?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, you have in your possession an amendment proposed by Ms. Shebesh, which I have adopted. We would therefore suggest that, subject to that amendment which you have, I move:-

THAT, Clause 8 be amended by adding a new 1(l) after sub-clause (k) to read as follows, “ensure the efficient devolution of the administrative units to county levels, including a High Court Division in each county”.

*(Question, that the words to be added be added,
put and agreed to)*

(Clause 8 as amended agreed to)

Clause 9

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 9 be amended in paragraph (b) by deleting the word “five” and substituting therefor the word “three”.

(Question of the amendment proposed)

*(Question, that the word to be left out be left out,
put and agreed to)*

*(Question, that the word to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 9 as amended agreed to)

Clause 10

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

THAT, Clause 10(1) be amended by deleting the word “may” and substituting therefor the word “shall”

(Question of the amendment proposed)

*(Question, that the word to be left out be left out
put and agreed to)*

*(Question, that the word to be inserted in
place thereof be inserted, put and agreed to)*

(Clause 10 as amended agreed to)

(Clause 11 agreed to)

Clause 12

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 12 be amended in subclause (2) by—

(a) deleting the word “them” appearing immediately before the words “in writing” and substituting therefor the words “him or her”;

(b) inserting the words “or herself” immediately after the word “himself”.

I would just like to bring to the attention of the Minister that there are similar deficiencies in the rest of the Bill that could be cured through other means.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Minister, you must pronounce yourself on this one, because in the Constitutional dispensation you cannot just treat it as a small typing error. It could mean serious misgivings about gender considerations.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I stand guided. This proposal adds value to this law and I welcome it.

*(Question, that the word to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 12 as amended agreed to)

(Clause 13 agreed to)

Clause 14

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 14 be amended by inserting the words “to sub-committees and the secretariat” immediately after the word “delegate”.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! The Minister has a subsequent amendment which might affect the other one. Therefore, we would like to take the Minister’s amendment first and then we can come back to this one if his amendment will not have cured hon. Odhiambo-Mabona’s.

Minister, please, proceed!

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

THAT, Clause 14 be amended by deleting the words, “delegates such of its functions” and substituting therefor the words, “hire such experts or consultants or delegate such of its functions to sub-committees or to the secretariat”.

Mr. Temporary Deputy Chairman, Sir, this will add value to the law.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, it actually adds strength to our earlier proposal. Therefore, I support it and withdraw my amendment.

The Temporary Deputy Chairman (Mr. Ethuro): I therefore, wish to confirm that the Committee’s amendment as per the Order Paper has been withdrawn. The only amendment to Clause 14 is from the Minister.

(Proposed amendment withdrawn)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 14 as amended agreed to)

Clause 15

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 15 be amended in paragraph (a) of sub-clause (1) by deleting the words “the President shall” and substituting therefor the words “until after the first elections under the Constitution, the President shall, subject to the National Accord and Reconciliation Act and after consultation with the Prime Minister”.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Ethuro): Minister, we need an indication. As I said, you can still do it from where you are seated.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I participated in the drafting of the National Accord and Reconciliation Act. I accept and welcome this amendment.

The Temporary Deputy Speaker (Mr. Ethuro): Subject to the rules of relevance, I wish to put the Question.

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 15 as amended agreed to)

Clause 16

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

THAT, Clause 16 be amended by inserting the following new proviso immediately after the word, “ballot”-

“Provided that the nominating body shall ensure that its nominees comply with the requirements set out in the Constitution”.

Mr. Temporary Deputy Speaker, Sir, we just want to protect the Constitution when nominations are being made.

The Temporary Deputy Chairman (Mr. Ethuro): Minister, the copy we have reads, “complies” but you have read the correct one which says, “comply”.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): I apologise, Mr. Temporary Deputy Chairman; it is a typing error. It should be “comply” not “complies” because the nominees are in the plural.

(Question of the amendment proposed)

*(Question, that the words to be inserted be inserted,
put and agreed to)*

(Clause 16 as amended agreed to)

(Clause 17 agreed to)

Clause 18

Mr. Gumbo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18 be amended by inserting the following new paragraph immediately after paragraph (c)-

“(d) a lawyer in private practice who appears for litigants in court”

Mr. Temporary Deputy Chairman, Sir, as I propose this amendment, I think as I said during my contribution during the Second Reading of this Bill, this amendment is supposed to protect magistrates and judges. It is not targeting any individual. We have discussed with hon. Mungatana. His amendment was trying to stop practising advocates from sitting on the Judicial Service Commission. What my amendment hopes to do is to stop practising advocates who are members of the Commission from appearing in court, though they can still practice law. I hope Members will see that.

(Question of the amendment proposed)

Mr. Affey: Mr. Temporary Deputy Chairman, Sir, I rise to object to this amendment. As you realize, this issue was a subject of a court ruling about two weeks ago. The High Court ruled that a practising lawyer can still be a member of the Judicial Service Commission. Besides---

Mr. Gumbo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I am not a lawyer, but it is not correct that the High Court ruled that a practising lawyer can still serve in the Judicial Service Commission. What the High Court ruled was that there is no law to stop a practising advocate from being a member of the Commission.

Mr. Affey: Mr. Temporary Deputy Chairman, Sir, besides, the matter actually goes to the heart of the Constitution. Chapter 171 deals with the establishment of the Judicial Service Commission, Article 171(f) is very clear; two advocates, one woman and one man, each of whom has at least 15 years of experience, elected by the members of the statutory body responsible for the professional regulation of advocates.

The Constitution has not disallowed a member of the Law Society of Kenya from practising in the normal way he or she practises while at the same time not going to the

Judicial Service Commission. Therefore, I think this amendment goes contrary to what the Constitution provides, and besides, it discriminates. The Constitution does not allow any law that discriminates against any cadre, be it a practising lawyer or a non-practising lawyer. The framers of the Constitution actually knew what they meant by “a practising advocate who can bring experience of practice to the Commission”. Therefore, I think this amendment is meant to achieve other objectives other than what the Constitution envisages.

The Temporary Deputy Chairman (Mr. Ethuro): Order hon. Affey! Make your case; do not impute improper motives on other hon. Members. Hon. Minister!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I sincerely would like to suggest to my very good friend; the hon. Member as well as my learned friend, to look very carefully at the Constitution and the composition of the Judicial Service Commission. If you pass this amendment, it would mean that, then you are in fact removing the description of these people coming from the Law Society of Kenya, because they are required to be advocates. Under the Advocates Act, advocates are sworn in by the Chief Justice to practice law, including appearing before judges. Therefore, I also want to point out, with utmost humility that appointment of judges and the functions of the Judicial Service Commission will be occurring from time to time. It is not the sort of thing that would intimidate magistrates and judges before whom a member of the Judicial Service Commission is appearing.

I oppose.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I wanted to support hon. Gumbo’s proposition for the simple reason that there is a clear distinction between my amendment, which was going to be contrary to the Constitution, as opposed to the amendment of hon. Gumbo who is simply saying that these people who will be going before courts should not, because amongst the duties they will have is to promote and even transfer judges and judicial staff. So, we cannot rule out intimidation that can occur. In the same breath, I think my amendment is the one that would be contrary to the Constitution like the Minister said, because it is wider. But this one is very restrictive.

Mr. Temporary Deputy Chairman, Sir, the Constitution is very clear. The Bill of Rights can be limited. So, this issue of segregation can be limited by statutes. This is one of the statutes. We are saying: Yes, advocates of the High Court can be members of the Judicial Service Commission, but those who choose to continue going before magistrates and judges who expect their promotions to come from the same people---- That is what it is addressing. It is not addressing all advocates. So, I think it is a good amendment.

I support.

Mr. Affey: On a point of order, Mr. Temporary Deputy Chairman, Sir. We are speaking on a matter that touches on the Constitution. The Minister for Justice, National Cohesion and Constitutional Affairs has just advised that this goes against the Constitution itself as it is framed. Are we, therefore, in order to proceed with a matter that is clearly not in line with the constitutional provisions?

Mr. Duale: Mr. Temporary Deputy Chairman, Sir, picking from where Mr. Affey left, you need to look at Standing Order No.47 (3). If that amendment we are bringing is in contravention of the Constitution, then we need your direction and guidance.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, actually I think that there is an even bigger fundamental flaw, with all due respect to hon. Gumbo's amendment. If you look at Article 171 of the Constitution with regard to the Law Society of Kenya, it says in Section (f): "Two advocates, one woman and one man, each of whom has at least 15 years' experience, elected by the members of the statutory body responsible"

Hon. Gumbo is saying that he wants to insert a clause saying that instead of requiring two advocates, it will require a lawyer. That lawyer has not been defined. Would I be in order to suggest that this is an amendment that should be considered very carefully with circumlocution and suggest that my good friend reconsiders the matter together with Mr. Mungatana, so that we do not appear to be amending the Constitution. The Constitution requires two advocates and not a lawyer. For your information, a lawyer is very generic term that can include all manner of people, but your Constitution requires advocates. By that definition: "Must have practising certificate", meaning that they ought to appear before magistrates.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we need to make progress.

Yes, Eng. Gumbo!

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, I started off by declaring that I am not a lawyer and so, I am not an expert on matters of law. My position is that the intention is good. In fact, I am equating it, in a very simple way, to an employer appearing for justice before an employee. This is because magistrates and judges will be employees of the Judicial Service Committee. But I agree that by putting the word "lawyer," that is not what the Constitution intends. I do not want to belabour the matter. I could have asked the Chair to allow me to substitute the word "lawyer" with the word "advocate" as a further amendment, but in the circumstances, noting my position--- We will definitely have a clash of interests. There will definitely be problems of vested interests as we proceed, but in the circumstances, very reluctantly, indeed, I withdraw my amendment.

(Proposed amendment withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Now, we are left with hon. Mungatana's amendment.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I had indicated that I will withdraw my amendment.

(Proposed amendment withdrawn)

(Clause 18 agreed to)

Clause 19

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I think the functions of the Commission need not be devolved to the counties. But the functions of the---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Mungatana! You need to move your amendment, but because it is already written, you will just say “as per the Order Paper,” and then you can maybe justify it in one sentence.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I wanted to withdraw my amendment to Clause 19. The reason I am giving is that with the improvement on the functions of the Judiciary that was made by the Minister on Clause 8, I think we do not need to devolve the Commission, but we can devolve the judges.

Mr. Temporary Deputy Chairman, Sir, I wish to withdraw my amendment to Clause 19.

(Proposed amendment withdrawn)

(Clause 19 agreed to)

Clause 20

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, for the same reason, I wish to withdraw the proposed amendment to Clause 20.

(Proposed amendment withdrawn)

(Clause 20 agreed to)

(Clauses 21, 22, 23, 24 and 25 agreed to)

Clause 26

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 26 be amended in sub-clause (1) by deleting the words “without further appropriation than this Act and the budget of the Commission shall be a separate vote”.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. I wish to request hon. Sambu to give the import of his amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Sambu, could you explain your amendment?

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, this particular provision is not in line with the Constitution. This is because Section 221(6) says:

“When the estimates of national government expenditure, and the estimates of expenditure for the Judiciary and Parliament have been approved by the National Assembly, they shall be included in an Appropriation Bill, which shall be introduced into the National Assembly to authorize the withdrawal from the Consolidated Fund of the money needed for the expenditure, and for the appropriation of that money for the purposes mentioned in the Bill.”

Mr. Temporary Deputy Chairman, Sir, when you add the words “without further appropriation than this Act and the budget of the Commission shall be a separate vote,” two things will happen. First, the Constitution says that it should be included in the appropriation. Secondly, Section 173 of the Constitution says that the Judiciary shall only be one fund. So, as it is, it is not in line with the Constitution, but by removing or deleting the words “without further appropriation than this Act and budget of the Commission shall be a separate vote,” it means that you comply with Sections 221(6) and 173 of the Constitution.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I welcome the amendment because I think it adds value and also reflects the correct position of the Constitution. If it is approved by the House, I will withdraw my amendment because it will have been covered by this one.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I just want to confirm that hon. Sambu, in fact, is moving that amendment with the benefit of the input of the Committee of Budget, which I am a Member and he is the Vice-Chairman.

So, it is a good amendment, and we should support it.

*(Question, that the words to be left out be left out,
put and agreed to)*

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, there are two amendments by the Minister----

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, you did not propose that Clause 26 as amended be part of the Bill.

The Temporary Deputy Chairman (Mr. Ethuro): Order! Hold your horses, hon. Gumbo. I sit where I sit and you sit where you sit. I need to dispose of two others, so that it becomes now part of the Bill. Once, I make it part of the Bill before the other two amendments, I will be excluding those other amendments. We will get to where the hon. Member wants us to go.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, in view of the amendment by hon. Gumbo and the Committee on Budget, I wish to withdraw my amendments on Clause 26.

(Proposed amendment withdrawn)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, in light of the proposed amendment, I also wish to withdraw mine.

(Proposed amendment withdrawn)

(Clause 26 as amended agreed to)

Clause 27

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27 be amended in subclause (3) by deleting the word “not” appearing immediately before the words “be paid into the Consolidated Fund”.

(Question of the amendment proposed)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I welcome this amendment and accept it. I would have been happier with the Bill the way it is. However, hon. Mungatana has explained some of the reasons he had in the Second Reading and I accept them.

(Question, that the word to be left out be left out, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): We have further amendments. Hon. Members, I do not know whether you want to proceed with them or withdraw them. Yes, hon. Odhiambo-Mabona.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, perhaps, I would stand guided. We had a similar amendment. However, I notice that if we leave the last words “but shall be retained for purposes of the Fund” then it actually defeats the earlier amendments. So, I wish to propose a further amendment to hon. Mungatana’s amendment by deleting the words “But shall be retained for the purposes of the Fund”.

The Temporary Deputy Chairman (Mr. Ethuro): Then in that case since we have disposed of hon. Mungatana’s amendments you may just wish to maintain your own amendment. Then you can amend within that amendment. So, you can retain the words you want and withdraw the words you do not want.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27(3) be amended by deleting the words “But shall be retained for the purposes of the Fund”

(Question of the further amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): You should be able to give the Clerks-At-the Table the reconstructed amendment, because it was an amendment within an amendment.

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27 be amended in sub-clause (4) by inserting the words “and any other law on the regulation of the Fund for the time being in force” immediately after the word “section”.

This is in order to comply with Clause 173(5) of the Constitution.

(Question, that the words to be inserted be inserted,

put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Committee, you have further amendment?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 27 be amended –

- (a) in sub-clause (3) by deleting the word “not” appearing immediately before the words “be paid ”;
- (b) in sub-clause (4) by inserting the words “ and any other law on the regulation of the Fund for the time being in force” immediately after the word “section”.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Odhiambo-Mabona, I do not know whether you have looked at your amendments and hon. Sambu’s. The Chair feels they are the same. Once one is carried, then you may wish to withdraw yours.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I withdraw my amendments.

(Proposed amendment withdrawn)

(Clause 27 as amended agreed to)

Clause 28

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 28 be amended by—

- (a) deleting the words “Commission and the” appearing immediately before the word “Judiciary”;
- (b) deleting the word “their” appearing immediately before the word “functions” and substituting therefor the word “the”;
- (c) inserting the words “of the Commission and the Judiciary” immediately after the word “functions”.

Mr. Temporary Deputy Chairman, Sir, this is in order to comply with Clause 173 of the Constitution.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir---

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Odhiambo-Mabona is on her feet.

Mrs. Odhiambo-Mabona: Sorry, Mr. Temporary Deputy Chairman, Sir, I think I am sitting a little too far from you and that is why you did not notice me.

The Temporary Deputy Chairman (Mr. Ethuro): I actually saw you, but it is just in our proposed amendments, they must be listed so that we know whether you have one. Since we did not see your name, it was only Mr. Sambu.

Mrs. Odhiambo-Mabona: I was actually opposing the amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Sorry, we are past that stage. I have already put the Question. You oppose at the time of proposing the amendment.

Given that you represent the Committee, maybe you need to be more alert and agile.

(Clause 28 as amended agreed to)

Clause 29

The Temporary Deputy Chairman (Mr. Ethuro): There are several amendments and I wish we start with the Minister.

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

(i) THAT, Clause 29(2) be amended by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”

(ii) THAT, Clause 29(3) be amended by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary”

The reason is clear. It is just changing “Minister” to “Cabinet Secretary” to reflect the Constitution.

(Question of the amendment proposed)

*(Question, that the words to be left out be left,
put and agreed to)*

*(Question, that the words to be inserted
in place thereof be inserted, put and agreed to)*

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, mine was similar to the Minister’s so as I withdraw it.

(Proposed amendment withdrawn)

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 29 be amended—

(a) in subclause (2), by deleting the words “Minister responsible for finance” and substituting therefor the words “National Assembly for approval”;

(b) by deleting subclause (3);

(c) in subclause (4), by deleting the words “presented to the National Assembly under subsection (3)” and substituting therefor the words “by the National Assembly”.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 29 be amended—

- (a) in sub-clause (2), by deleting the words “and shall thereafter forward them to the Minister responsible for finance” immediately after the word “necessary”;

The Temporary Deputy Chairman (Mr. Ethuro): Mrs. Odhiambo-Mabona, our reading is the same with Mr. Sambu’s. Reconcile your accounts!

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I withdraw the proposed amendment.

(Proposed amendment withdrawn)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
put and agreed to)*

(Clause 29 (2) as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we still have further amendments to Sub-clause 3. Mr. Sambu!

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, in view of the fact that it is now by the National Assembly, Section 3 should all be deleted because it is not necessary. So, Sub-section three should also be deleted.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Sambu! We will do sub-clause by sub-clause. We are now in Sub-clause 3! I appreciate that you have another amendment on Sub-clause 4, but just restrict yourself to Sub-clause 3.

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I beg to move that Sub-clause 3 be deleted.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, since it is similar, I wish to withdraw.

(Proposed amendment withdrawn)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I accept.

The Temporary Deputy Chairman (Mr. Ethuro): What are you accepting? You are supposed to be proposing. You either move or you withdraw.

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

THAT, Clause 29 be amended -

“in sub-clause (3) to read “The Chief Registrar shall forward the estimates approved by the Commission under Sub-section (2) to the National Assembly for approval”

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, my understanding is that Mr. Sambu's amendments in effect deleted that amendment. So, I am not too sure what we are amending. It has been deleted.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, it looks like I was right originally. That is what I was accepting.

The Temporary Deputy Chairman (Mr. Ethuro): You were right originally but since it was an amendment, you say: "Given that you entertained the earlier one, then yours---

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I withdraw.

(Proposed amendment withdrawn)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 29(3) deleted)

Clause 29(4)

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 29 be amended –
(c) in sub-clause (4), by deleting the words "presented to the National Assembly under subsection (3)" and substituting therefor the words "by the National Assembly".

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

(Clause 29(4) as amended agreed to)

(Clause 29 as amended agreed to)

Clause 30

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 30 be amended in Sub-clause (1) by deleting the expression "three (3)" and substituting therefor the word "five".

(Question of the amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that, the word to be inserted in place thereof
be inserted, put and agreed to)*

*(Clause 30 as amended agreed to)
(Clause 31 agreed to)*

Clause 32

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 32 be amended in sub-clause (1) by inserting the words “which shall be gender representative” immediately after the word “Panel”.

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 32 as amended agreed to)

(Clause 33 agreed to)

Clause 34

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, the procedure will change a bit. We will go paragraph by paragraph and we will start with Paragraph (2)(b).

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

(i) THAT, Clause 34(2) (b) be amended by deleting the word “Minister” and substituting therefor the word “Cabinet Secretary.”

(Question of the amendment proposed)

*(Question, that the word to be left out be left out,
put and agreed to)*

*(Question, that the word to be inserted in place
thereof be inserted, put and agreed to)*

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 34 be further amended-

- (a) in subclause (2) by-
- (i) inserting the words “or his or her representative appointed in writing” immediately after the word “Judiciary” in paragraph (b).

(Question of the further amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

Clause 34(2)(c) and (d)

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I wish to move:-
THAT, Clause 34 be further amended-

- (a) in subclause (2), by-
- (ii) inserting the words “or his or her representative appointed in writing” immediately after the word “Attorney-General” in paragraph (c)
- (iii) inserting the words “or his or her representative appointed in writing” immediately after the word “Prosecutions” in paragraph (d);

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

Clause 34(2)(e)

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

- (ii) THAT, Clause 34(2)(e) be amended by deleting the phrase “Commissioner of Police” and substituting therefor the phrase “The person for the time being exercising command over the National Police Service.”

Mr. Temporary Deputy Speaker, Sir, I want it to be amended in this manner to reflect the provisions of the Constitution because the police will be headed by an Inspector-General of Police and not Police Commissioner.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place)

thereof be inserted, put and agreed to)

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 34 be further amended-

(a) in subclause (2), by-

(iv) inserting the words “or his or her representative appointed in writing immediately after the word “Police” in paragraph (e);

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mungatana, the Chair would like to advise subsequent to what the Minister has said that there will be National Police Service. Instead of the word “police” use the word “service”.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I wish to add the word “service”.

(Question of the further amendment proposed)

(Question, that the words to be inserted be inserted,

put and agreed to)

Clause 34(2)(f)(g)(h)(i)(j)

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT Clause 34 be further amended-

(a) in subclause (2), by-

(v) inserting the words “or his or her representative appointed in writing” immediately after the word “Prisons” in paragraph (f);

(vi) inserting the words “or his or her representative appointed in writing” immediately after the word “Kenya” in paragraph (g);

(vii) inserting the words “or his or her representative appointed in writing” immediately after the word “service” in paragraph (h);

(viii) inserting the words “or his or her representative appointed in writing” immediately after the word “affairs” in paragraph (i);

(ix) inserting the words “or his or her representative appointed in writing” immediately after the word “land” in paragraph (j);

(x) inserting the words “or his or her representative appointed in writing” immediately after the word “Services” in paragraph (n);

(xi) deleting the word “Minister” appearing in paragraph (b) and substituting therefor the words “Cabinet Secretary”;

(xii) deleting the word “Permanent” wherever it appears in paragraphs (h), (i) and (j), and substituting therefor the word “Principal”;

(b) by inserting the following new subclause immediately after subclause (4)-

“(5) Not more than two-thirds of the member of the Council shall be from one gender and the chairperson of the Council shall, during the first meeting of the Council, ensure that this requirement has been met.”

Mr. Temporary Deputy Chairman, Sir, simply speaking the import of this amendment is so that we do not have a situation where this council of the administration of justice offends the Constitution in terms of gender.

The Temporary Deputy Chariman (Mr. Ethuro): Hon. Members, it is just a matter of procedure. We are satisfied with (f), (g), (h), (i) and (j). If you look at (k) and (l), Mr. Mungatana has no amendments. So he cannot purport to move what he does not have.

Mr. Mungatana, you have others after that?

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I stand corrected. (k) and (l) could not have been part of my amendment, but (m) and (n).

The Temporary Deputy Chairman (Mr. Ethuro): So, we will dispose of the earlier ones because we are doing things sequentially. Then we will allow these others. We will treat this one for purposes of the ones that will come after (l). So, for now we will just dispose of (f), (g), (h), (i) and (j).

(Question of the further amendment proposed)

*(Question, that the words to be inserted be
inserted, put and agreed to)*

Clause 34(2)(b)

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 34(2)(b) be further amended by inserting the following new subclause immediately after subclause (4)-

“(5) Not more than two-thirds of the member of the Council shall be from one gender and the chairperson of the Council shall, during the first meeting of the Council, ensure that this requirement has been met.”

(Question of the further amendment proposed)

*(Question, that the words to be inserted, be inserted,
put and agreed to)*

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, do you have further amendment to move?

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

(iii) THAT, Clause 34(2)(h) be amended by deleting the phrase “Permanent Secretary” and substituting therefor the phrase “Principal Secretary”

(iv) THAT, Clause 34(2)(i) be amended by deleting the phrase “Permanent Secretary” and substituting therefor the phrase “Principal Secretary”

- (v) THAT, Clause 34(2)(j) be amended by deleting the phrase “Permanent Secretary” and substituting therefor the phrase “Principal Secretary”

(Question of the further amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

Clause 34(2)(k)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 34 be amended-

(a) in subclause (2), by-

(i) inserting the words “human rights and” immediately after the words “provision of” in paragraph (k);

Mr. Temporary Deputy Speaker, Sir, I am aware that the Minister wants to move further amendment that might have an effect to my amendment on (l). Therefore, I wish to wait for him to move his amendment. If it passes, then I will not move my amendment.

Clause 34 (2) (p)

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

THAT, Clause 34 (p) be further amended by:-

(a) adding a new paragraphs as follows:-

“a representative of an organization or association dealing with human rights and legal aid to children”

(b) “a representative of an organization or association dealing with human rights and legal aid to women.”

This Clause will bring issues to do with women and children in line with the Bill of Right and other issues which are close to women.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, for the sake of clarity, our proposal in “k” still stands as it is. What is being added are the words “human rights”. The Minister is also proposing further amendments by adding--- This affects “l” and not “k”. The Minister’s amendments affect “l” and not “k”. I stand guided but we should first pass the amendment in “k” as proposed by the Committee. I had moved an amendment in “k”. That is why I am proposing that we first move to “k” so that when we move to “l”, the Minister can propose his amendments. His amendments affect “l”.

The Temporary Deputy Chairman (Mr. Ethuro): I was being guided here but let us move to the procedure. That is the only place we can seek refuge. Let us finish with 34(2)(k) as amended by the Committee. We are now back to square one. We will start with hon. Odhiambo-Mabona because that is what is recorded here.

Clause 34 (2) (k)

Ms. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 34 be amended—

(a) in sub-clause (2), by—

(i) inserting the words “human rights and” immediately after the words “provision of” in paragraph (k);

It will have the provision of “human rights”.

Mr. Temporary Deputy Chairman (Mr. Ethuro): I can see that you are talking about “k”. Your “l” is in “k”. Let us dispose that one first. You want to insert the words “human rights” under “k”?

Ms. Odhiambo-Mabona: Yes, Mr. Temporary Deputy Chairman.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Who goes first between the Minister and the Committee? Mr. Minister, go first on 34(2)(l).

Clause 34 (2) (o)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M.Kilonzo): I have a further amendment.

THAT, Clause 34(2) be further amended by-

(a) adding a new paragraph (34(2) (o) as follows:-

“a representative of an organization or association dealing with human rights and legal aid to children”

(b) “a representative of an organization or association dealing with human rights and legal aid to women.”

The Temporary Deputy Chairman (Mr. Ethuro): Mrs. Odhiambo Mabona, are you happy?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, my understanding of the amendment is that it replaces (l) so that we have a new (l) and it will be renumbered appropriately.

(Question of the amendment proposed)

(Question, that the words to be added be added, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Since hon. Mungatana had already covered “n”, we will move on to dispose it.

Clause 34 (2) (n)

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 34 be amended –
in subclause (2) by –
(x) inserting the words “or his or her representative appointed in writing”
immediately after the word “Services’ in paragraph (n);

(Question of the amendment proposed)

*(Question, that the words to be inserted be
inserted, put and agreed to)*

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, you have another amendment on page 2145, 34(2)(n). You notice that under Item (x), which should be (n), you have an amendment to (b), (i) and (j). Should we proceed to (b)?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, yes, we will move to the end. I beg to move:-

THAT, Clause 34(2) be amended by inserting a new paragraph (o)
immediately after paragraph (n) “The Director of the Witness Protection
Agency”

(Question of the amendment proposed)

*(Question, that the words to be inserted be inserted,
put and agreed to)*

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, there are too many amendments and we are just trying to ensure that we have taken all of them into account. The last new paragraph should be the one from the Departmental Committee. It is indicated as 34(2).

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, is that not what the Minister has just moved about the Director of the Witness Protection Agency?

The Temporary Deputy Chairman (**Mr. Ethuro**): Yes, it is.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, if he has already moved it, I wish to withdraw mine.

(Proposed amendment withdrawn)

The Temporary Deputy Chairman (Mr. Ethuro): Mrs. Odhiambo-Mabona, you still have an amendment on Sub-clause 4.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, this is actually the clause that the Minister wanted to amend earlier. I think his might be more comprehensive because mine might be affected by the renumbering of the clauses.

Clause 34(5)

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

THAT, Clause 34 be amended by inserting a new sub-clause immediately after sub-clause (4) –

“(5) The persons nominated under sub-section 2(k) and (l) shall be appointed by the Minister from organizations with national coverage and known track record in their respective fields and shall serve for a term of three years which may be renewed for a final and further term of three years”

The purpose of this is quite clear. We want to be able to have nominations of persons with a wide spectrum of coverage throughout the country and a track record.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Temporary Deputy Chairman, Sir, whereas I support that, I wish to note that our further amendment--- Our amendment is different although the Minister had the same one I was talking about. I support the one he has just moved. With your indulgence, we could move to another amendment under the new sub-clause.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, the Chair has been generous to your co-ordination. Where you do not agree, we have no choice, but to abide by our rules again. We have no notice on the further amendments and so we will take what the Minister has said.

*(Question, that the words to be inserted be inserted,
put and agreed to)*

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I am happy that we have passed that amendment. The one I am saying is in the Order Paper. I, therefore, wish to move that Clause 34 be amended by inserting the following new sub-clause immediately after Sub-clause (4) ---

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Odhiambo-Mabona! For clarity, which one did you withdraw? You deferred for that appointment. You know we cannot go back. In this business, if you noticed, we are making progress forward.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, that is right. I was trying to clarify that what he has brought is in order. There were actually two amendments: The one the Minister has moved which he has the right to do so as the Minister; and the one I have in the Order Paper. I am moving the one in the Order Paper which he also has. His is more pregnant than mine.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Irrespective of the state of pregnancy, at the Committee level, we will move forward. We consider that we treated it as a withdrawal and the Minister went ahead to make an amendment which we have accepted. So, let us proceed to a new clause. We cannot entertain that.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Temporary Deputy Chairman, Sir. With due respect, could the Minister repeat his amendment? It has nothing to do with this one – they are two different amendments. What I indicated is that the Minister moved an amendment---

The Minister for Justice, National Cohesion, and Constitutional Affairs (Mr. M. Kilonzo): On a point of information, Mr. Temporary Deputy Chairman, Sir. This is a very crucial law and all views should be taken on board. I want to inform the hon. Member that if she deems fit, the best thing that she could do is to change this to Sub-clause (6) because I have already put in Sub-clause (5). I will then welcome it.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! It is not really for the Chair to entertain that. The Chair has made a ruling and we are going to make progress.

(Clause 34 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): I want to pray that Mrs. Odhiambo-Mabona and the Minister for Justice, National Cohesion, and Constitutional Affairs liaise. You are both important. These things are there and we want to get it right. We do not want to exclude anybody. Please, remember that once the procedure has been taken there is no reverse gear.

Clause 35

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

THAT, Clause 35 be amended in Sub-clause (2) by deleting the word “district” appearing in paragraph (c) and substituting therefor the word “county”.

Mr. Temporary Deputy Chairman, Sir, this is so that it could reflect the position of the Constitution and recognize counties.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, there was another proposal. I was actually hoping that Mrs. Odhiambo-Mabona was going to contradict the Minister before her own amendment. Our understanding is that your

amendment is the same as that of the Minister. If it is different, I will give you a chance to move.

(Clause 35 as amended agreed to)

(Clause 36 agreed to)

Clause 37

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 37 be amended by deleting the word “Minister” and substituting therefor the words “Cabinet Secretary”.

(Question of the amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 37 as amended agreed to)

Clause 38

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we have amendments by Messrs. Sambu and Mungatana, and by the Committee. Let us take hon. Sambu’s amendment first.

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 38 be amended –

- (a) in subclause (1) by deleting-
 - (i) the words “Commission and the” appearing immediately before the word “Judiciary”;
 - (ii) the word “each” appearing immediately before the word “cause”;
- (b) in subclause (2) by deleting the words “Commission and the” appearing immediately before the word “Judiciary” in paragraphs (a) and (b);
- (c) in subclause (3), by deleting the words “Commission and the” appearing immediately before the word “Judiciary” in paragraphs (f);
- (d) in subclause (4), by deleting the words “Commission and the” immediately before the word “Judiciary”, wherever they appear.

Mr. Temporary Deputy Chairman, Sir, all this is referring to Article 173 of the Constitution, which establishes only one Judiciary Fund. The way it is put here is as if there are two Judiciary funds.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I wish to oppose the amendment. I think hon. Sambu does not understand the context under which that Fund is proposed. We have the Judiciary, but we still have independent Commissions. As per practice in this country, independent Commissions have their own independent funds. Therefore, the Judicial Service Commission Fund is independent from Judiciary Fund.

Therefore, I oppose.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I wish to concur with hon. Millie Odhiambo-Mabona, because she is right. There is really a difference between these funds. I say this with utmost respect to the Committee on this particular budget, but I would like to draw its attention to the fact that the Judicial Service Commission is a distinct Commission constitutionally and is quite separate from the Judiciary. Therefore, the two should not be mixed.

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, I still feel that the Constitution provides for only one Judiciary Fund, but we can have a Sub-Vote for the Commission, instead of having two separate main Votes.

(Question, that the words to be left out be left, put and negated)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Mungatana and hon. Millie Odhiambo-Mabona, your amendments are similar. So, please, let us have those two amendments done at once.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 38 be amended in subclause (4) by deleting the words “in such other manner as the Commission and the Judiciary may determine” and substituting therefor the words “shall send a copy of the report to each of the two Clerks of the two Houses of Parliament for it to be placed before the respective Houses for debate and adoption.”

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Odhiambo-Mabona, if you read hon. Mungatana’s amendment to this Clause, you will see that it is similar to yours, word for word. So, I advise you to withdraw your amendment.

Mrs. Millie-Odhiambo: Mr. Temporary Deputy Chairman, Sir, the challenge I have is that you move too fast, and I miss very vital amendments. So, I would rather harmonisation is done after my amendment is passed, and not before.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Millie, I heard you on the amendment to Clause 35. That is why I took the other one but, on this one, the two amendments are similar, word for word.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I withdraw the amendment.

(Proposed amendment withdrawn)

(Clause 38 as amended agreed to)

Clause 39

Mr. Sambu: Mr. Temporary Deputy Chairman, Sir, based on the same arguments advanced against my amendment to Clause 38, I wish to withdraw this amendment.

(Proposed amendment withdrawn)

*(Clauses 39, 40, 41, 42, 43,
44, 45 and 46 agreed to)*

Clause 47

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 47 be amended by inserting the following new subclause immediately after subclause (2)-

“(3) Regulations made under this section shall be presented to the National Assembly for debate and approval before they take effect”

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

The Temporary Deputy Chairman (Mr. Ethuro): Minister, you have a further amendment to Clause 47.

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

THAT, Clause 47 be amended in subclause 2 by inserting the following new paragraph immediately after paragraph (h)-

“(i) mainstreaming of gender and regional equity in the Judiciary”

(Question of the amendment proposed)

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 47 as amended agreed to)

Clause 48

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 48 be amended in subclause (1) by inserting the words “or any other written law” immediately after the words “provisions of this Act”.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 48 as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Minister, do you have a further amendment to Clause 48?

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

THAT, Clause 48 be amended by inserting a new sub-clause (3) as follows –
“Until after the first elections under the Constitution, any reference to a Cabinet Secretary shall be construed to mean Minister and any reference to a Principal Secretary shall be construed to mean Permanent Secretary”.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted, put and agreed to)

(Clause 48 as amended agreed to)

(Clause 49 agreed to)

First Schedule

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

THAT, the First Schedule be amended –

- (a) in Section 3(1), by inserting the following new subparagraph immediately after subparagraph (b) -
“(c) circulate the notice in any other appropriate manner”;
- (b) in Section 6(1), by inserting the words “the deadline for the” immediately after the word “days of”;

- (c) in Section 9, by inserting the following new paragraphs immediately after the paragraph (b) –
 “(c) invite any member of the public to avail in writing any information of interest to the Commission in relation to any of the applicants;
 “(d) interview any member of the public who has submitted any information on any of the applicants and such information shall be confidential”;
- (d) in Section 18, by -
 (i) deleting the word “one” appearing immediately before the word “hundred” and substituting therefor the word “five”;
 (ii) by deleting the words “six months” and substituting therefor the words “one year”.
- Mr. Temporary Deputy Chairman, Sir, I propose these amendments in order to add greater value to this schedule; I beg to move.

(Question of the amendment proposed)

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mungatana, do you have a further amendment to the schedule?

Mr. Mungatana: Yes, Mr. Temporary Deputy Chairman, Sir.

I beg to move that the First Schedule be amended-

- (a) In paragraph (10), by deleting the word “private” appearing in subparagraph (5) and substituting therefore the word “public”;
- (b) in paragraph (13), by deleting subparagraph (e).

(Question of the amendment proposed)

(Question, that the word to be left out be left out, put and agreed to)

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(First Schedule as amended agreed to)

(Second Schedule agreed to)

Third Schedule

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

THAT, the Third Schedule be amended in Section 2 by deleting the definition of the term “public officer” and substituting therefor the following new definition – “public office” and “public officer” shall have the respective meanings assigned thereto in Article 260 of the Constitution”.

This brings it in line with the Constitution.

(Question of the amendment proposed)

*(Question, that the words to be left out be left out,
put and agreed to)*

*(Question, that the words to be inserted in place thereof
be inserted, put and agreed to)*

*(Third Schedule as amended agreed to)
(Title agreed to)*

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Judicial Service Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE JUDICIAL SERVICE BILL

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered the Judiciary Service Bill and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

Mrs. Shebesh seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Judiciary Service Bill be now read the Third Time.

Eng. Gumbo seconded.

(Question proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity. I want to congratulate the Minister for the hard work that he is doing. I want to specifically laud the provision of county judges at the county level which will bring justice closer to people especially to women and children and for enhancing the administration of justice to women and children.

Finally, I want to laud the Minister for enhancing the independence of the Judiciary and the Judicial Service Commission.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, on the issue of county judges, we have now created the Judiciary Fund. We expect the Minister to put pressure on the Acting Chief Justice and the Chief Justice who will be appointed to immediately appoint the 47 county judges and then they can work on structures. They should start first just like the District Commissioners (DCs) were appointed and the structures came later. We need these judges at home. We no longer want to come to Nairobi, particularly the people of Tana County. We are through with Nairobi. We do not want to travel again.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I also take this opportunity to thank the leadership of the Committee on Justice and Legal Affairs for their diligence and dedication in the manner that they have handled this process. We urge them to move on with that spirit.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, history will remember you for presiding over the Third Reading of the Judicial Service Bill. In this time in proper democracies when history happens, you rarely hear sound or noise. With the Third Reading of this Bill, the history of this country and the future of this country will dramatically change because the two Principals will now have an opportunity to appoint new judges who will reflect the spirit of the new Constitution. Therefore, I want to thank the entire House, the Chair and your office for the support that you have given my Ministry in the preparation leading to the debate of this Bill and its approval by the House. I want to salute hon. Members and agree with Mr. Mungatana and my student Mrs. Odhiambo-Mabona that the county is there now to stay and, therefore, the County Judge.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

The Temporary Deputy Speaker (Prof. Kaloki): Next Order!

BILL

Second Reading

THE VETERINARY SURGEONS AND PARA-PROFESSIONALS BILL

(The Minister for Livestock Development on 16.2.2011)

(Resumption of Debate interrupted on 22.2.2011)

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Lesrima, you have ten more minutes to contribute to this Bill.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Mr. Temporary Deputy Speaker, Sir, before the House adjourned the other time, I was going to say that this Bill professionalizes the extension services in this country. In fact, it begins by laying down the supervisory role of the Veterinary Board, which looks into the standards of para-veterinary training all the way up to university. The Board plays the supervisory role in checking that the curriculum and the facilities at universities are such that they can produce the best surgeons and the best of the para-veterinarians.

Mr. Temporary Deputy Speaker, Sir, as you know in this country we have suffered in the hands of people who pretend to go to training centres for two weeks, come out and call themselves “*daktari*”. They end up messing up our livestock and our own health as human beings.

This Bill comes out very clearly, under Section 17, to define what qualifications shall be required, how long the training shall be; in fact, it is two years internship for para-vets, and a requirement to belong to association of para-vets. It also provides for penalties against anybody pretending to be a professional.

This Bill, under the Second Schedule, defines the roles of the para-vets. I am pleased to note that among the roles will be the provision of extension services, which we are very much in need of in this country, and meat inspection.

Mr. Temporary Deputy Speaker, Sir, I just want to bring to the attention of the House the fact that there is a critical shortage of staff in form of para-vets and surgeons in Kenya. I am told this country has a shortage of up to 1,000 vets. In fact, recruitment has been scarce. There was recruitment in 1994, 1997, 2008 and I think there is another one going on now. That very serious shortage needs to be taken care of.

Mr. Temporary Deputy Speaker, Sir, as Members of Parliament, we also need to support the Minister to get more resources for more recruitment. Finally, since we are now beginning to prepare ourselves for the counties, I would recommend that as hon. Members of Parliament, we push, after the passage of this Bill for the recruitment of surgeons in every county. Coming from an ASAL area where there is no adequate business for private practice, the Government should employ surgeons there and pay them properly to compensate them for loss of business if they were to work in towns.

With those few remarks, I beg to support.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I rise to support this Motion first and foremost because it is long overdue and secondly because we have really over-exposed ourselves as a country and as industry by ignoring the very fundamentals in veterinary medicine. I want to congratulate all veterinary surgeons because I dread those days we were at the university and still it is the hardest course you can tackle. The spectrum of that course, the programme that makes you a veterinary surgeon is frightening and would frighten anybody who is not made of that particular material.

Having said that, there have been several dis-incentives from the part of Government to have this honorable profession perform what they are good at. Just to give you a quick overview, I want to tell this House that every time you take a cup of tea and you have some milk, you are exposed to a myriad of activities. It is not just microbes and pathogens, but also chemicals that could have come by way of a quack who handled a dairy animal somewhere in Nyandarua, Kinangop or wherever it was. Such a chemical may have such a serious effect to your health that you do not know when it happens. Some of these would be able to stimulate such bad things like cancer growth in some parts of the body or cause such serious damage to unborn that the lessons learnt in China – if it is anything to go by – would make every Member of Parliament in this Tenth Parliament sit here to contribute to this Motion.

Mr. Temporary Deputy Speaker, Sir, I say this because unlike human medicine, the veterinary medicine is complex. You are dealing with living creatures; big animals, the bovines like the cows and the rest and they do not talk. You have really to look them at the eyes, look at the mucus membranes, behavior, temperament, skin, gait and many other factors in order to make a deduction that there is a possibility of this. So, the quacks do something which is quite unethical. They come in, in a carpet bombing spring. “Carpet bombing” is a terminology which was introduced by the Americans when they were doing the Afghanistan war and also the Desert Storm where, because of some strange reasons, they could not be able to get the target but applied bombs that bomb like a carpet. That is carpet bombing. They use this with antibiotics, although the condition could be caused by protozoa.

We need very strong legal mechanisms that guarantee every housewife and every Kenyan; the *nyama choma* lovers that whatever they are going to have on their table has gone through a professional touch. It is such a serious situation that if you look through currently and you look at the number of deaths that we are having, you will be surprised that most of these cases that we are having, are caused, not by these diseases but by a nutritional regime and the status of health and foods, particularly in the dry areas. Again when this happens, somebody goes to treat what he does not know. Instead of just administering hay and affording water, somebody would go flat out to apply antibiotics and again, exposing millions of people to a lot of hazards.

Mr. Temporary Deputy Speaker, Sir, this profession is understaffed. Subsequently, we have herdsmen, dip attendants and other people who have not had this kind of training, all of them posing as veterinary surgeons. They refer to themselves as doctors. That is where the mess is. That forms the basis for this particular Bill.

I do realize that time is not for me, but during the next sitting, with your permission---

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Order, Mr. Mututho, you cannot anticipate debate! Hon. Members, it is 6.30 p.m. It is time to adjourn the House. The House stands adjourned until tomorrow, Thursday, February 24th 2011 at 2.30 p.m. Hon. Mututho, you will have additional 25 minutes to conclude your contribution.

The House rose at 6.30 p.m.