

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 17th May, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PAPER LAID

The following Paper was laid on the Table:

Report of the House Broadcasting Committee on investigations into the sound interference of the Kenya National Assembly House Proceedings on Thursday, 28th April, 2011.

(By Eng. Gumbo)

NOTICE OF MOTION

ADOPTION OF REPORT ON SOUND INTERFERENCE
OF HOUSE PROCEEDINGS

Eng. Gumbo: Mr. Speaker, Sir, I beg to give Notice of the following Motion:

THAT, this House adopts the Report of the House Broadcasting Committee on Investigation into the Sound Interference of the Kenya National Assembly House Proceedings on Thursday, 28th April, 2011 laid on the Table, Tuesday, 17th May, 2011.

QUESTIONS BY PRIVATE NOTICE

DIVERSION OF DRAINAGE WATER TO NEW WOOD
ESTATE BY SHENGLI CONSTRUCTION COMPANY

(Mr. Kabogo) to ask the Minister for Roads:-

(a) Is the Minister aware that the ongoing Thika Road construction by Shengli Construction Company has affected the residents of New Wood Estate by diverting drainage water into the estate, hence heightening the risk of water-borne diseases?

(b) What immediate measures is the Ministry taking to address the matter?

Mr. Speaker: Hon. Members, Question No.1 by Private Notice will be deferred to Thursday this week at 2.30 p.m. because the Member for Juja is bereaved. He lost his uncle and he is attending a burial ceremony as we conduct business now.

(Question deferred)

REPAIR OF NAROK-MAASAI MARA ROAD

(Mr. ole Lankas) to ask the Minister for Roads:-

(a) Can the Minister clarify when the contract for the construction of Narok-Maasai Mara Road was awarded and state which firm was awarded the contract, what was the cost and duration of the contract?

(b) Could the Minister state what works have already been achieved and explain why the contractor abandoned the site soon after award of the contract?

(c) What urgent measures will the Minister take to ensure the construction commences and is completed before the imminent peak season of tourism?

Mr. Speaker: Hon. Members, similarly, Question No.2 by Private Notice will be deferred for different reasons to Tuesday next week at 2.30 p.m. because the Member for Narok South communicated to the Chair that he was engaged elsewhere in Parliamentary business. So, he cannot be here to ask the Question.

Mr. Minister, please, note that. Thank you for being here dutifully on time.

(Applause)

Mr. Speaker: Yes, the Assistant Minister deserves that!

(Question deferred)

RESETTLEMENT OF FAMILIES DISPLACED BY FLOODS IN RONGAI

Mr. Kigen: Mr. Speaker, Sir, I beg to ask the Minister of State for Special Programmes the following Question by Private Notice.

(a) Is the Minister aware of the 230 families that were displaced by floods along various rivers in Makongeni Location in Rongai Constituency and have been camping at Athinai Camp from 2nd January, 2010 and, if so, when will the Government compensate them for loss of their kin and property?

(b) Could the Minister consider including the families in the ongoing resettlement programme for Internally Displaced Persons (IDPs)?

(c) What is the Ministry doing to ensure that the affected families are urgently provided with secure habitation, clean drinking water and food in view of the current rains?

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Speaker, Sir, I beg to reply.

(a) I am aware of the 200 families that were displaced by floods in various rivers in Rongai in January, 2010 and are currently camping at Athinai. The Government has been intervening by providing tents and humanitarian assistance, that is, food and tents. However, the Government does not compensate people for disasters.

(b) The resettlement of squatters is under the Ministry of Lands through the Settlement Fund Trustee Scheme. As such, they cannot be considered under the IDP Resettlement Programme. My Ministry will, however, continue to provide the required humanitarian assistance.

(c) The Kenya Red Cross Society provided tents in 2010. Since these people are still in the camps, we are still providing the families with food. As of last week, we provided them with tarpaulins.

Mr. Kigen: Mr. Speaker, Sir, could the Minister confirm the last time when they actually gave any assistance in terms of provision of tarpaulins other than what the Red Cross gave? The tarpaulins they gave last time are all torn and they do not exist anymore.

Ms. Mathenge: Mr. Speaker, Sir, I gave an order last week and I believe if they have not been delivered, they should be there before end of this week.

Mr. Mwangi: Mr. Speaker, Sir, while we appreciate the action that has been taken by the Minister to provide food and other necessities such as tents, the most important part of the Question has not been handled. It is good to feed people and it is also good to give them tents. However, what is the policy of the Government in getting these people to be self-reliant so that they can feed themselves?

Ms. Mathenge: Mr. Speaker, Sir, we have formulated an IDP Policy which is going to be presented to the Cabinet so that all the people who have been displaced for various reasons will be looked at in a holistic manner. Currently, my mandate is just to look at the post-election violence victims of 2007/2008. I believe that under that policy, they will be able to cater for themselves.

Mr. Koech: Mr. Speaker, Sir, while I appreciate the Minister's action that for as long as they are still in IDP camps she will continue giving them food and the Ministry of Lands is concerned with resettlement; now that it forces the Minister to continue giving them food, what is she doing to ensure that the Ministry of Land gets land to resettle these people and, therefore, she does not continue to give them food, unless she has bottomless amount of food in this country?

Ms. Mathenge: Mr. Speaker, Sir, as I said, my mandate is really to deal with the victims of post-election violence and squatters. Those people were actually squatters and they fall within the Ministry of Lands. I presume that once we finish the resettlement of the post-election violence, we shall be able to see how we can take care of those who are landless and those who are squatters.

Mr. Njuguna: Mr. Speaker, Sir, with the admission by the Minister that those families were affected by the floods, what measures is the Ministry taking to ensure that the children of those families access education in that area?

Ms. Mathenge: Mr. Speaker, Sir, we recently did a school in Kiwa and it is catering for the entire population in the area. I believe that they are part of the population that is being taken care of to access education.

Mr. Koech: On a point of order, Mr. Speaker, Sir. Perhaps, the Minister is not aware of the place she is talking about. Kiwa, the place she is alleging that students are going to school is 24 kilometres away. Is she in order, to mislead this House that the IDPs are now accessing education 24 kilometres away?

Mr. Speaker: Minister, that is valid.

Ms. Mathenge: Mr. Speaker, Sir, the last time I was there, I was made to understand that they are going to the school that we did at Kiwa. As it is, I cannot do a school where I do not have land because they are squatters. So, I assumed that they would be able to access the neighbouring schools in the place they have settled.

Mr. Kigen: Mr. Speaker, Sir, it surprises me to hear the Minister say that the problem of squatters is about the Ministry of Lands. When the Vice-President and Minister for Home Affairs visited the IDPs accompanied by the Minister for Agriculture and the former Minister of State for Special Programmes, they assured the IDPs that they should remain put as the Government makes arrangements to resettle other IDPs and that when land is found, they would all be settled. How come the Minister is now saying that this is a problem for the Ministry of Lands to solve and that the IDPs can be settled under a different arrangement? They are all IDPs!

Ms. Mathenge: Mr. Speaker, Sir, I am not aware of that statement by the Vice-President. I do not think I will be in a position to answer on his behalf. However, I know that the IDPs that I am resettling are the post-election violence victims and I have their names in my register. These particular ones are not in that register.

OUTBREAK OF STRANGE CATTLE DISEASE IN MARSABIT EAST DISTRICT

Mr. Letimalo: Mr. Speaker, Sir, I beg to ask the Minister for Livestock Development the following Question by Private Notice.

(a) Which disease has killed the hundreds of cattle in Engilai Central in Wamba Division of Samburu East District between March and early May 2011 and how many head of cattle have died so far?

(b) What measures is the Minister taking to forestall further deaths of cattle from the disease?

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

(a) I am not aware of any outbreak of disease or death of cattle in Engilai Central in Wamba Division of Samburu District. My Ministry has not received any information relating to deaths as stated by the hon. Member's Question. The District Veterinary Officer (DVO) for Samburu East has confirmed that there is no outbreak of any killer disease of cattle in that district. I have further instructed my officers on the ground to carry out thorough investigations on this matter. However, if the hon. Member has information that my officers do not have, I am kindly requesting him to provide the same to us and the DVO for action.

It is important to note that the Ministry of Livestock Development through the Department of Veterinary Services monitors disease incidences throughout the country through passive and active disease surveillance and, disease control programmes which are some of our core functions in the Ministry.

The Ministry has also set up disease control committees in all the locations within the country to help monitor disease situations in all the districts throughout the country. These committees have arrangements in place that enable them to pass information regarding any notable animal health concern to the Division Veterinary Officers (DVOs).

(b) Recently, the Ministry of Livestock Development carried out a routine vaccination exercise in Engilai Central against foot and mouth disease, lump skin disease and sheep and goat pox. The figures are very clear. Within the specified two months, we have vaccinated 7,400 heads of cattle against foot and mouth disease. We have also vaccinated 1,950 cattle against lump skin disease, 143,617 sheep and goats against PPR and 3,800 sheep and goats against goats and sheep pox. That is what we have done in that district.

Under the drought mitigation programme, Samburu East District was allocated Kshs3.1 million under that programme. Engilai Central, specifically, was allocated Kshs158,000 for logistics under that programme in terms of animal health.

Mr. Letimalo: Mr. Speaker, Sir, the Assistant Minister has said that he is not aware of the outbreak of the disease. My Question is quite specific. I wanted to know which disease killed hundreds of cattle in that location. I am also specific by saying that the animals died between March and early May. I got the information from both the Councillor and the livestock keepers. I would like to ask the Assistant Minister why he cannot dispatch his officers to go to Engilai Central, meet with livestock keepers and ascertain whether or not, the animals have died? It is as simple as that.

Mr. Duale: Mr. Speaker, Sir, it is not in my nature to lie to Parliament. I would like to say, very clearly, that what I have said is a fact. No animals have died. However, I agree to the request by the hon. Member and will dispatch a team of veterinarians from Kabete Headquarters to Engilai as early as tomorrow to ascertain the situation.

Mr. Konchella: Mr. Speaker, Sir, the Assistant Minister may be aware that, occasionally, such diseases occur in various parts of the country. Particularly, in the month of July, there is a likely outbreak of PPR on goats. That happens in Trans Mara and many parts of Kenya. What is the Government doing to manufacture the drugs and avail them to livestock farmers in the country, knowing that we have a perennial disease outbreak in the country, particularly, foot and mouth disease and PPR?

Mr. Duale: Mr. Speaker, Sir, I would like to confirm to this House that Kenya Veterinary Vaccine Institute is the largest vaccine production institute in the whole of Eastern and Central Africa. Among the vaccines that the hon. Member has talked about are manufactured in Kenya. We manufacture vaccines for PPR and foot and mouth disease. As we speak now, we have close to 5 million vaccines for PPR. I want to assure this House that, at any given time, the Government, through the Ministry of Livestock Development, will ensure that livestock farmers and their animals are taken care of against PPR.

Mr. Konchella: Mr. Speaker, Sir, while I may not want to oppose what the Assistant Minister has said but, if you visit veterinary officers in our constituencies, they do not have those vaccines. So, how come there are vaccines just lying down

somewhere? Are they put there for a show or they are supposed to be sent to another country and not for the benefit of Kenyans?

Mr. Duale: Mr. Speaker, Sir, I am the Assistant Minister for Livestock Development and I know what our veterinary officers have on the ground in terms of stocks. As we speak here, I can give a tabulation, in terms of districts, of the drugs that we sent from our factory in Nairobi. Therefore, drugs are there and we have personnel. I would like to assure the House that we are up to the task.

Ms. Leshoomo: Ahsante Bwana Spika. Ugonywa huu wa ng'ombe hauadhiri sehemu ya Engilai peke yake. Ugonjwa huo umetambaa kila mahali. Waziri Msaidizi anajua kwamba sisi ni watu wa kuhama. Kwa hivyo, ugonjwa huo unafaa kukomeshwa mahali ulipo kabla haujaenea kila mahali.

Mr. Duale: Bwana Spika, hilo ni swali nzuri kutoka kwa Mheshimiwa Leshoomo. Kama nilivyosema mbeleni, Wizara au Serikali kwa jumla, ina fedha za kutosha. Pia, tuna madawa ya kutosha na kiwanda kikubwa cha kutengeneza madawa hayo kiko hapa katika nchi yetu. Tutajaribu juu chini ili kuhakikisha kwamba wafugaji na wanyama wetu hawataadhiriwa na magonjwa tofauti.

Mr. Lekuton: Mr. Speaker, Sir, the problem is not the shortage of drugs but the shortage of personnel. This Ministry has not done enough to make sure that the people who are legally trained by the Government to practice - like livestock technicians--- They are not allowed to practice privately so that they can be the soldiers in the borders guarding against animals coming in through our borders from Tanzania and Uganda. What are you doing about that?

Mr. Duale: Mr. Speaker, Sir, yes, before the Grand Coalition Government came into place, the Ministry of Livestock Development had not employed any animal health technician for over 20 years. However, I would like to assure this House that in the year 2008/2009, we have employed over 100 qualified veterinarians. We have also employed over 200 animal health assistants. In partnership with donors, we have employed 120 veterinarians. I would like to assure the hon. Member that, yes, under the OIE and World Animal Health Organization, we have rules to follow. We do not allow animal health technicians to perform duties that are performed by veterinary surgeons. So, as much as we are saying that every cadre of expertise within the Ministry of Livestock Development has a role to play, the veterinarians have a role to play, the animal health assistants have a role to play and that is well documented in the National Livestock Policy.

Mr. Letimalo: Mr. Speaker, Sir, now that the Assistant Minister has assured the House that he will dispatch veterinary officers to that area, I would like to request him to send an alert to the residents so that, by the time the officers pay the visit, they will find the residents there. I have no further questions.

Mr. Duale: Mr. Speaker, Sir, we will send a team. However, the responsibility of alerting the community is co-shared between us and the leadership of the area, which is led by the hon. Member of Parliament. He must play his role.

(Ms. Karua stood up in her place)

Mr. Speaker: Order! Member for Gichugu, that Question is spent!

Ms. Karua: It is not!

Mr. Speaker: It is! That is the last supplementary question!

(Ms. Karua interjected)

Order, Member for Gichugu!

ORAL ANSWERS TO QUESTIONS

Question No.676

TRESPASS INTO PRIVATE PROPERTY BY APS

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

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

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

Ms. Karua: Mr. Speaker, Sir, the Question was answered. However, the Minister was to investigate and revert on the issue of firearms and illegal activities.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. You will recall that, sometime last year, I brought a Question touching on the same matter where one Mr. Nguruman had not paid 37 workers that he had laid off. The Minister for Labour intervened in the matter. The same Question has come back and the issue of ownership and of the police which is being raised here--- There are three cases which are pending in court. Proceeding with it would be prejudicing the cases in court. I can lay on the Table documents to show that this matter is already in court. These documents touch on matters of review of police involvement, which is the subject matter of the Question that is being asked. In fact, even on the ownership of the farm in question, there are court orders restraining the involvement of the two parties in determining the ownership.

(Mr. K. Kilonzo laid the documents on the Table)

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. You heard hon. Karua say that this Question was fully answered, and that what was remaining was only tabling of additional information. Is it in order to re-visit a Question which has already been answered, when the only thing that was remaining was tabling of documents relating to the existence of private armies in a ranch? Is it in order to introduce matters which are totally irrelevant in order to prevent the Assistant Minister from tabling the proper documents in the House?

(Ms. Karua stood up in her place)

Mr. Speaker: Order, Member for Gichugu! I need to deal with that one first. The point of order raised by the Member for Imenti Central will be valid, subject to one thing:

That, after the Assistant Minister tables the only document that he had to table, there will be no supplementary questions. If there will be supplementary questions, then it is possible that they will broach areas that may very well be *sub judice*.

Yes, Member for Gichugu!

Mr. Karua: Mr. Speaker, Sir, I find it very strange that a point of order can be raised during the fourth time the matter is coming to the House. The matter came here the first time when the Question was answered. The Question had been deferred on two other occasions by mutual agreement due to various circumstances. If an hon. Member ought to have raised a point of order and never did, I would imagine that he or she must hold their peace forever. If the Minister had finished answering the Question on that day, what would have happened? So, unless we are going to adopt a strange procedure, once a Question is substantially answered, the point of order being raised ought not to be.

Secondly, the Question acknowledges the fact that there are ongoing court matters. The Question acknowledges that the AP officers are trespassing on a property which is subject to a court dispute. So, there is a dispute, but the Question asked does not relate to that particular dispute. The orders given for *status quo* do not include police being there. With those facts, I would urge that you allow the answering to conclude. Even as you look at the documents, the point of order is late. Even though the hon. Member was not here when the Question was asked, we are all deemed to be part of the proceedings, and to have participated. Otherwise, it should be open for anybody who did not discuss a Bill or participate in any Question to come here and file their own Motions.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Let me hear the Assistant Minister first!

Mr. Ojode, do you have any response?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, indeed, I had answered this Question. What is remaining is that I was tasked to have investigations carried out to establish whether we have people being trained in musketry, whether we have AP officers on the farm and whether the police officers were denied entry into the ranch. Those are some of the issues on which I have a report, and on which I wanted to report what the Criminal Investigations Department (CID) officers' investigations have come up with. I just want to give my friend, hon. K. Kilonzo, the benefit of the doubt and confirm that it is not only three cases which are in court regarding this property. There about seven cases, which talk about trespass, which hon. Karua has not talked about.

Mr. Speaker, Sir, my officers have done a wonderful job. If the Chair allows me to report their findings, I will go ahead and give the report. I can then take supplementary questions from those hon. Members who may be interested. So, if you allow me, I am ready to give the findings of the investigations. Otherwise, there is nothing as at now, which bars me from giving the report on the issues that were raised by hon. Karua.

Thank you, Mr. Speaker, Sir.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order, hon. Members! Let me hear the Member for Kisumu Town West.

Mr. Olago: Mr. Speaker, Sir, arising from the points of order by hon. Imanyara and hon. Karua, the fundamental point that should be addressed – to which I kindly ask you to address your mind – is whether it is in order for a Backbencher to attempt to frustrate the answering of a Question that has been asked by an hon. Member by raising a point of order, which goes against the Question directly.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. I rose on a point of order and referred to a follow-up on a subject which touches on the persons we are discussing today. Question No.676 asks whether the Minister is aware of the contingent of AP officers who have trespassed on private property, and whether the Minister could order their immediate withdrawal from the property.

Mr. Speaker, Sir, what I have tabled in this House is a constitutional court review of the issue, touching on the presence of those AP officers. That is why I am saying that discussing the issue of whether the AP officers should be withdrawn or not, or their presence there, is *sub judice*. Beyond that point, I am a stranger and I cannot discuss any other matter. I am addressing the issue, which has been raised by hon. Karua in this Question. This is Parliament, and we must respect the other arm of the Government which is the Judiciary.

Mr. Speaker: Assistant Minister, I want you to table any document you want to table even if I will retreat to consider this matter.

Mr. Ojode: Mr. Speaker, Sir, I am not going to table anything, but I am going to give the details of the report.

Mr. Speaker: Order, Assistant Minister! In that case then, I have heard the point of order raised by the Member for Mutito. I have further heard the supplementary points of order raised by the Member for Imenti Central, Kisumu Town West and the Member for Gichugu. I have also heard the Assistant Minister's response. What has been tabled is a bundle of documents which go upwards 100 pages. Quite obviously, I am not able to read through these documents, even with my level of intelligence and I require time to actually consider these issues and give direction as to whether or not this matter would be *sub judice*.

I must hasten to add that since I became Speaker, I do not know what may have transpired previously. This is the first time that a Member of the Back Bench has claimed *sub judice* to apply against a Question which is seeking information by his colleague on that side. So, obviously, it is a unique situation and it is going to be, in a way, precedent setting. So, it is important that I consider these issues. Member for Gichugu, with the utmost respect, I will have to look at those issues and give directions.

Ms. Karua: On a point of order, Mr. Speaker, Sir. While considering that, you need to consider whether you are now reversing your decision, where you ordered the Assistant Minister, within four weeks, to investigate and report. That is what it will amount to.

Mr. Speaker: That is fine. I am equal to the task and I will consider that as well.

Question No.907

DEMOLITION OF PERIMETER WALL BY POLICE

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

(a) who authorized a contingent of police officers, led by the Buruburu OCPD, to demolish a stone perimeter wall on Nairobi Umoja Block 107/1/1133 on 2nd of December, 2010;

(b) why the police have failed to respond to a letter written by the proprietor of Rockville Junior Academy on 2nd December, 2010 and another by his lawyers on 3rd December, 2010; and,

(c) whether he could provide copies of court orders that authorized the police to demolish the perimeter wall.

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

(a) The police were assisting one Mr. Nathan Pala in executing a court order issued vide ELC No.1905 of 2007 by the Chief Magistrate Court sitting at Nairobi dated 28th April, 2010. In the order, the OCS, Buruburu, and the officer in charge of the Huruma Chief's Camp, Administration Police, were to assist the above mentioned person while executing the court order which was renewed on 15th March, 2010.

(b) The proprietor of Rockville Junior Academy, Mr. Peter Wambugu Gichimi, wrote to the Provincial Police Officer, Nairobi, over the demolition on two occasions, one in an undated letter which was received on 7th December, 2010 and in another letter dated 14th December, 2010. The Provincial Police Officer responded to the complaints through a letter Ref: C/COM/1/6/B Vol.25/27 dated 7th December, 2010, whose copy I will table before the House. On receipt of the second letter in which he indicated that the executors may have demolished a wall on the wrong piece of land, the PPO ordered an inquiry to be opened. Subsequently, an inquiry file No.12/2011, Buruburu Police Station was opened and the appropriate action will be taken once investigations are finalized.

(c) I will also table the court order.

(Mr. Ojode laid the document on the Table)

Mr. Ochieng': Mr. Speaker, Sir, now that the Assistant Minister has admitted that the perimeter wall was demolished erroneously, could he consider compensating the owner of this property with the cost of putting up the perimeter wall? I would like to table the cost of putting up this wall afresh.

(Mr. Ochieng laid a document on the Table)

Mr. Ojode: Mr. Speaker, Sir, I cannot compensate the owner of that property because my police officers did not demolish the wall. The police officers were executing the orders from the court to give security, but not to demolish the wall. The court order provided that we had to provide security to the fellows when they were occupying the premises. Since my officers were not demolishing the wall, there is no way I can compensate the owner.

Mr. Mbuvi: Mr. Speaker, Sir, it is within the public domain that everything is possible with our courts provided you have a deep pocket! Could the Assistant Minister provide State Counsel to represent the police?

Mr. Olago: On a point of order, Mr. Speaker, Sir. I have a lot of respect for the Member but is it in order for him to get away with the allegation that in the Judiciary, you can get away with anything as long as you have deep pockets?

Mr. Speaker: Member for Makadara, you are challenged to substantiate your claim. Please, proceed, with decorum, carefully because these are matters of integrity.

Mr. Mbuvi: Mr. Speaker, Sir, I will just concentrate on my question to the Assistant Minister.

Mr. Speaker: Order, Member for Makadara! Please, resume your seat for a moment! I want to guide you! You have made an allegation that, in this country, anything is possible in the courts provided you have deep pockets! In other words, you are imputing improper motive on the part of the Judicial officer that may have presided over this matter that issued a court order. So, you must have facts! Can you, please, then substantiate before you proceed?

Mr. Mbuvi: Mr. Speaker, Sir, with all due respect, I wish to withdraw and apologize.

Mr. Speaker: Thank you! Proceed with the question!

Mr. Mbuvi: Mr. Speaker, Sir, could the Ministry consider providing State Counsel to represent the police and the public, especially the poor? This will protect the police against being misled by some of these rulings.

Mr. Ojode: Mr. Speaker, Sir, yes, with the current reforms that are taking place, we are going to have prosecutors from outside the Police Force who will be under the office of the Attorney-General. So, with the police reforms, we are going to make a number of changes like what the Member has talked about. So, the Member should not worry. Once we get enough money, you will start seeing those reforms going on. Already, we have identified the prosecutors who are going to be under the office of the Attorney-General. So, that is a plus for the Judiciary.

Mr. Ochieng: Mr. Speaker, Sir, the Assistant Minister has stated that his officers did not supervise the erroneous demolition of a perimeter wall. If that is the situation, could he consider dealing with his officer who did not follow the proper instructions from the court? The court orders were very clear on which premises the wall was supposed to be demolished. I believe the policemen went there with the knowledge of what they were going to do there. Why did they disobey the OCPD to go and demolish a wrong wall?

Mr. Ojode: Mr. Speaker, Sir, indeed, I agree with the Member that the court orders were very clear. I just want to read what the court order says.

It says that:-

“It is ordered that the officer commanding the Buruburu Police Station or officers under his command and the officers commanding the Huruma Chief’s Camp, Administration Police, do assist Nathan Muhatia Pala in executing court orders issued on 3rd March, 2009, and renewed on 13th March, 2010”.

In this court order, there is nothing which says that the police were given mandate to go and demolish the wall. I have tabled the court order for my friend to go through and see what it says, namely; executing orders and not to demolish the wall.

Question No.694

DELAY IN ISSUANCE OF TITLE
DEEDS IN ZOMBE LOCATION

Mr. K. Kilonzo asked the Minister for Lands:-

(a) whether he is aware that between 1992 and 1993 some areas of Thua Sub-location in Zombe Location were surveyed and other areas left out and no title deeds have been issued to-date;

(b) whether he is also aware that Ngungi and Kasunguni sub-locations were surveyed and no title deeds were issued and that Malatani sub-Location has not been demarcated; and,

(c) what immediate steps he is taking to ensure that title deeds for the surveyed areas are issued.

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

(a) I am aware that Kwa Mbaa Mulako/Nzilani area of Thua Sub-location was left out and plans are underway to have the area adjudicated.

(b) I am aware that Ngungi sub-Location was declared as an adjudication section on 14th February, 1986.

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. If my memory serves me right, I think the Chair did rule that this Ministry will not answer any Questions until they apologise unless it was lifted.

Mr. Speaker: It was lifted because the substantive Minister, Mr. James Orengo, actually tendered a very comprehensive apology and I lifted the sanctions.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, I think the hon. Member was absent on that day. I think he needs the answers and not sanctions.

Mr. Speaker: Proceed, Mr. Assistant Minister! I know from your teaching background, maybe you will have ordered some corporal punishment.

(Laughter)

The Assistant Minister for Lands (Mr. Bifwoli): Since he was never a teacher, he does not know how it is administered.

Mr. Speaker: Proceed!

The Assistant Minister for Lands (Mr. Bifwoli): I beg to reply.

(b) I am aware that Ngungi sub-Location was declared as an adjudication section on 14th February, 1986 and survey work completed. Title deeds for Ngungi are being issued by the District Lands Registrar, Kitui, while those for Nzombe are being prepared and will be issued by 30th June, 2011.

Mr. Speaker, Sir, I am also aware that Malatani and Kathunguni sub-locations have not been demarcated. Adjudication work in Malatani was scheduled to commence on 30th March, 2011, while Kathunguni Sub-location adjudication work will start in mid July, 2011.

a) Finalization of the following adjudication section is at an advanced stage and title deeds are expected to be prepared and issued as follows:-

- (i) Mandongoi - 30th June, 2001;
- (ii) Ngungi/Zombe - 30th June, 2011;
- (iii) Miambani - 30th September, 2011;
- (iv) Itiko - 30th December, 2011;
- (v) Musukini - 30th December, 2011; and,
- (vi) Ithumula, 30th December, 2011.

Mr. K. Kilonzo: Mr. Speaker, Sir, from the outset, I want to thank the Assistant Minister for Lands for this answer. However, is he aware that with the new changes, Zombe falls under Mutito District? This is the case and yet some of these sections now fall under the new districts and are not completed. Since one of the Assistant Minister's officers is there, could he consider moving the operations from Kitui District to Zombe District for ease of work?

Mr. Bifwoli: Mr. Speaker, Sir, I think we still have one District Lands Officer in Zombe District. However, we do not have a District Lands Registrar in that district. So, the matter will be handled by one District Lands Registrar.

Mr. Mbuvi: Mr. Speaker, Sir, is the Assistant Minister aware that his officers are selling title deeds at Kshs10,000 each due to the shortage of this essential document? That is why the people of Zombe have not been issued with title deeds.

Mr. Bifwoli: Mr. Speaker, Sir, with due respect, if the hon. Member cannot substantiate, I will not answer that question.

Mr. Speaker: Order! I think it is a legitimate question. He asked, "if you are aware." If you are not aware just say: "I am not aware." It is simple!

Mr. Bifwoli: Mr. Speaker, Sir, I am not aware.

Mr. Nyamai: Mr. Speaker, Sir, the issue raised by Mr. K. Kilonzo applies to many new districts that fall under Kitui County. I have got three districts in Kitui West Constituency which I represent. Now that the Assistant Minister has said that it is only one officer who serves all the districts, what plans does he have to post an officer in each of those districts because we do not have title deeds in Kitui?

Mr. Bifwoli: Mr. Speaker, Sir, we would like to recruit land officers and post them to the 300 new districts but we do not have the funds. If the Treasury could allocate us enough funds, we would be able to post land registrars to all the districts in this country.

Mr. Speaker: Last question, the Member for Mutito!

Mr. K. Kilonzo: Mr. Speaker, Sir, the Assistant Minister in his answer for Ithumula, Thua, Kitoo and Musukini said that these documents were forwarded to the Ministry on 30th August, last year for fair printing of the maps. How long does it take to print these maps and what has he done to ensure that the process is hastened so that wananchi do not suffer as a result of waiting for these documents for too long? What is the shortest period one can get this document?

Mr. Bifwoli: Mr. Speaker, Sir, I admit that the process started in 2009. Again, on behalf of the Ministry, I apologise for the delay. That is why we have hastened the process.

Question No.835

CRITERIA FOR ESTABLISHMENT OF

YOUTH RESOURCE CENTRES

Mr. Koech asked the Minister for Youth Affairs and Sports:-

- (a) what criteria the Ministry uses to establish Youth Resource Centres all over the country; and,
- (b) whether he could consider constructing one in Mosop Constituency.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Mr. Speaker, Sir, first of all, I want to apologise for what happened last week because there was no one to answer the Question. We will make sure that this will not happen again. I am sorry about that.

Mr. Speaker: Very well! The sanctions which had been imposed on the Ministry on 11th May, 2011 are lifted. You may proceed!

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Thank you, Mr. Speaker, Sir.

I beg to reply.

(a) The following criteria is used by the Ministry of Youth Affairs and Sports in establishing youth resource and empowerment centres all over the country:-

- (i) confirmation of availability of land by the District Youth Officers in consultation with the District Officer (title deed or allotment letter from the area council);
- (ii) availability of part development plans;
- (iii) regional distribution;
- (iv) confirmation of support by the Constituency Development Fund Committee; and,
- (v) availability of funds from the Exchequer.

(b) The Ministry intends to construct, at least, a youth empowerment centre in every constituency. The construction of an empowerment centre in Mosop Constituency will be considered in the next financial year alongside other constituencies.

Mr. Koech: Mr. Speaker, Sir, while I thank the Assistant Minister for the answer she has given, in this country, there are many new districts that were created and as a result, they do not have many essential facilities. Unfortunately, that is not part of the criteria that was used. Even the districts that have very many offices and departments were awarded the very essential facility. Since we are seriously in need of this facility and one of the conditions that the Assistant Minister specified is confirmation of support by the Constituency Development Fund committee, how is this done so that we can allot money in Mosop Constituency now?

Ms. Ndeti: Mr. Speaker, Sir, we normally give Kshs5 million for the construction of a youth empowerment centre in a constituency. We, as a Ministry, construct two wings while the other is done by constituency. There are three wings in the Youth Empowerment Centres.

Mr. James Maina Kamau: Mr. Speaker, Sir, could the Assistant Minister enlighten the House on what the Government is doing to harmonize or streamline development activities of the youth in the whole country in an equitable manner?

Ms. Ndeti: Mr. Speaker, Sir, I did not hear the last part of the hon. Member's question. Could he, please, repeat it? I am sorry about that.

Mr. Speaker: Member for Kandara, could you, please, repeat and go slowly?

Mr. James Maina Kamau: Mr. Speaker, Sir, I will go very slowly. I am asking our good Assistant Minister here whether she can enlighten this House on what the Government is doing to harmonize or streamline youth development activities in this country in an equitable manner.

Ms. Ndeti: Mr. Speaker, Sir, as I said, we will be building a Youth Empowerment Centre in every constituency. We are also in the process of building a modern youth polytechnic in every constituency. Right now, we are concentrating these centres and polytechnics in the constituencies. If Parliament approves more money for us, we will consider constructing an empowerment centre and polytechnic in each district. So, I urge this House to support us to get more money, so that we ensure these centres and polytechnics are constructed concurrently in all constituencies.

Mr. Mureithi: Mr. Speaker, Sir, I thank the Assistant Minister for establishing a modern youth polytechnic in my constituency. However, with respect to the establishment of Youth Resource Empowerment Centres, after the establishment of the initial 27 which were selected before and quite a number of them are in operation, how many more have been done? What amount of money do we require to do more? When will she be able to establish one in Ol Kalou Constituency?

Ms. Ndeti: Mr. Speaker, Sir, during the 2008/2009 Financial Year, we built 47 Youth Empowerment Centres. In the last financial year, we built 30 Youth Empowerment Centres. During this financial year, we will build 30 Youth Empowerment Centres. We have forwarded our budget estimates to the Treasury.

Mr. Sambu: Mr. Speaker, Sir, what equipment is available for use in these polytechnics? How does she ensure the equipment is equitably distributed to all the youth polytechnics in the country?

Ms. Ndeti: Mr. Speaker, Sir, we are trying to equip all the youth polytechnics that are registered with the Ministry of Youth Affairs and Sports. We cannot equip those that are not registered with us. The equipment we give is for dressmaking, hairdressing and carpentry, just to mention a few.

I would really like the Members of Parliament to take the initiative to know what we are doing for the youth in this country. I would urge them to get more involved, so that they can know what is happening in our Ministry.

Mr. Warugongo: Mr. Speaker, Sir, some of our constituencies have got two districts and others three districts. Could the Assistant Minister consider putting up Youth Empowerment Centres in every district instead of constituencies?

Ms. Ndeti: Mr. Speaker, Sir, as I said, we have started establishing these centres at the constituencies level. If we get more funds, we will establish more youth empowerment centre in every district. Yes, we know some constituencies are very vast and that the districts are far apart. So, this will be done once the funds are available.

Mr. Koech: Mr. Speaker, Sir, the Assistant Minister has confirmed that since 2008, they have actually constructed Youth Empowerment Centres to the tune of 107 across the country. I have been visiting her offices requesting for one because we badly need one in Mosop for the benefit of the youth. The problem is that she has said she will consider our request alongside other constituencies. Could she confirm today that in the next financial year she will actually put money for Mosop and I can confirm to her that I will set aside money from the CDF to complete the work?

Ms. Ndeti: Mr. Speaker, Sir, I will consider doing so. However, I would like the hon. Member to provide us with a title deed or letter of allotment of the piece of land where they want us to construct a centre. I would also like him to furnish us with a letter confirming that he will allocate some money from the CDF kitty for this purpose.

Question No.819

STATUS OF REGISTRATION OF SIM CARDS

Mr. Linturi asked the Minister for Information and Communications:-

(a) what became of the Government's policy on registration of sim cards and what is the level of compliance or non-compliance by the respective mobile telephone operators; and,

(b) what action the Government will take against the defaulters.

The Assistant Minister Information and Communications (Mr. Khaniri): Mr. Speaker, Sir, I beg to reply.

(a) The need to capture details of persons subscribing to telecommunication services and in particular cellular mobile services arose from numerous public security concerns such as kidnapping, terrorism, drug trafficking and money laundering, among others.

The requirement for transaction traceability, which is normally preceded by the capturing of subscriber information is, indeed, now widespread throughout the world. Many countries around the world have taken specific measures including establishing specific legislation to address this issue.

It is for this reason that in 2005 the Government initiated the process of establishing a system of capturing the subscriber details thus being able to link a subscriber to a particular sim card mainly for security reasons.

It was, however, noted that there is need to put in place a legal framework to, among others, pre-empt any litigation, to address the issue of disclosing subscriber call records and oblige subscribers to register themselves.

Following the Presidential directive of 20th July, 2009, on the same, a lot of ground has been covered including the subsequent issuance of subscriber registration guidelines on 30th September, 2009. These guidelines are based on voluntary registration which is currently being used, pending enactment of appropriate legislation that provides for mandatory registration.

The sim registration exercise is, therefore, on-going within the above context. As at the end of February, 2011, the registration statistics were as follows: Airtel which has 3.7 million subscribers has registered 2.4 million subscribers which represents about 63.4 per cent of their subscribers.

Orange which has 2.6 million subscribers has registered 1 million subscribers which is about 38 per cent of their customers.

Mr. Speaker, Sir, Safaricom, with 17.4 million subscribers, has registered 14 million subscribers which represents 85 per cent and lastly, Yu, which has 1.5 million subscribers, has registered 1.1 million, which represents 72 per cent of the subscribers. In total, we have registered 76.6 per cent of all the subscribers across the networks.

(b) As stated earlier, there has to be a legal framework to, among others, pre-empt any litigation, to address the issue of disclosing subscriber call records and oblige subscribers to register themselves. Such legal framework would be used to take action on any defaulter, be they subscribers or service providers. My Ministry is at present, in consultations with the Attorney-General, with a view to bringing to Parliament draft legislation for debate and enactment.

Mr. Linturi: Mr. Speaker, Sir, I want to thank the Assistant Minister for that exhaustive answer and, at the same time, laud those Kenyans that have really heeded the call of registration of sim cards. At the same time, I want to differ with the Assistant Minister because I, personally, do not believe that there must be legislation to compel anybody to register as a subscriber to any mobile telephone service providers. Since Kenyans have been getting threatening messages through those service providers, why can the Assistant Minister not get into consultations with the service providers, with a view to disabling those sim cards that are not registered, so that they are forced to comply without really necessarily having to bring about any legislation through this Parliament?

Mr. Khaniri: Mr. Speaker, Sir, that is easier said than done. We can only do that under a legal framework. You cannot go blocking peoples' numbers without a legal framework because they will take you to court. So, what section of the law are you going to cite in your defence? Therefore, it is important that we pass this particular legislation. I want to assure the House that we have already drafted the legislation and forwarded it to the Attorney-General. I think it is going to be included in the Statute Law (Miscellaneous Amendment) Act that will be coming to the House soon. I want to urge Members to support that piece of legislation.

Mr. Ochieng: Mr. Speaker, Sir, could the Assistant Minister explain why the Communications Commission of Kenya (CCK) rushed to order people to register their sim cards, if it cannot take action against those who have not registered up to now?

Mr. Khaniri: Mr. Speaker, Sir, as I said in my answer, that was done, following the Presidential Directive that all sim cards must be registered. That Directive was issued on 20th July, 2009.

Mr. Imanyara: Mr. Speaker, Sir, given that we assume even presidential directives have the force of law or they are based on some legal framework, could the Assistant Minister explain why it has taken that time from 2009 December up to the present before tabling a Bill for discussion in this House, and whether that Bill that you are proposing to bring to the House has reciprocal provisions relating to the neighbouring countries? That is because you can be in Uganda, get a MTN line and come and use it in Kenya. You can be in Tanzania and buy a card there and you can use it in Kenya. Could the Assistant Minister confirm that the proposed Bill has provisions that take that into account? How soon can we expect to debate it?

Mr. Khaniri: Mr. Speaker, Sir, for us to come up with that Bill, you will agree with me that we had to do a lot of consultations, particularly, with the service providers who were a bit hesitant about the Bill. Therefore, consultations have been taking place all the time. We have had several retreats and meetings with the service providers and, eventually, we agreed on the Bill that we drafted. I have just stated that it is at the Attorney-General's Office. It will be tabled in this House when the Attorney-General brings the Miscellaneous (Amendment) Bill.

Mr. Linturi: Mr. Speaker, Sir, it appears from the Assistant Minister's answers that, many Kenyans registered after the Presidential Directive that was given on 20th July, 2009. Could he confirm to this House whether, after that particular date, those operators have given out sim cards without registration?

Mr. Khaniri: Mr. Speaker, Sir, that issue is included in the guidelines that we gave to the service providers after the directive. Anybody buying new sim cards must be registered. So, the 25 per cent that is not registered are sim cards that were sold before that particular directive.

Mr. Speaker: Next Question by Mr. Olago!

Question No.689

STEPS TO ASCERTAIN *BONAFIDE* IDPs IN KISUMU
EAST/KISUMU WEST DISTRICTS

Mr. Olago asked the Minister of State for Special Programmes:-

(a) whether she is aware that the political violence of early 2008 resulted in many IDPs fleeing their homes and were accommodated by relatives before the Provincial Administration set up mechanisms for registration of the returnees;

(b) what steps her Ministry is taking to ascertain *bona fide* IDPs staying with relatives in Kisumu East and Kisumu West Districts, who were not registered by the Provincial Administration at the time of arrival; and,

(c) whether the unregistered *bona fide* IDPs will receive Government *ex-gratia* payment like their registered counter-parts.

Mr. Mbuvi: On a point of order, Mr. Speaker, Sir. It is important to be serious on security matters in this House. On my left, there is a large group of suspicious people who look very organized and I suspect they are armed. Could we be introduced to these people – the last group over there?

(Laughter)

Mr. Speaker: Order! Order, Mr. Mbuvi! Yes, your concern may be genuine, but I want to assure you that those people up in the Speaker's Gallery have been admitted after due diligence. They have been subjected to security checks and they are properly admitted. They are, therefore, here under license which is duly given and recognized in law.

Mr. Mbuvi: Mr. Speaker, Sir, are we aware that they are police officers?

(Laughter)

Mr. Speaker: Order! Even if they are police officers--- Police officers, just like Members of Parliament, are citizens of this country. They have every right to attend and follow parliamentary proceedings. Let us proceed!

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

Mr. Speaker: Order, hon. Linturi! That matter must rest there. Let us concentrate on the core business that we are here to do! Madam Minister, proceed to answer!

The Minister of State for Special Programmes (Ms. Mathenge): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the political violence of the year 2008 resulted in many IDPs fleeing their homes and were accommodated by relatives before the registration exercise commenced.

(b) The Ministry is currently not taking any steps towards ascertaining IDPs staying with relatives in Kisumu or elsewhere in Kenya. But those should be considered under the IDP policy.

(c) Since the Ministry is not registering new IDPs, the issue of payment does not arise. However, I wish to table three registers that indicate that we actually paid IDPs both in Kisumu East and Kisumu West the Kshs10,000 and the Kshs25,000 for the burnt houses, so that the hon. Member can actually check whether the people he is referring to have been captured or not.

(The Minister laid the documents on the Table)

Mr. Olago: Mr. Speaker, Sir, it has been said here before - and I wish to repeat it - that the Ministry of Special Programmes is paying undue attention to IDPs living in Central and Rift Valley provinces. There are communities in Kenya which, even after the disruption of 2008, find it difficult to go and live in camps. So, they opted to go and live with relatives. They were not aware that they were required to report to the district officers. As a result of that, they were not registered. Under those circumstances, what is the Ministry's policy to ensure that IDPs who went to live with relatives are encouraged to stay there and not go into camps?

Ms. Mathenge: Mr. Speaker, Sir, I think what the hon. Member has said is not quite true, because in our register we have 350,000 integrated IDPs. Those are the ones who went to live with relatives, or rented houses in various places and did not go to the camps. We are, therefore, not actually concentrating on IDPs in camps in the Rift Valley and in central Kenya. The IDP policy is going to take care of all those and even those who were there in 1992 and 1997.

Mr. Kiuna: Mr. Speaker, Sir, I would like to ask the Minister whether she is aware that the Head of State had given a deadline for all the IDPs in the Republic to be resettled by end of April. We are now past April; what measure or step is she taking to make sure that all the IDP camps in this Republic are destroyed?

Ms. Mathenge: Mr. Speaker, Sir, I did not hear what he said.

Mr. Speaker: Member for Molo, repeat your question and slowly!

Mr. Kiuna: Mr. Speaker, Sir, I want to ask the Minister of State for Special Programmes whether she is aware that there was a directive by the Head of State, while in Eldoret, to make sure that all the IDPs in Republic are resettled and IDP camps in the Republic are cleared by the end of April? Now we are in May and there are still some IDP camps in this Republic. What measure is the Ministry taking, or has taken, to make sure that all the IDPs are resettled in the Republic?

Ms. Mathenge: Mr. Speaker, Sir, I believe I was in that meeting in Eldoret, and the President did not give a directive for April. He gave a directive for June. We are

trying as much as possible, to fast-track the process. However, we have met a lot of challenges. You have heard the saga of Mau Narok, where we were supposed to settle 800 IDPs but we were not able to. We also had the saga of Endebess where we were supposed to settle 255 IDPs, but we had a problem. Now, we also have a new one at Kipkabus where we have---

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

Ms. Mathenge: Can I finish, please?

Mr. Speaker: What is it, Member for Rongai?

Order, Minister! You do not have that prerogative!

Mr. Kigen: Is it in order for the Minister to refer to the issue of Endebess, yet those people have actually been settled in Endebess?

Ms. Mathenge: Mr. Speaker, Sir, I thought the Questioner wanted to know what we are doing and I am trying to give the challenges that we have encountered. If they were settled at the time we wanted them settled, we would have beaten our June deadline. However, because there was that antagonism it did not happen as quickly as possible.

Currently, we also have Kipkabus, where we are supposed to settle 369 IDPs. It also has issues. So, if we politicians stop politicizing the issue of IDPs, we can settle them as soon as possible.

Mr. Mwadeghu: Bw. Spika, kila wakati Waziri akija hapa anatueleza mambo ya Wakimbizi wa Ndani. Kwa nini hawarudishwi pahali walikotoka? Kule walikotoka kuna ardhi; walikuwa wanaishi pahali fulani. Mbona wasirudi huko kama amani imerudi? Mpaka sasa ni kuzungushana, *merry-go-round*. Waziri, tumechoka!

Ms. Mathenge: Bw. Spika, utaniruhusu nijibu kwa Kiingereza kwa sababu kwa Kiswahili ninaweza kusema kile sitaki kusema.

At least 90 per cent have returned to their homes. However, as I have said many times in this House, the people we are settling did not own land. It is their livelihoods which were disrupted. Those are the ones we are settling; the ones in the 20 self-help groups.

Mr. Mwadeghu: Jambo la nidhamu, Bw. Spika. Kama hawa ambao anajaribu kuwapatia makao hawakuwa na ardhi hapo awali, mbona wanapewa kipaumbele na katika nchi hii kuna watu ambao hawana ardhi? Kwa nini wao wapatiwe ardhi? Mkoa wa Pwani kuna watu ambao hawana ardhi. Mbona hawafikirii? Mnafikiria hawa wengine huku juu. Hio ni haki?

Mr. Speaker: Mhe. Mwadeghu, hujafaulu kwa jambo la nidhamu. Umeuliza swali jipya. Kwa hivyo, hio haikubaliki na ninautupilia mbali!

Mr. Njuguna: Mr. Speaker, Sir, acknowledging the answer given by the Minister, could she inform this House the deterrent measures the Ministry is taking to protect homes and property left behind by the fleeing IDPs, as they wait to be settled in their homes or elsewhere in the country?

Ms. Mathenge: Mr. Speaker, Sir, I am not very sure I quite got what he---

Mr. Speaker: Order, Minister!

Ms. Murugi Mathenge: Can he ask---

Mr. Speaker: Learn to be attentive!

Ms. Mathenge: Mr. Speaker, Sir, I was very attentive. Can he ask the question again?

Mr. Speaker: This is the second time you are asking for a repeat!

Ms. Mathenge: They are mumbling!

Mr. Speaker: What did you say, Minister?

Ms. Mathenge: Mr. Speaker, Sir, I said the people who are asking questions are actually mumbling. Could they---

Mr. Speaker: Order, Minister! The word “mumbling” is unparliamentary! You must withdraw and apologize!

Ms. Mathenge: Mr. Speaker, Sir, I apologize but can he be more articulate so that I can answer?

Mr. Speaker: Member for Lari, raise your voice so that the Minister can hear you.

Mr. Njuguna: Mr. Speaker, Sir, while acknowledging the answer that was given by the Minister, could she further indicate to this House the strong measures the Ministry is taking to protect homes and property left behind by the fleeing IDPs as they wait to be settled back home or elsewhere in the country?

Mr. Speaker: Minister, that is now clear, and as articulate as can be.

Ms. Mathenge: Thank you very much; it was quite articulate. I have already said that over 90 per cent have already gone back to their properties. The Ministry of State for Provincial Administration and Internal Security has also set up police posts in various places, where we feel that it is insecure. They are as secure as can be.

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, could the Minister clarify? The question that has been asked is on integrated IDPs. The facts we got from Government Ministries speak for themselves. There is a very clear ethnic discrimination in the settlement of IDPs. We will be providing a report which shows that, so that we do not go back to 2007. What is the Minister doing to deal with the issue of ethnic discrimination? For example, in Rongai, we found that camps with Kalenjin, Kisiis and Luos were receiving very different treatment from a camp that had Kikuyus. The camp with Kikuyus had already been paid Kshs10, 000 and Kshs25,000 and were settled on land. The ones next to them which had Kalenjins, Luos and Kisiis had received Kshs10,000 others had not received Kshs20, 000 and most had no land. This is happening all over the country. What is the Minister doing to ensure that we do not ethnise the issue of resettlement of IDPs?

Ms. Mathenge: Mr. Speaker, Sir, I am not aware of that and I would like to have a glimpse of the report first before I answer.

Mr. Speaker: Last question by the Member for Kisumu Town West.

I am afraid that answer by the Minister must pass, because if you apply our Standing Orders, you cannot anticipate the contents of a Report before it is tabled.

Mr. Olago: Mr. Speaker, Sir, in the first part of the answer by the Minister, she says that she is aware that there are many Internally Displaced Persons (IDPs) who fled their homes and went to stay with their relatives. In the second part, she says that in Kisumu, she will not allow registration of these IDPs because the period for doing so elapsed on 31st December, 2008. Could the Minister tell us the legal basis for putting the deadline to 31st December, 2008, and not thereafter when there are IDPs who are not registered now?

Ms. Mathenge: Mr. Speaker, Sir, the date of closure, which was 31st December, 2008, was for the entire Republic. However, the hon. Member’s Question was very specific to Kisumu. So I tried to answer specifically to Kisumu.

Mr. Olago: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to avoid the Question, which was the legal basis for fixing the date of 31st December, 2008? What is the legal basis for it?

Ms. Mathenge: Mr. Speaker, Sir, I believe that it was for budgetary purposes.

(Laughter)

Mr. Speaker: Very well! That brings us to the end of Questions and we will now take the next Order!

Are there any statements due for delivery? There are none. Are there any requests for Statements?

Proceed, Mrs. Odhiambo-Mabona!

POINTS OF ORDER

CIRCUMSTANCES SURROUNDING DEATH OF MR. SAMUEL WANJIRU

Mrs. Odhiambo-Mabona: Thank you, Mr. Speaker, Sir. I rise to seek a Statement from the Minister of State for Provincial Administration and Internal Security. In the Statement, I would request the Minister if he could issue a Statement on the circumstances that led to the death of Mr. Samuel Wanjiru, the renowned international athlete on Monday, 16th May, 2011. In the Statement, could the Minister further indicate the number of domestic violence cases that have been reported to the Police from January, 2010, to date. Thirdly, could he further update the House on the status of the Domestic Violence and Family Protection Bill?

Finally, could he indicate what the Government is doing to help couples proactively deal with marital problems in light of the increase in cases of domestic violence because yesterday, we saw a case which appeared to be a case of domestic violence? Last week, Mrs. Wambui Kabiru was buried, consequently, as a case of domestic violence. We do not want to lose our young people. Could the Minister provide a Ministerial Statement in relation to the same?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, from the Member's request, it appears as if some research ought to be done. On domestic violence cases that were reported from January to date, I require about two weeks to give an elaborate Statement.

Mr. Speaker, Sir, if the other cases of domestic violence are not included and we just talk about the case of Mr. Samuel Wanjiru then I can give a preliminary report on Thursday, this week. This is because that case is under investigation.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: Order! Mr. Assistant Minister, you should then give your Statement on Thursday, this week, at 2.30 p.m.

Mr. Assistant Minister, if I were in your shoes, I will be careful on the second part because I think somebody has already been charged in court. So, I am not so certain that you can make that Statement to any greater detail than just indicating that the matter is in court. However, that is for you to decide and determine.

That Statement will be given on Thursday, this week at 2.30 p.m.!
Yes, the hon. Member for Cherangany!

BENEFITS OF PRIME MINISTER'S RECENT
VISIT TO US AND FRANCE

Mr. Kutuny: Thank you, Mr. Speaker, Sir. I would like to seek a Statement from the office of the Prime Minister following his recent visit to the United States of America and France. In the Statement, I would like him to indicate what multilateral or bilateral agreements Kenya secured during the two-week trip. Could he table the same, if any?

Secondly, could the Prime Minister highlight any immediate or long-term benefits Kenya stands to gain from the countries he visited? Thirdly, could the Prime Minister indicate the amount of the taxpayer's money the country incurred during his two-week overseas travel and provide an inventory of all senior Government officials and legislators, if any, who accompanied him?

Thank you, Mr. Speaker, Sir.

(Applause)

Mr. Speaker: Very well! Is there anybody from the Prime Minister's Office here? Where are the Assistant Ministers? The Minister of State for Public Service, that would be under the auspices of the Prime Minister.

Proceed, Mr. Minister!

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, we will issue the Statement by Tuesday, next week.

Mr. Speaker: The Prime Minister has a designated time!

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, it can be included in the Wednesday's Statement.

Mr. Speaker: Wednesday, this week? Is that tomorrow?

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, on Wednesday, next week.

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

What is it, the Member for Gwassi?

STATUS OF REVENUE ACCOUNT AT TREASURY

Mr. Mbadi: Mr. Speaker, Sir, I remember I had sought for a Ministerial Statement from the Deputy Prime Minister and Minister for Finance and last week, you did rule that the Minister and the Assistant Minister will not be able to transact any Business in this House. This is the fourth sitting since that time and it appears as if the Office of the Deputy Prime Minister and Ministry of Finance has not made any attempt at all to bring the Statement to this House. I am at a loss. What step should we take against this Ministry so that it can comply with the requirements of the Standing Orders that when you commit to bring a Ministerial Statement, you bring it?

Mr. Speaker: Very well! I have registered that and I will consider the matter further and give directions on Thursday at 2.30 p.m. We will liaise with the Office of the

Deputy Prime Minister and Minister for Finance to find out what the explanation could be. In the absence of an explanation, we will review the severity of the sanctions that we have imposed. Perhaps we need to do more.

Hon. Members, that brings us to the end of that Order and we want to go to the next Order!

BILL

Second Reading

THE SALARIES AND REMUNERATION COMMISSION BILL

*(The Minister for Justice, National Cohesion
and Constitutional Affairs on 12.5.2011)*

(Resumption of Debate interrupted on 12.5.2011)

Mr. Speaker: The hon. Member for Teso has the Floor and he still has 15 minutes!

The Assistant Minister for Labour (Mr. Ojaamong): Mr. Speaker, Sir, I beg to continue with my contribution on The Salaries and Remuneration Commission Bill, 2011.

In the Report that was delivered by the Permanent Public Service Remuneration Review Board in collaboration with the Productivity Centre of the Ministry of Labour, certain recommendations were made with regard to the harmonization of salaries and remuneration of our public officers. This was in recognition of the fact that we had many differences in the salaries.

Mr. Speaker, Sir, if you look at the education sector, for instance, you will find that the difference in payments given to the teachers who did A-Levels and those who trained as P1 teacher are enormous. The P1 teaches earned more than the teachers who went up to the A-Levels. We also had untrained teachers with university qualifications who earned less than their graduate counterparts.

If you go to the Ministry of State for Provincial Administration and Internal Security, you will find that Administration Police were earning less than other police officers. If you look at the clause that provides for that keenly, you will see that, that has something to do with the health sector. Therefore, there is need for us to have a Commission that will be setting and regularly reviewing the salaries of our public servants.

Inequality in earning amongst public servants has caused them to have very low morale in the delivery of services. In the health sector, nurses do more work than the doctors although in terms of training, doctors are trained more. However, if you look at the work that the nurses do and the salaries that they earn, the two do not match. There is need, therefore, to have that Commission that will evaluate the work that people do in relation to the amount of money they are paid.

When we were writing our Constitution, the public, through various fora, cried and said that state officers should not be increasing their own salaries. That was in

reference, probably to Parliament, which was not the case. The Press took it upon itself to mislead the public because we had only adopted the recommendations of the Tribunal that had been appointed to look at our allowances. I will urge the Minister, when he tries to fine-tune this Bill, to ensure that he incorporates the Ministry of Labour as one of those institutions that will be appointing people to the Commission because it is the Ministry of Labour which has been handling most of these matters. It has enough data related to the labour market worldwide. I would appeal that, amongst the appointing bodies, we include the Ministry of Labour because it has sufficient information regarding the labour market across the world.

Thank you.

[Mr. Speaker left the Chair]

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

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, I thank you for giving me this chance to contribute to this very important Bill. I would like to say, from the outset, that I support this Bill with amendments. I will only support it when it is amended in some areas. The first reason why I support this Bill is because it makes the Constitution operational. On that basis, I support the Bill. Secondly, I support the Bill to remove the notion that MPs decide their own salaries and allowances. On that basis, I will support it. Thirdly, I will support it because when you look at the appointment of the Commissioners, you will see that the process is very clear. The Bill gives freedom to the organ. For example, Clause 7(3) says:-

“The relevant nominating body shall consider the applications received under Sub-section (i) to determine the compliance with the provision of the Constitution and this Act, interview the applicants and forward the names of two persons so qualified, who shall be of opposite gender, to the Cabinet Secretary for onward transmission to the President.”

This Bill gives our President an option to pick from two people who qualify, and of either gender. It does not tie the hand of the President. The President cannot also dictate to Parliament to endorse a name. Previously, we had given him that leeway. On that basis, I want to support this Bill. That is because when you are given two options, and you have some doubts with the first option, you can go for the second option.

Mr. Temporary Deputy Speaker, Sir, I also have a lot of reservations. One, there is an area that I would like to see some amendments. I request the Minister, who is here, to look at Clause 11 which says:-

“The Commission shall:-

“(a) inquire into and determine the salaries and remuneration to be paid out of public funds to State officers and other public officers.”

Here, I would like the Committee that will come up with amendments to remove the word “determine” and replace it with “advice”.

I have a good reason for saying that. That sentence contravenes our own Constitution. When you look at Section 41 of our Constitution, you will see that it gives people the freedom to belong to trade unions. I come from a background of trade unions.

As a trained teacher, we used to have the Teacher Service Remuneration Committee. The Government had six representatives. The teachers used to have five representatives. This particular clause will render the Teacher Service Remuneration Committee irrelevant. You know that teachers are not civil servants. They are public officers. People are supposed to belong to their unions. Our Constitution recognizes that we are free to belong to a trade union. However, this particular Clause removes the freedom of joining a union.

Look at Sub-clause (b). I would like to have it deleted. It reads:-

“(b) Keep under review all matters relating to the salaries and remuneration of public officers.”

This contravenes our Constitution that we passed last year. That means that we should not have any trade union. This Bill kills COTU, KNUT, KUPPET and any other union. At what point will trade unions negotiate with employers on behalf of workers? Sub-clause (h) reads:-

“(h) perform such other functions as may be provided for by the Constitution or any other written law.”

With due respect, some of us conduct a lot of research. It is unfortunate that I have come across the fact that there is a proposed TSC Bill. Under the proposed TSC Bill which has not been tabled here, and which I have--- Please, allow me to alert the nation of the fact that there is some malice from TSC. The drafters of this Bill must have worked in concurrence with TSC. This is very sad. TSC, in its proposed Bill, is proposing that the remuneration due and payable by the Commission to teachers and its secretariat staff shall be as prescribed by the Salaries and Remuneration Commission. How did they know that we are going to discuss The Salaries and Remuneration Commission Bill so that they came up with this Bill? If the Chair allows me, I will table it. Can I table it, so that the Chair can look at it? It is the prerogative of the Chair to tell me whether it is relevant or not.

The Temporary Deputy Speaker (Mr. Imanyara): Just go ahead!

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Temporary Deputy Speaker, Sir, as I said, I do a lot of research. If this Bill is passed as it is, it will infringe the Constitution that we passed. If anybody goes to court, it will nullify the Act. We are intelligent enough to foresee what can easily come. That is why I pray to my colleagues that we do a thorough job, instead of waiting for somebody to, later on, go to court and have this law nullified. Why should we work so hard and pass this Bill, and have it assented to by the President only for an individual to challenge its constitutionality in court and have it declared null and void?

As I said, I will only support this Bill with amendments. If it is not going to be amended, I will withdraw my support for it despite the fact that I am in Government.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to support the Bill.

I am supporting this Bill in the spirit that we must have the Constitution that we adopted last year implemented, particularly the aspects that deal directly with the business that the Government is supposed to do and the services that it is supposed to render to the citizens.

When I look at The Salaries and Remuneration Commission Bill, I imagine what has happened in the public sector and feel that it should be as independent as possible. There are some institutions which have to play roles but, sometimes, just because of

individuals, you find that what happens is personalised. An example is the issue of where people have had to pay salaries to themselves because they are more powerful than the systems that are in place, because of the connections they have. People had salaries paid to themselves in some Ministries and state corporations.

Mr. Temporary Deputy Speaker, Sir, therefore, this Commission must be as independent and as strong as possible. I was just imagining, where we talk about the conduct of business and the affairs of the Commission, where we are saying that the chairperson will preside over all meetings and, in the absence of the chairperson, the person elected by the Commission at the meeting for that purpose. I would have expected this provision to be very clear – that we shall have a chairperson and a vice-chairperson, rather than having somebody to be elected from amongst those present in a meeting. That way, we will have somebody taking responsibility of the activities of the Commission in the absence of the chairperson. There should be a chairman and a vice-chairman. These are the people who can be held accountable for the work that the Commission will do.

Mr. Temporary Deputy Speaker, Sir, there is the issue of conflict of interest. I am saying that this Commission should be very credible, independent and strong because what is being said here is what has been happening in Government. There are senior Government officials who have used their positions to benefit from the offices in which they work. They do not use the influence of their positions to get business elsewhere, but rather do business in the same Ministries and state corporations they serve. There should be a penalty for such action. We always say that people should declare their interests but many of them do not declare their interests and nothing happens when they do business with the departments they head.

I watched a programme on television on the day before yesterday in which the issue of the ownership of Kenol/Kobil featured prominently. I hope that nobody will force me to substantiate because the issue was discussed publicly. In that discussion, it was said that Nicholas Biwott is the one who owns that company. What was being discussed relates to the problems of fuel pricing and shortages. I believe that he got those interests when he was the Minister for Energy. So, even if somebody declares his interest, there must be some penalties to be levied against him, if it is discovered later that he lied. If we only say that one must declare his interests, if any, in a matter before the Commission, and that he shall not, unless the Commission otherwise directs, take part in any consideration or discussion or vote on any question touching such matter, such a person will go out of the meeting but he will already be having the business. You do not have to be in the meeting that is discussing such a matter in order for you to get the business.

Mr. Temporary Deputy Speaker, Sir, I agree that the criteria by which remuneration shall be determined should be very clear. They are generalised in this Bill, but they should be very specific. Section 13(1)(b) of the Bill states:-

“13(1)(b) The Commission shall take any measures it considers necessary to ensure that in the harmonisation of salaries and remunerations, equity and fairness is achieved in the public sector.”

There is need for this provision to be very clear in terms of what it means. This is something which has always been said. We have heard about harmonisation of salaries in the public sector several times. The reason as to why this has not been achieved is that the criterion is not very clear. Details like educational qualifications, field of study, the

experience that somebody has had and the time spent on the job must be taken into account. There should be more information than we have here.

Mr. Temporary Deputy Speaker, Sir, there are those people who are not employed by the Government, but they are very productive in whatever they do. Some of the workers may not be very much trained, but they produce so much that goes into the growth of the economy. When the Government created the Kenya Revenue Authority (KRA), we had two categories of workers in the same institution. Something similar happened in the Kenya Wildlife Service (KWS). There were those who were recruited directly from the Government and those who were recruited privately after the organisations were created. There were big variances in the salaries of the two categories of workers. The affected employees could not complain because if they complained, they would be dismissed. I do not know whether this has been rectified.

Mr. Temporary Deputy Speaker, Sir, this is a very important and useful Bill that must be strengthened. As I said, it must be as independent as possible. An hon. Member talked about politics. It is very difficult to quantify the job of a Member of Parliament. Some of us are on duty 24 hours, but somebody believes that the time we appear in Parliament is the only time we are working. I heard one of the FM stations claim that MPs only work for three days; that is, Tuesday, Wednesday and Thursday. There must be a way of quantifying the amount of work an MP does. This can only work if we are honest enough. I know there are some places, particularly in some companies where people log in the time they report to work and the hours they have worked. If you leave the office, you log out to show that you have left. People should not just go to their offices, leave their coats and go roaming about and at the end of the day or the month, they cannot justify what they have put in and they extend their hands to receive their pay. The criteria of determining how the Salaries and Remuneration Commission will work to reward productivity must be of very high standard.

The Commission should be guided by the principle of equal remuneration. This is provided in Clause 12 of the Bill. This is a very important guiding principle to the Commission in addition to the principles set out in Article 230(5) of the Constitution which states:-

“The Commission shall also be guided by the principles of equal remuneration to persons for work of equal value”.

The criteria set for the working of this Commission must be high enough. The commissioners must be people of integrity who cannot be compromised, so that they are fair. They should be fair across the board based on productivity and the importance of the role that is being played.

With those remarks, I beg to support.

The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030 (Mr. Kenneth): Mr. Temporary Deputy Speaker, Sir, thank you for giving me an opportunity to also add my voice in support of this very important Bill. From the beginning when some of us went out there to campaign for the new Constitution, one of its strengths - in the view of some of us, other than other sections within the Executive and Devolution - was on the Salaries and Remuneration Commission Bill.

For a long time, various sectors in our country have felt that other sectors were looking after themselves much more. In fact, this institution known as Parliament has

been on the spotlight on salaries and remuneration issues. We have also had instances where we have hired senior technocrats who are our brothers and sisters and have ended up getting very high salaries which are not in harmony with what their colleagues in the same positions have been earning.

Mr. Temporary Deputy Speaker, Sir, you will remember that we had the Dream Team and some of the salaries that were offered to the members of the Dream Team, most of whom joined the Civil Service nearly caused disharmony within the Civil Service itself. We had some Permanent Secretaries who were earning about Kshs2 million and others earning about Kshs400,000. There were such huge disparities. I know that the Teachers Service Commission (TSC) has also said that it would like to maintain its remuneration committee, but I want to appeal to them that one of the roles of this Commission is to have an equalizing factor within all the sectors in our country, so that the disparities that might be in one sector will not be in another and Kenyans can finally feel that the ceilings have been well deliberated and looked into by the Salaries and Remuneration Commission.

In the same view, we hope that we can reduce the size of the Government so as to be able to pay civil servants better salaries so that they can remain professional civil servants. As we move forward and require more service delivery to be offered by the Civil Service, we must ensure that all the sectors that offer services within the Government are well looked after. The only one who can look after them better will be this Commission.

Mr. Temporary Deputy Speaker, Sir, we have civil servants who want to leave the Civil Service and join quasi-Government bodies like the parastatals or semi-autonomous Government bodies or agencies because of low salaries, yet they go and serve the same Government in other capacities. Therefore, it is very important that we have an equalization factor by way of a Commission, so that any civil servant who is in a parastatal, a semi-autonomous Government agency, the mainstream Civil Service or the TSC feels that they are adequately taken care of. There has been perception - some of it might be correct - that in the Judiciary and in the National Assembly, we have looked after the Members better than we have looked after the society. As we insist on having a just society, it is good that as Members of Parliament, we also accept to be subjected to the Salaries and Remuneration Commission. It has been felt that constitutional office holders and Members of Parliament have not been subjected to taxation because they have taken care of themselves alone. All this can be sorted out by this Commission.

We should accept that this will be the driving force within the labour force because the Government is the biggest employer. Let us accept that this Commission will articulate the views of the Government by equalizing the manner in which salaries and disparities are set and the manner in which harmonization of salaries can be achieved for all Government workers.

As I conclude, I know a few of my colleagues are worried about the independence of this Commission. It is upon us to ensure that there is total independence of this Commission, so that it can take root as quickly as possible.

With those few words, I beg to support.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Lesrima): Thank you, Mr. Temporary Deputy Speaker, Sir, for this opportunity. I rise to support the passing of this Bill.

Mr. Temporary Deputy Speaker, Sir, this Bill is as a result of the Constitution that we passed. As you know, we need to take care of the human resources that will drive and implement this Constitution. There have been 15 commissions and committees reviewing salaries in Kenya between 1960 and 2003. A number of them have actually been operating on *ad hoc* basis. We ended up with the Kipkulei Harmonization Committee, which I think did a good job. It also ended up with the establishment of a Permanent Public Service Remuneration Review Board which has not been anchored in the law because it was merely gazetted. So, the setting up of this Commission has come at the right time. We are aware that there are other Commissions that have been taking care of salaries in the Public Service. They are the Parliamentary Service Commission, the Public Service Commission, the Judicial Service Commission, the Teachers Service Commission and the Armed Forces Pay Review Board. The Constitution has redefined some of these bodies. For example, the Armed Forces now fall under the Defence Council. There will also be a representative from the Senate, as bodies which will nominate members to sit in this Commission.

Mr. Temporary Deputy Speaker, Sir, there were concerns by some Members that the unions will not be considered, but if you look at the Constitution, under Section 230(1)c, you will find that there will also be one person, each nominated by an umbrella body representing trade unions. Earlier on, a Member had expressed his fears that under the Teachers Service Commission, the teachers' interest will not be taken care of. The principles that are recognized by this Constitution also revolve around the question of sustainability of the payroll. This is because you can have a wage bill that the economy cannot sustain. Or, you can pay people this year and the following year, the economy cannot sustain that. Sustainability also means the ability to balance between operations and maintenance. In the budget of the Public Service today, maybe, the resources are available. On the Recurrent budget, 70 per cent goes into salaries and remuneration while 30 per cent goes to development. However, there may be departments where the ratios are even worse. This is where you have to spend 90 per cent of the resources to pay people while only 10 per cent of the resources is available for development. So, that principle of sustainability brought by the Constitution is very important.

The other principle is the retention of skills. We should retain skills in the Public Service and recognize productivity and performance. We should also be fair and transparent. As a result of all those historical reviews, there has been a lot of disparity over pay and this law will now assist us. That is if we establish the Commission.

I do not want to repeat what Mr. Kenneth talked about the Dream Team. We recognize the fact that when the Dream Team came in, in 1999, supported by the World Bank, some Permanent Secretaries, including me, were retrenched. The Dream Team came on board with incredible salaries of Kshs2 million each. The result of that, the judges also came up and said that they perform a very important function in this nation and their salaries were increased. The parliamentarians and Permanent Secretaries also followed suit. Under Section 11, the responsibility to determine the salaries paid to public servants and state officers falls under the Commission. Therefore, we do not need to wait for pressure from trade unions and individuals, like it happened in the past, to increase their remuneration.

Mr. Temporary Deputy Speaker, Sir, as we also establish counties, I think it is very important that we have a body that will assist the county governments to harmonize

and bring equity in salaries. I recall that during the establishment of a number of parastatals, especially the regional authorities, like the Lake Basin Development Authority, Tana and Athi Rivers Development Authority (TARDA) and Ewaso Ng'iro North, one of the problems because of politics was the tendency to over-staff the institutions until there were very little resources for development. If we are not careful, some of these counties can get out of control in terms of the kind of remuneration and the employment level they will undertake.

This Commission will also deal with the question of job evaluation across the board, so that we can get equal pay for jobs performed. The question of individual salaries, which has been cited here, where some public servants negotiate their salaries, is covered under Section 11(f), where the Commission will have to make recommendations on matters relating to remuneration of a particular state for public officer. This will ensure that we do not have a situation where one public officer earns Kshs2 million while another one Kshs1 million, and yet they perform the same job.

Mr. Temporary Deputy Speaker, Sir, finally, this Commission can also take over from the job done by Ministry of State for Public Service which established a pay policy. I am sure one of the tasks that they can also be granted is to look at the question of all pay policy in Kenya, so that personnel can also move from private sector to public sector with ease. If you have universities developing knowledge and that knowledge needs to be translated into development activities or inventions, it should be possible for university staff to move to the private sector and vice-versa. That is what happens in other countries.

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

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, I beg to support this Bill.

Mr. Temporary Deputy Speaker, Sir, in supporting this Bill, I want to say that I am happy that, as a country, we are looking at issues of inequality because if we do not equalize opportunities for all, then we will get the scenario that we had in 2007. We are witnessing many cases of violence as we speak now. Many of them are as a consequence of frustrations because we are in a country where inequalities are glaring. We have extremely rich and extremely poor people. I think we must find a balance as a country. We cannot have a society where all are equal, but if we have a society where there are persons who are completely without, then we are setting up ourselves for trouble.

Mr. Temporary Deputy Speaker, Sir, in supporting this Bill, I want to make brief remarks in relation to some clauses. As we dealt with the Electoral Commission Bill, the issue of commissions and secretariats arose. I would want to suggest that when we are dealing with this Bill and other Bills, the Minister would guide the House so that a standard is established that applies across the board for all commissions.

I know that we have had a problem where in a lot of commissions you have commissioners that are powerful and they get into a lot of conflict with the secretariat. There was an attempt when we were in Naivasha to deal with this issue by separating very clearly the roles of commissions and secretariats. I do not know if there is something else that we can do further by legislation to ensure that we do not have this conflict. It would not only affect the Independent Electoral and Boundaries Commission, but I think it is more glaring when you have the Commission because it does work that is very

closely monitored by the country. Therefore, under Clause 4(2), maybe the Minister can think of a noble way of dealing with that issue because I know it keeps coming up.

Mr. Temporary Deputy Speaker, Sir, I would also want to speak to another issue that has been running across most of the Bills that relates to commissions. I would want to also encourage the committee and the Minister that is looking into it, that when they will be dealing with these Bills that set up commissions, once they get a general trend, if they could establish it so that we do not speak to the same issue.

One of the issues that keeps coming up is the issue of years of service. In this Bill and the others that we have dealt with, you will notice that we put 15 years for the chairman and 10 years for the members of the commission. It has come up in the IIEC Bill and on this one under Clause 15(1)(b) and others which I will not mention. So, if you could standardize all of them, we can enrich ourselves from the views that keep on coming from the Floor of this House. Even the other commissions that we have passed where they have reduced the time to take into account the youth who cannot be punished for excelling. There are people who have worked hard and they have excelled. They are committed and are doing excellent work. I keep giving the example of the CEO of Vision 2030 who has done an excellent job and is a young man. We have several such young men who have done excellent jobs in the past. We cannot punish somebody for excelling as a young person.

Mr. Temporary Deputy Speaker, Sir, in Clause 7 on the issue of advertisement so that we do not want to find ourselves in the same problem that forced us to return a Bill for further amendment, it is good that now this Bill provides for advertisement using newspapers. But I think one of the things that we should be including is also advertisement through radios. I do not think there is anything that precludes us from advertising positions using radios. Sometimes people say if you are qualified, why would you not see newspapers? Surprisingly, the people who are qualified are the ones who sometimes do not read newspapers. Most Members of Parliament will tell you that they hardly read newspapers and that sometimes they read them when the deadlines have passed. Why? It is because they are very busy. Usually even if you are busy, if you are in a car, you will put on your radio and listen. So, let us also advertise.

Mr. Temporary Deputy Speaker, Sir, I want to laud the inclusion of gender parity under Clause 7(2). Even though the Constitution provides, we must always indicate that because when we do not indicate, people forget. In that regard, I would want to encourage an amendment that very specifically indicates that there shall be gender parity in the panel.

I want to talk about Clause 11. I want to make reference to Article 230(4) of the Constitution which indicates the powers and functions of the Salaries and Remuneration Commission. It says under "a" the powers and functions shall be to:

- (a) set and regularly review the remuneration and benefits of all State officers.
- (b) advise the national and county governments on the remuneration and benefits of all other public officers.

Mr. Temporary Deputy Speaker, Sir, when it comes to the issue of public officers, the Constitution is clear; it would be to advise. It shall not be to set and/or determine. So, the language should be amended to reflect the letter and spirit of the Constitution. I think that is the quarrel that the teachers have with that clause. When I looked at it, I realized that they have a point that we might actually be going beyond the constitutional mandate.

A lot of people have spoken about the issue of independence of commissions. For me, I think we have a misconception about what independence constitutes. When we say that a commission is independent, it does not mean that it shall be a rogue commission. It basically means that it shall be able to exercise its mandate as provided in the Constitution without interference. It shall also exercise its mandate as provided by any written law. We, as Parliament, cannot be stopped from passing a law that would then allow a commission to exercise its mandate. But once we pass that law, we shall not then go to the commission and tell them how to exercise their mandate within it, especially if it is crafted within constitutional limits. I would also want to encourage that we need to include the aspect of public participation because it is weak in this Bill.

Clause 16 talks about recruitment being competitive. I would want to encourage the Minister that, not only should the recruitment be competitive, but that it should be open.

In the recruitment process of the Chief Justice and Deputy Chief Justice, for the first time, the country was able to witness transparency, honesty and openness in the interview. Through that process, the public had the opportunity to raise issues that are of concern to them. We do not want a situation where we say it is competitive, but it is behind closed doors; we do not know what goes on through that process.

Mr. Temporary Deputy Speaker, Sir, one of the things that the Salaries and Remuneration Commission must do is to harmonize salaries in counties and in the national Government. The reason I am saying so, is that I noticed that when it was said that the nurses would be taken to devolved units, they were saying that they would not go there, because perhaps their salaries would not be the same as that of national Government. This notion that we have that devolved governments are local governments should not continue. I sat through the process of coming up with the Constitution in the Select Committee and I have been through the process of Bomas, really, there was never an intention of the drafters of the Constitution to give the local governments a new name. Devolved units are totally new government level. If you look at the Constitution, it says both the national and county level of governments shall be inter-dependent, but autonomous. Because of that, let us not have this notion that we are creating county councils. Devolved units are not county councils. They are superior and are meant to be new centres of economic growth for this country. Unless we get that clearly, then really we had no business coming up with a new Constitution. Why did people call for new devolved governments? They wanted new centres of growth. They wanted new centres of livelihood. They wanted new centres where people can get jobs. Their advice to county governments must be taken into account.

Finally, I want to speak on the issue of vetting of public officers and State officers. I know this is one of the issues that has been bedeviled us, as a Parliament. The Constitution is very clear. It provides very standards in terms of some of those offices. Chapter 6 is also very clear in terms of what is required. However, we need to be clear between what is criminal and what is moral. The Constitution talks very largely to issues that are criminal in nature.

Therefore, if somebody is involved in something that is criminal in nature, it is outlawed in the Constitution. But beyond that, those are matters of personal preferences. For instance, I, as a person, do not like men who wear suits and white socks. But I

cannot, for instance, bar or challenge a person from coming to Parliament because they wear white socks with their suits. That is a matter of personal preference.

Those who have white socks, I am sorry for you.

With those few remarks, I beg to support.

(Laughter)

Dr. Otchilo: Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to contribute to this Bill. First, I want to thank the Minister who has brought this Bill to this House. I have gone through it and I can say that, overall, it is quite good. The processes for appointment of a chairperson are very clear. The process for appointment of commissioners is very clear and I am very happy that all the commissions that will be involved will be appointing their own representatives competitively. So, I would say that the process is clear.

Mr. Temporary Deputy Speaker, Sir, I am very happy with this Bill because, for many years, some professions have been marginalized and, particularly, scientists and researchers who actually join Civil Service or parastatals. As you are aware, some of those disciplines require people to go for long-term training. To become a renowned scientist, you need to go in for a Masters degree and even PhD. But the sad thing for this country has been that most of us who chose those lines or professions, which are very important for this country--- After we spend so many years in universities doing Masters and PhDs, when you come back to the Civil Service, you find that your colleagues who did liberal subjects like history and government and became district officers have moved faster and they have even become your bosses. So, you find that, as a result, many scientists have moved out of the Civil Service. They use Civil Service as a transit as they move out. So, I hope that this Commission will be fair enough to look at various professions and see how much time and commitment is required to achieve some of those qualifications. When they will be determining the various scales or entry points and salaries, they should take into account those qualifications, particularly the technical subjects where it is very difficult for quantification based on the current system. So, I hope this Commission will encourage scientists and innovators to be able to be part and parcel of the public service system, so that they can bring in a lot of innovations.

Mr. Temporary Deputy Speaker, Sir, I also want to say that I am very happy with some of the duties or recommendations that will be made by that Commission, particularly as regards to the task they have been given to regularly undertake comparative service of labour markets and trends in remunerations. This is very important because in this country, we actually do not know for sure, in quantitative terms, what type of professions the labour markets require. So, I think once that Commission is put in place and undertake that regular survey, we will be able to know which areas we are lacking as a country, so that we can train people in those areas.

Mr. Temporary Deputy Speaker, Sir, if you look at most of the curricula that are offered by most of our institutions and universities, you will find that most of them are now focused on business administration and those other liberal subjects. But in this country, we need people of science and technology, if we are going to move and achieve our 2030 Vision. So, we will need regular survey which can show which professions this country is lacking, so that various institutions, particularly universities and tertiary

institutions, can mount those courses so that we have the right people to move this country forward.

Mr. Temporary Deputy Speaker, Sir, I also want to comment on the task that the commission has been given, particularly as regards to review of pensions. Most pensioners in this country are living very poorly because the types of pensions they receive after they have worked so hard for this country are so small that they cannot live on. So, I believe this Commission will be able to look at the pensions depending on the cost of living so that our pensioners who have worked so hard for this country can also live in dignity in their old age. So, I believe this is a very good proposal which this Commission will be able to undertake.

Mr. Temporary Deputy Speaker, Sir, I also want to raise a concern. It is not clear from this Bill about all the reports and recommendations that the Commission will be generating. How will they finally be approved or ratified for implementation? Probably, I need to be educated on what will happen because I have read this Bill and I have not seen how those reports will be presented to a particular body that will eventually say: “Yes, we have looked at these recommendations and we believe they are right and, therefore, should be implemented.”

Mr. Temporary Deputy Speaker, Sir, I also want to say that the Commission is coming in at the right time because, at least, Parliament will not be accused in future of coming up with their own salaries and allowances. I believe the Commission will solve this problem and Members of Parliament will now focus on working and making sure that their salaries are determined by an independent body.

Finally, I also need the Minister to define the difference between “salary” and “remunerations” because in this Bill, the two terms are taken to be the same. I do not know whether that is the case. I am particularly asking this because on the issue of allowances, I do not see where they are covered. Apart from salaries, there are certain allowances that go with various positions and so on. So, I need to be clear on the definitions of salary and remunerations.

So, with those few remarks, I want to support this Bill.

Mr. Baiya: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I wish to support the Minister for bringing this Bill to this House. This is a very significant Bill in terms of pushing the constitutional reform forward. The Salaries and Remuneration Commission is a new institution being created under Section 230 of the new Constitution. Its mandate are specified in the Constitution and the functions as well as the powers the Ministers has in the Act are similar to those that have been set out in the Constitution.

These powers vested in this Commission are expected to be the basis of a very important exercise. Kenyans will be looking up to this Commission to ensure that not only is there harmonization of salaries but also that the principles of the Constitution, especially in Article 10 with regard to fairness, equity and so forth, are brought out in payment of salaries.

Mr. Temporary Deputy Speaker, Sir, one of the key features in the current salary system is huge disparities of salaries particularly between the senior most staff of Government and the junior ones. It is, indeed, a very demoralizing situation and this has arisen because of uncoordinated review of salaries, where the senior most staff are better placed to influence their own terms. It is hoped that the Commission will, first and

foremost, endeavour to ensure that there is parity across all the Government employees, particularly bearing in mind that the bulk of work is generally done in the middle and lower cadres of Government employees. This has been adequately captured by the functions of the Commission.

It is also important that a policy be developed. The Commission should not be simply given powers and functions without challenging it to come up with a policy on salary and remuneration. This is all the more reason to ensure that we do not fall into a situation where there are different representatives in the Commission representing different sectors of the Government. There may be a lot of resistance when we talk about implementing the equalization of salaries. That is why it is very important that a policy is developed to ensure that there will be progressive equalization or harmonization of salaries over a period of time. For instance, if we look at the Parliamentary Service Commission (PSC), the salaries of Members of Parliament have been a basis of clear complaint among Kenyans that they do not answer to the principles of fairness and equity relative to other Government employees. It is the same thing among other sectors like the Judiciary. You will find that the salaries of highest ranking judges relative to those of the lower ranked magistrate, there is no rationale or any explanation. Therefore, it will not be enough to state the principle mentioned in Section 12 – equal remuneration for work of equal value. Let there be a clear and well documented policy that will be the basis for the Commission in reviewing the various salaries to really focus on a policy decision and meet the terms of the policy.

The other point I would possibly want to speak on is the power given to the Secretary, and the appointment of the Secretary to the Commission in Section 16. The terms upon which the Secretary will be retained are very well spelt out and they are within what are normally the expectations. In this regard, I would also want to highlight to the Minister, especially that of Justice, National Cohesion and Constitutional Affairs, that we expected some more or less a parallel provision with regard to the other Commission on elections and boundaries review. This is basically because these are independent commissions. If you make provisions that are so different, for example those on the salaries, what is the basis of those differences in terms of appointment of a secretary or relationship of the Secretary to the Board? It is discriminatory in nature to make one different in terms of removal and so on. There should be a standard way of dealing with these matters.

Mr. Temporary Deputy Speaker, Sir, the Constitution requires this Commission to be very independent. I expect that this is contained in the Bill. The reason is that this Commission will also determine the terms and conditions of service even of such powerful employees in the Government as Government officers and Members of Parliament. The importance of its independence will, therefore, be critical, so that it can make the right decisions. This independence is precisely what has been lacking in the past. In this regard, we have noted some of the reactions and comments that have come as a result of the decision of the Judicial Service Commission (JSC) on the nomination of the Chief Justice and Deputy Chief Justice. Some of the reactions are partly a reaction to the attempt by the independent commission to demonstrate that it can make independent decisions. There are some powerful forces, or individuals, who feel that such decisions are going to prejudice their vested political interests, and they are bound to react the way they have reacted. This is why it will also be very important, even when it comes to the

commissioners, that we do not merely meet the minimum terms that have been set. When the appointments are being made, regard should be to the ability of the commissioners to demonstrate independent decision making in matters of remuneration, which are, by their very nature, bound to be very controversial.

Mr. Temporary Deputy Speaker, Sir, it is also noted, for instance, that this Bill, unlike other Bills which are in Parliament, has not elicited the kind of controversy other Bills have elicited. An example is the Bill on the Independent Electoral and Boundaries Commission. This is precisely because the political vested interests in the other Bill apparently are not present in this Bill. It is really astonishing how some of us, especially those in the Committee on Justice and Legal Affairs, which was dealing with the other Bill, have been affected by those vested interests to the point of the Committee being rendered inoperative. We hope that all the political players will divest themselves of such political interests as we are interfering with the proper and smooth implementation of the Constitution.

We would be much better off if we actually discussed this Bill on its merits, and without regard to the political vested interests that are likely to be affected by any of the Bills brought to this House.

With those comments, I beg to support.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, I also stand to support this very important Bill. I congratulate the Minister for Justice, National Cohesion and Constitutional Affairs for the good work he is doing. In fact, I believe it has taken him a lot of time to bring these Bills in good time.

This Bill is so important to us, especially when we look at the state we are in today. Already, we have no way. Parliament is struggling to cushion Kenyans against inflation and cost of living. The major reason why we are trying to do this is because we have completely neglected our workers.

If you look at the salaries we are paying our own workers, and not just Government workers, they are regrettable. That is why it is important that when we read this Bill--- Kenyans and Members of Parliament must understand it, and the interpretation in Article 2 of Part I – Preliminaries - clearly.

The interpretation includes the ordinary, basic or minimum wage or pay and any additional emoluments whatsoever payable directly or indirectly, whether in cash or in kind, by an employer to an employee - this is very important – and arising out of the employment of that employee.

Mr. Temporary Deputy Speaker, Sir, some people out there are thinking that we are coming up with this Bill just to cushion the Government and we are looking at the civil servants only. It must be noted that this is an extension even to some of us who have that habit of not paying our workers very well. You will get even people who are really prominent paying their gardeners Kshs2,000 and employing house assistants who they cannot even pay Kshs5,000. This is the case and yet they are capable of doing that. Their drivers are also mistreated. This should go to an extent that those who employ our people in Industrial Area--- The manufacturers in this country must know that this Bill also targets them. They must know that they better start working now on the wages of our people. It should be very clear that it touches on every level of employment and any employer. We need to know the general rule that from today henceforth as we pass this Bill, we should be responsible and follow the law to the letter so that we can have our

people properly facilitated. This will enable them to take their children to school and put food on the table. It is regrettable that as much as we look at the Government as the worst employer, you will realize that the Government employs even less than 20 per cent of our population. Who employs the rest of these people? If you look at the people we employed directly; those who work in our shops and in the matatu sector, you will find that all these people are now covered by this Bill. That is why I am very happy because for the first time, we will end the era of exploitation so that every Kenyan wherever he or she works is properly protected. Secondly, the habit of waking up one day, you think that Kenyans are not protected by any law and do whatever you want will be a bygone if we pass this Bill. It is also important when we come to the Government.

Mr. Temporary Deputy Speaker, Sir, I wonder why the salary of a public servant should be less than that in the public sector to an unimaginable figure. You will get a Chief Executive Officer in the private sector earning Kshs1 million while a Permanent Secretary earns Kshs200,000. Those people have the same qualifications. I want to give a good example. When I worked as an Assistant Minister, Ministry of Energy, we had difficulties to recruit people in the civil service because all of them had gone away. They left the service for greener pastures. Where did they go? Most of them left the Ministry of Energy to go and work for the Kenya Power and Lighting Company (KPLC). Others left for the Energy Regulatory Board and other sectors related to energy. Others went to Geothermal Company Ltd. Why should you pay a person who does the same job I do five times the salary I earn? We demoralize these officers. The same applies to every other Ministry. For example, in the Ministry of Justice, National Cohesion and Constitutional Affairs, why would you pay a legal officer at the KPLC or the Kenya Pipeline Company or any State corporation over Kshs500,000 when you pay the State Law officer who serves in the Attorney-General's Office Kshs30,000? This is the case and yet they went to the same school. It is only that this guy was lucky and when they went for the interviews, he passed or it is because he is related to Mr. Kiunjuri that he got the job while the other one did not. We must make sure that Kenyans earn what they have been able to work for, otherwise, it really discredits these officers.

Mr. Temporary Deputy Speaker, Sir, in this Parliament, when the officers who are our drafters left the Drafting Section at the Attorney-General's Chambers, they were paid almost ten times what they earned in the Attorney-General's Chambers. This is the case and yet they have the same qualifications. It is a shame to this country. We must motivate our Kenyans. Let every Kenyan go to school; let them put all the effort they have knowing that they will be paid properly.

Yesterday, I had a meeting with head teachers from one of my districts and a serious issue was raised. You want a person to be the head teacher of a primary school but you do not want to treat this guy as a manager. However, when it comes to other departments; when you employ a person in the Civil Service or other sectors of the Government, you really distinguish clearly who is a manager and who is at what level. You expect this head teacher to go and perform the same responsibility with other teachers in the classroom; you allocate him the same number of lessons and you expect him to run the school. How will this person be distinguished from others that he is supposed to be the manager?

So, we shall look at this Bill clearly so that, at least, even if it is other relevant laws, we should make sure that Kenyans earn according to their input. If I am a head

teacher today, I will be proud of being a head teacher. That pride can only come through remuneration. How much do you pay me to do this job? This will ensure that we do not blame them for not being responsible for their own schools. It happens to principals and not only to teachers and other sectors. How do you expect a teacher who earns a salary that is only enough to pay his debts for all of his life to go to class and give attention to the pupils or students? Those are some of the areas that are very sensitive and we must look at them critically. When we discuss their salaries, we must put into consideration the magnitude, their weight in the society and what they can produce for us.

Equity and fairness is very important. We should have this Commission that should be ready, at any given time, to sit down – and that is why, for me, I would propose that they be full time--- This is because by the end of the day, the first Commission will be too busy. By the end of the day, we are talking about issues of inflation and we do not know what will happen in the next five years. We do not know which other country the Americans will invade and the fuel prices will go up. It is important that we set up a commission that can sit down at any given time and cushion Kenyans in case of any emergency.

Mr. Temporary Deputy Speaker, Sir, it is also important that we have a Commission that will be able to work according to this Constitution. I hope that the Minister for Justice, National Cohesion and Constitutional Affairs will bring other laws--- For example, Article 162 of the Constitution is very clear. This is the Article that will back up this Bill and without that Article, we will work in futility.

(Applause)

We have to get a law because there will be a lot of litigation. We have to get a proper tribunal because old habits never die easily. Article 162 on system of courts is very clear. Article 162 (2) states that:

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

(a) employment and labour relations;”

We should have set up that yesterday!

(Applause)

There is no question about it and I hope the Minister will bring it in good time so that this Bill is properly backed and Kenyans are now aware of their rights. That will also ensure that those who have been oppressing others can know that there is already a law that will challenge them.

Mr. Temporary Deputy Speaker, Sir, we must also look at ourselves - those in positions of privilege - that, for the first time in this Parliament over 380 hon. Members will sit and we shall have over 47 governors and 47 senators. This is a burden to the nation. We will give this Commission a free hand and let Parliament not try in any way to armtwist it. This will enable them to sit down properly and say how much an hon. Member should be paid and how much a governor must be paid. For the first time, let us only have servants of the people coming to Parliament; let us only have the servants of the people becoming senators; let us only have servants of the people becoming

governors and not those who want to come and enrich themselves. I am very happy that the Constitution already bars us from becoming Ministers or Cabinet Secretaries. This will ensure that whenever you vie to become an hon. Member, you know that you have a duty; that you have come here to make laws; that it is very clear that you do not come here to benefit in any way or the other; that you do not come here so that you can start arm twisting the Cabinet Secretaries in order to be awarded contracts. Those salaries must be set in a way that will also consider Kenyans. That way, we will talk about true and patriotic Kenyans.

I remember, Mr. Temporary Deputy Speaker, Sir the first time you came to this House. You used to earn between Kshs10,000 and Kshs30,000 and you did the job. When I came to this House, I earned Kshs70,000. That was 14 years ago. The money was still enough. Whenever I went for *Harambees*, I gave Kshs3,000. People recognized that their area Member of Parliament was around. I was given the respect that I deserved. When the salary was raised to Kshs300,000, I also raised the Kshs3,000 to Kshs30,000. Now, the salary is about Kshs800,000 and the contribution has been raised to Kshs100,000. The salaries we get from this House determine what people think about us. It is very unfortunate that when we are fighting for those salaries; when we are only trying to cut the long queues that were heading to State House--- Those days, every weekend, hon. Members would queue for long waiting to go to State House to be properly facilitated.

Despite all those things, Parliament is losing its credibility and respect. Let us, for the first time, be seen to work alongside with other Kenyans. We should be able to control the civil servants and tell them to state their facts clearly. We want to know how they are spending monies from donors. They should also tell us how much they are earning, as CEOs in their respective civil societies, so that we can harmonize their salaries. If it is the Press, we will ask, for example the Nation Media Group, how much they pay their MD and the reporter down there in the village, so that they can also be ashamed. We will have a country where every Kenyan will be comfortable. You might think that reporters who are out there reporting negatively or positively about you are properly paid. You might end up realizing that even there, the gap is very huge.

We can go on and on, but I think this is one of the best things that we can give to this country. We are ready to support the Minister. When it comes to amendments, let us be realistic so that we are seen to have a Parliament that is working for Kenyans and not a Parliament that is divided on political affiliation. For the first time, let us pass this Bill as Kenyans and not members of PNU, GNU or ODM.

With those few remarks, I beg to support.

Mr. Shakeel: Thank you, Mr. Temporary Deputy Speaker, Sir. Since I am the only person present, I will represent the Finance, Planning and Trade Committee. This Bill was brought to us for comments. We made the comments but because I cannot see anyone here, I wish to put those comments on record.

First, I stand to support this appropriately timed Bill. Once this is done, Parliamentarians will no longer set their own wages or salaries, or anybody else for that matter. I would like to go straight to the issues. First, on the qualifications, Clause 5(1) (a) says:-

- “A person shall be qualified for appointment as the chairperson if such a person-
- (a) holds a degree from a university recognized in Kenya.”

We felt that there were people who had professional qualifications which are akin to degrees and, sometimes, even higher than degrees. I know that the Chairman of the Commission on Revenue Allocation and former Governor of Central Bank, Mr. Cheserem, is a Fellow of the Institute of Certified Public Accountants of Kenya. That is a very high qualification, but it is not covered in this matter. It only talks about a degree from a recognized university. This could be a degree in anything. This is one area that we must consider having an amendment.

The second point is that on the same clause, it says that the chairman should be a person who-

“has knowledge and, at least, fifteen years’ experience in matters relating to either...”

This matter was well thought out and discussed. If we intend to give the youth of Kenya any chance, 15 years from the time they qualify, one would have to wait until they are between 40 to 45 years of age. This, we felt, was punitive to the process of involving youths. That was proposed to be ten years. Likewise, in 5(2)(a), we said that relevant professional qualification must be covered. The issue of whether members would serve part time or full time was discussed in great detail. We discussed it and it was the opinion of the Committee that it must remain part time. Many commissioners start taking up secretariat roles of running the commission. We felt that the secretariat must be strong. It should do all the data processing. We thought that for them to work part time was better. They can be called upon at any time. They could also serve on a full time basis but on a short term when there is a crisis. However, we felt that they should serve on part time basis.

The other issue that was raised related to the time that the commissioners would serve. We felt that six years was good. However, we also felt that, as it is in the United States and other countries, after six years, there is a completely new set of people who would not know what has been happening. So, we decided that we stagger the appointments of members of the committee so that they can overlap the six year period.

The other issue that arose was about equity. As much as we were talking about equity, we also wanted to bring out the issue of pension. I had the opportunity to meet a very old friend of my father. That man has served this country for very many years - over 30 years. He ended up as a Chief Justice. When he told me what his pension was over 15 years ago – and it is still stuck there, I was astounded. My driver gets paid much more than that gentleman who has served this country. Something should be done about pensions. This Bill is meant to bring equity in salaries and bridge the great differences between the public and private sector. It is very important that this Bill handles that situation. I remember J.M. Kariuki once said that we will have 10 millionaires and 10 million beggars. I think we are now having 40 billionaires and 40 million beggars.

So, we need to move on this. The other day, there was a demonstration by people who could no longer feed themselves due to increase in the prices of commodities, yet their salaries had remained the same. If we do not do something to harmonise the great inequities between these two aspects, we will be in great trouble.

The other issue I want to touch on is that of remuneration. What exactly is remuneration? This is covered very clearly, but just to ensure that there is no doubt whatsoever, we discussed it. “Remuneration” means all benefits in kind. There are certain Government officers who have four security officers, four gardeners, three cooks, *et*

cetera. All these will have to be quantified, so that it becomes the total remuneration on which tax is paid.

We received very serious letters from the Teachers Service Commission (TSC) and the Central Organisation of Trade Unions (COTU), which told us that this is totally out of line. We looked at the complaints contained in those letters and felt that they had no grounds whatsoever. The issue might have gone to the Departmental Committee on Justice and Legal Affairs as well.

Mr. Temporary Deputy Speaker, Sir, we were jokingly wondering whether officers of trade unions, which might want to object to this Bill, like Francis Atwoli, who is paid a big amount of money but keeps on attacking Members of Parliament all the time, should not declare their salaries and pay tax. We felt that the salaries of officers of co-operatives and labour organisations need to be administered under this Bill.

With those remarks, I beg to support.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I thank you for giving me the opportunity to add my voice in support of this Bill. The Minister for Justice, National Cohesion and Constitutional Affairs will be responding to debate. I want to thank him for having ably moved debate on this Bill.

This is a very important Bill for the public sector human resource reforms that we are undertaking in this country. We are introducing a performance-based management system, which gives emphasis on performance and productivity, and focuses on delivery of service to citizens. We need to be able to be fair to all the employees in the public sector. The system that is currently in place is such that those who are powerful enough are able to increase their benefits, and the weak ones have to struggle far behind them. This is something which has led to serious inequalities within the public service itself.

Mr. Temporary Deputy Speaker, Sir, as you are aware, we have serious income inequalities in the whole economy. This is becoming a cause of very serious social problems, which have to be rectified. The public sector, as the major employer, would have to set the pace in making sure that the principle of equal pay for work of equal value to the country is enforced. This Bill will make this possible by empowering the commission it seeks to create to look at salaries and the remunerations of workers throughout the Public Service. For State Officers, the commission will set their salaries and remuneration. For other public officers, or any other person paid from public funds, the commission will be able to make appropriate recommendations.

The Constitution has provided for the composition of The Salaries and Remuneration Commission, bringing on board 14 members comprising of members from the Public Service Commission, the Parliamentary Service Commission, the Teachers Service Commission, the Judicial Service Commission, the National Police Service Commission, the Defence Council and the Senate, which will represent the counties. Other members will be representatives from the Kenya Federation of Employers (FKE), the COTU and the Association of Professional Societies.

Mr. Temporary Deputy Speaker, Sir, the Constitution specifies that these bodies shall not appoint their members to this commission. We expect them to competitively and transparently recruit professionals who fit the bill of a highly technical commission, which will be backed by in-depth research, analysis and evaluation of work in the economy as a whole before we set the scales. Given the manner in which we are reforming the Public Service in this country, we hope to, finally, be the employer of

choice. This will only be possible if we continue to emphasise productivity, performance, service delivery and focus on the needs of the citizens. To be able to do so, we have, for a long time, needed a commission of this kind to be able to harmonise remuneration in the Public Service.

We all know that as at now, work of equal value to the economy is not something to determine. It will take research, analysis and measurement to do so. We look forward to the productivity centre, under the Ministry of Labour, to also come on board with adequate legislation to be able to undertake research in productivity measurements in the economy. We are committed, under Vision 2030, to have a globally competitive economy, which will be growing continuously. To be able to do so, this emphasis is critical.

Mr. Temporary Deputy Speaker, Sir, the principles that this commission will be using include ensuring fiscal sustainability of the compensation. If we leave it to bargain by the powerful, regardless of whether that is fair, and fiscally sustainable--- It will be a matter of how much muscle you have to force your way through.

Of course, people have made reference to the salaries of Members of Parliament. Members of Parliament have been challenged to perform and become virtually jacks of all trades in the public sector as well as in the management of the economy; their work has become the most difficult to evaluate.

Mr. Temporary Deputy Speaker, Sir, I hope that the commission will be able to come up with a criteria by which it will be able to give the right advice on diverse job descriptions in this country. This will evolve out of a long practice like that which has made the Member of Parliament everything. For example, you may find that, today, the Member of Parliament is labour exchange; tomorrow, he might be a funeral advisor; on the day after tomorrow, he might be a fundraiser; on the day after that, he may be a builder of bridges; on the next day, he might be the one to look after orphans and, finally, he is challenged to take responsibility for everything.

Therefore, I expect the commission being created through this Bill to have enough detail and technical skills to be able to carry out all the evaluation that may be necessary in determining what should be regarded as pay for work of equal value. I am sure that, given the support that this Bill has received up to now, it will be possible for us to have reasonable wage levels in our economy. It will also be possible for us to ensure stable industrial relations in the country. It should be possible for the Public Service to attract and retain competent personnel who will be committed to public service delivery. It will be possible for us to ensure fairness, and transparency in the management of remuneration in the economy.

Mr. Temporary Deputy Speaker, Sir, we have sought to add a few more of the powers and functions that have been given to the commission, based on the experience of the Pay Review Board. We know that the additional powers we are requesting for this commission are necessary for it to be competent in giving the right advice, as well as in setting and reviewing pay to State officers. Some controversy has come out of Clause 11; we are asking for an expanded benefit.

I would not mind if this clause was amended, so that the commission's functions, under this clause, are not just to inquire and determine. The use of the word "determine" in this case is confusing, and it seems to be final. It should be to "inquire and advise." So, such an amendment will be acceptable to us because it will not seriously curtail the

functions of the commission. So, if the amendment is proposed by the relevant committee, we will have no objection to it.

Mr. Temporary Deputy Speaker, Sir, the governance structure of the commission proposed under this Bill is not different from the structures of all other commissions, except that this being a commission with a membership of 14 persons from different stakeholders, it really suits its members being on part-time basis, with a highly technical and professional secretariat.

Mr. Temporary Deputy Speaker, Sir, this governance structure which is in most of the independent constitutional commissions is very fair. Parliament will be at the top and the commission will report to Parliament through reports. I expect Parliament to determine how these reports will be evaluated and the commission as a whole held accountable to Parliament. The reports will be given to both the Senate and Parliament in addition to the President. Then, the commission through procedures, codes, regulations and documents that it needs to govern its operations, will direct the secretariat of professional staff to look into issues of salaries and remuneration. This governance structure is ideal for a commission like this so that the issue on whether there should be part time or full time commissioners would not arise, particularly with regard to this commission. At any time, the chairperson and the deputy chairperson of any of these commissions would always be available to be consulted by the management in terms of the implementation of any guidelines and policies that such commission has set for the secretariat to use.

I am happy with the trend the Bill is taking and I beg to support.

The Temporary Deputy Speaker (Mr. Imanyara): Order, Minister! Before you do that, you will notice that the Bill is yours. It is published by you and so, you must formally request your colleague to reply on your behalf.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, I stated when I started that he would reply.

The Temporary Deputy Speaker (Mr. Imanyara): Yes, you indicated he would, but you have to make a formal request.

The Minister of State for Public Service (Mr. Otieno): Mr. Temporary Deputy Speaker, Sir, may I ask the Minister for Justice, National Cohesion and Constitutional Affairs, who humbly moved the Bill, to reply on my behalf?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I want to thank my good friend, hon. Otieno, for giving me the opportunity, not only to move, but to sit and listen throughout this debate and, you Sir, for the efficient manner in which you have run this debate. Yet again, another milestone has been crossed in the process of implementation and all of us here will find our way in the history books.

The amazing thing, thanks to you Sir, is that I have in my hands the report of the Departmental Committee on Finance, Planning and Trade. This is the reason why - I am happy my good friend, hon. Baiya is here - I have been asking the dispute in the Justice and Legal Affairs Committee to be resolved. This is the way to manage legislation, so that by the time debate matures, the line Minister or whoever is moving the Bill has in his hands the reaction of the public.

The Temporary Deputy Speaker (Mr. Imanyara): Minister, just for the record, indeed, you are closing and this report has been brought to the attention of the Chair. If

there is any Member of that Committee, I would like him or her to formally lay it on the Table.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, hon. Shakeel did that. He talked on it.

The Temporary Deputy Speaker (Mr. Manyara): I have been corrected! It was laid.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, it is a wonderful thing and it is important for the country, through you and I want to thank you, to notice that this Bill has proceeded in the manner that the constitutional implementation should proceed.

As I respond to the remarks of the hon. Members, I can say with certainty that now we know how to proceed as we go to the Third Reading of the Bill if the House approves the proposal on the Floor. I have sat throughout this debate and I have heard the comments and the remarks that have been made by hon. Members. I want to assure the House that in light of the report that has now been tabled by the Committee, as the Government, we will be presenting amendments in order to reflect the wishes of the House and through the House, the wishes of the country.

Mr. Temporary Deputy Speaker, Sir, first of all, I want to mention just a few, for example, Clauses 11, 12 and 13. I also want to touch on the issues that for example, hon. Odhiambo-Mabona, hon. Baiya and several others have raised on standardization of the roles of the secretary of the various commissions just like Articles 250, 252 including 254 have mentioned. I want, particularly to talk on the issue of reporting. Let us all look at Article 254 of the Constitution. It is fair that the House be aware of the reporting mechanism of all commissions because it has been standardized. That is why I am excited when the House suggests and I agree entirely, that we standardize these provisions regarding commissions. I am looking at Article 254. You will notice that Article 254 reads as follows:-

“(1) As soon as practicable after the end of each financial year, each commission, and each holder of an independent office, shall submit a report to the President and to Parliament.

(2) At any time, the President, the National Assembly or the Senate may require a commission or holder of an independent office to submit a report on a particular issue.

(3) Every report required from a commission or holder of an independent office under this Article shall be published and publicised”.

I have read that Article so that the House and the country can be aware of the requirements. The only thing that is lacking here and I think the Constitution has given Parliament this discretion, is what to do with the report. I expect that when these reports are tabled, they will be debated. They may be adopted or rejected in terms of the Standing Orders. Therefore, in the final version of the Bill, we will be proposing that those words - requiring debate in the House - because they already appear in the report, be included.

Mr. Temporary Deputy Speaker, Sir, hon. Kiunjuri addressed the issue of the definition of “salary” and “remuneration”. The same issue was also raised by other hon. Members, particularly my good friend, Dr. Otichilo. The fact of the matter is that it must be understood that Article 162 of the Constitution requires my Ministry, because it is within the judicial system, to present to this House before September a law for purposes that Parliament shall establish courts with the status of the High Court to hear and

determine disputes relating to employment and labour relations. The House should know that it is under that law that we are going to address the majority of the issues that have arisen, particularly with regard to labour outside the Public Service. Therefore, for hon. Otichilo, I hear you on the questions that bedevil scientists, researchers and people who have taken technical subjects as opposed to those who have taken liberal ones.

Hon. Shakeel addressed the issue of the recommendations appearing in the report and I hear him. We will definitely consider them and we will bring amendments. My brother, hon. Otieno has said it all and I do not need to repeat. In fact, the Deputy Prime Minister and Minister for Local Government has drawn my attention to the fact that we must include county assemblies, particularly in a number of clauses where we are talking about the national Government. We will be bringing in those amendments because after all, the purpose of legislation, particularly in the new Constitution is not for the Executive to demand or dictate, but for a comprehensive process, so that all of us can contribute through public participation in the constitutional implementation.

Mr. Temporary Deputy Speaker, Sir, on pensions, because the issue arose, I request hon. Members to look at Article 11(g) The commission will also be required to make recommendations on the review of pensions payable to holders of public offices. With regard to the others, we will be using Article 162 when we bring the law. I want to assure the country and this august House that we will have this law on Article 162 definitely, in the course of the next three to four weeks. The law will be available for passage before 27th August.

We are on schedule, but allow me in concluding, to plead with the country, national leadership and politicians to resolve the issues in the Departmental Committee on Justice and Legal Affairs. The fact that this Committee is not on board and is dysfunctional is hurting the work of the implementation. It may not appear on the surface, but deep inside, in due course, the country will notice that the delay that has occurred in this area is fundamentally very dangerous. Above all, I hope that the nominees for the Chief Justice, the Deputy Chief Justice and the Director of Public Prosecutions will be finding their way to Parliament. If it were up to me – and I am sure the Rt. Hon. Prime Minister and His Excellency the President are up to the task – these names ought to be on the Floor of the House this week. The amount of work awaiting the Judiciary is phenomenal.

Mr. Temporary Deputy Speaker, Sir, with those far too many remarks, I beg to move.

(Question put and agreed to)

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

MOTION

**ADOPTION OF REPORT ON CHALLENGES
FACING SUGAR SECTOR**

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on Hearings on the Challenges facing the Sugar Sector in the country, laid on the Table of the House on Wednesday, 13th October, 2010.

Mr. Temporary Deputy Speaker, Sir, in moving this Motion, I want to state that sugarcane was first introduced in Kenya in 1902 with the first sugar factory being put up at Miwani in 1922 and in 1927 a sugar factory was set up at Ramisi in Coast Province. Immediately after Independence, the Government of Kenya moved to expand sugar production through investment in sugar growing schemes and establishment of new sugar factories. Cases include Muhoroni Sugar Factory which was set up in 1966, Chemelil Sugar Factory in 1968, Mumias Sugar Factory in 1973, Nzoia Sugar Factory in 1978 and South Nyanza Sugar Company (SONY)/Awendo in 1979.

Today, Kenya has seven major sugar factories with an average production capacity of between 550,000 and 600,000 tonnes of sugar. The subsector remains one of the few areas where the Government still needs to do very heavy investment. Recent additions to the sugar milling establishments in the private sector include, Kibos Sugar Company and West Kenya Sugar Company. The evaluated worth of the sugar industry is Kshs20 billion annually. However, local production for decades failed to match the estimated domestic demand, which is slightly over 600,000 metric tonnes. That explains why year in, year out we have challenges on imports. I will deal with that later on.

Mr. Temporary Deputy Speaker, Sir, according to the Kenya Sugar Board, the combined installed capacity of operational sugar factories is 24,880 metric tonnes of cane per day. This is not sufficient to meet the domestic consumption of sugar, let alone for export. The estimated 200,000 metric tonnes which is a shortfall, is met through imports. The Government investment in various sugar factories also faces impeding privatization, which if not handled well may create new dimension of instability in local farmers who if not involved fully in the privatization, may end up being total losers. The problems facing cane farmers are acute and need multiple mitigation measures to institute a radical shift in respect of industry policy and legislative action to save the trade of farming cane from collapse. No other farming community experiences a myriad of problems like this industry.

I would invite hon. Members who could be having our Report to go through Appendix 1 on page 152 and look through the many challenges that are listed there and how they are spread out. However, for those of you who, perhaps, do not have the Report, I would like to mention the following:

One of the challenges is delayed payments and that was recorded from SONY/Awendo, Chemelil, Muhoroni, Miwani, Mumias, Busia, Nzoia and Malava. The other challenge is manipulation of the weigh bridge which is critical. We found out and we have evidence – hon. Members are invited again to look at the annexures – that most of these factories do manipulate weighbridges to an extent of 10 to 20 per cent of the cane weights. This means that as long as the farmer produces, he will automatically lose about 20 per cent of that weight through manipulation of weight by the millers. This cuts across both Government and private millers.

Mr. Temporary Deputy Speaker, Sir, over-mature cane was recorded all through. There was also gross mismanagement of factories. More particularly, if you look at the case of Muhoroni, which I will deal with at length later on, you cannot understand how a receiver manager receives Kshs2.5 million per month, and yet the revenue from the investment is only Kshs4 million. So, you will find that the receiver manager receives over 50 per cent of the entire revenue.

When you look again at the number of acres which are being farmed, then you will realize that something is awfully wrong in this particular industry. We will be dealing with that later on.

Mr. Temporary Deputy Speaker, Sir, the fifth problem that we have noticed is the nuclear estate. In the case of Mumias, for instance, the amount of land that the farmers surrendered at Kshs90 per acre is immense. As you fumble around and we look around through privatization process, it is important to realize that this was people's land. As we privatize, it is good to give some consideration. Again, we will deal with that one later on in my Report. More importantly, we need to ask the investors whether foreign or local to appreciate the value of land. People, particularly, in Mumias ought to be compensated properly because Kshs90 per acre, leaves a lot to be desired.

Most importantly, when you are doing privatization, it is good to separate the two; the nuclear farms and also the factory. In any event, why do you want to do the production yourself and then you also want to come and do the milling, whole selling and retailing? At least there must be a break somewhere. So, if the factories and the millers could focus on their core business; that of working on their factories, then that will be good. They will then leave the land to the land owners.

Mr. Temporary Deputy Speaker, Sir, there is also low cane prices, heavy taxation and other deductions. No other crop is taxed up to 27 per cent. It defeats all practical purposes. When you take the submission of all the taxation, you wonder why you want to come and penalize this poor sugar farmer 27 per cent. You can give it all the names you want to give, levies or whatever you want, but the bottom-line is that you are taxing the farmer 27 per cent.

Remember, I have already said that the factory manager also manipulates 20 per cent. So, at the start, the farmer has lost 47 per cent. How will they ever make money?

Mr. Temporary Deputy Speaker, Sir, there were some very emotional moments and I would invite you also to peruse through the HANSARD Report. It is a heavy one; it is over 3,300 pages. You will see one farmer particularly from Mumias area who says candidly that from 1975, although he has 100 acres of land, no farmer has ever bought a new vehicle in that area of Mumias which covers 22 constituencies.

In modern economics, of course, you cannot use a car as a measure of wealth. But it is good to show as an indicator that things are not okay. The farmer had appeared before the Committee and this is appearing in the HANSARD Report. He said he bought a grey three-piece suit in 1978. He still clad in it up until today. He has not been able to afford a new one. But he has a very good crop covering over 100 acres.

At this moment, I want to remind you of a case in Kitui one time in a place called Mutito. There was a big bridge. The bridge was so big that the World Bank chiefs felt that it was not economically viable to use all the parameters. After a lot of studies and arguments, in the final meeting which was meant to reject it and put the final nail in the coffin, the engineer in charge from World Bank, all the way from Washington looked at

one paragraph in the feasibility studies and saw that during the rains like now, families have to rely on arrows. There was no MPESA service. So, one has to tie money on an arrow then shoot across, so that the family can receive money which lasts them for about three months.

At that point in time the IMF and the World Bank said there must be a problem. We may miss the language. We may not be able to express out rightly that there must be a problem. I am now saying there is a problem. If a man owns 100 acres of very good crop and was able to buy a three piece suit in 1978 and has not been able to buy another one and he is still clad in it and the smart old man is still there and that is his Sunday, Monday and Christmas best, there must be a problem. There must be some funny thing.

Mr. Temporary Deputy Speaker, Sir, some of the most famous sugar barons were Barclays and Relt. These are people who were slave traders initially. They eventually became rich and went on to own plantations in the West Indies and other places. They became so rich. One of them started a banking chains and the other one shipping lines.

Sugar as an industry has a history of oppression. Looking at the hon. Minister and Ramisi Sugar Factory, no one would give any logical explanation as to why this Government allowed somebody known to be an investor of suspicious origin like we have said here --- You cannot say he is Indian or Kenyan. You cannot say who he is. He is allowed to come on in the name of an investor and take over 11,000 acres of land. What is even worse and disturbing is that he declares the original owners squatters. These issues are not good.

The same thing is happening to Mumias Sugar Company. It is quoted in the stock exchange. This is a very good company. They got Tana River and decided immediately that those poor farmers who have been there for over 500 years are now squatters and they should be removed. This Government should use force to go and remove those squatters.

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

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

It is time, with or without a new Constitution we listened to the sugar story. It is a sad story. It is a story of poverty generated by policies. It is a sad story that makes anybody move down to tears when you look at the people; when you look at the level of abuse.

In 2001, this House did pass a Sugar Act. This Act was celebrated all over. However, did you know that in doing payment for sugar, you have only two variables. The first variable is the weight of the cane and the second variable is the market value of the sugar.

Let us start with the first one, that upon harvesting, the cane is knocked 24 per cent by scrupulous weighbridges. A few days before that happens, you have to put it in big stacks. There you lose about 5 to 10 per cent moisture depending on the weather. So, already you have lost because you are dealing with weight.

The other parameter is the weight of sugar in the open market. Who does not know that this whole sugar business is controlled by about three or four people; these are sugar barons? So, the sugar prices in the market are not controlled by demand and supply, but by individuals who sit over a cup of tea. Thank you to Mututho; he has controlled the number of drinking hours. They come up to say that now sugar will be at this level. That entry is now taken as the gospel truth and they use that one plus the weight. Even a child knows that sugarcane from one farm could be sweeter than from the other one. In actual fact they can even double. That is called sucrose content. So, anybody who was willing to pay the farmers and compensate them should have considered sucrose content. Everyone knows that the by product is called biogas. Biogas is one of those by products that are produced after you have done your sugar milling.

That biogas has a value. Indeed, the new factory I saw in Kilgoris does not plan to use any electricity. They want to use biogas to produce total electricity. So, who owns the biogas? Biogas is owned by the farmers. Therefore, the formula should have that bit to acknowledge.

Looking at the sugar *per se*, sugar as a crop produces some of the finest food supplements. I want to tell people and my friends who want to be healthy that one of the best products to control blood fat or cholesterol is a product which is derived from sugar. A packet of 30 of those tablets costs about Kshs5,000. That is how useful that can be.

For those people who are producing that kind of thing, then the farmer must get compensation for that. Look at molasses and also the amount of alcohol produced in those areas, it is enough to make the whole of the former Central Province drunk, yet farmers do not get a penny out of it. The molasses and all those small factories do not give farmers anything, nothing at all!

I am reminded of time. But if you remember that from 1902 nobody has made profits in that particular area, then I deserve a bit more time, so that you understand and see and feel what I do in terms of the farmers and what can be done by this House at policy level to resolve the problem.

Some of it, and I believe Madam Minister is here---

The Temporary Deputy Speaker (Mr. Njuguna): Order, Mr. Mututho! You have a lot of time. You can continue since this is open to almost one hour.

Mr. Mututho: Thank you, Mr. Temporary Deputy Speaker, Sir. Madam Minister is in this House herself and not her Assistant Ministers who would be persuading her on issues to do with Muhoroni and those other places where people are earning Kshs2.5 million out of an output of Kshs4 million. Surely, we do not require the report to be ready. You should take action. Call all other arms of Government to investigate what went right or wrong. You should move with speed and call Kenya Bureau of Standards (KEBS) and other bodies to go and countercheck with Weights and Measures Department to know why the weights are manipulated and who is doing that. You should be able to check out all those evils. Let us work on the price of Kshs2,500 per tonne. That price is good if only you do not take 20 per cent in terms of weight, you compensate for bagasse, you pay in good time and you do not over-supply the inputs and so forth and so on.

Mr. Temporary Deputy Speaker, Sir, I will go to another more serious problem – the burnt cane. Why does cane get burnt? It is a desperate measure. It is because the farmer sits there for 18 months and he cannot harvest. Arsonists now come either by accident or design and again you end up having the problem. That one, again, we shall

deal with it in greater detail. We are looking at that. Please, look at our detailed outlook, hon. Ministers who are here in this Government. Spare time with your personal assistant to look through the HANSARD of the public hearing that we conducted. Check the audio and video of those farmers. Look at their faces and you will see, from where you sit, that you can make a difference by adjusting yourselves in terms of policy so that you do not have to come and punish this farmer with over-supply of inputs.

What happens is this: A poor farmer who cannot afford inputs is supplied with inputs which are normally twice or thrice what they will require in capacity. He is not allowed to say no. He is charged interest for what he cannot resell. So, from the start, he has lost. He is given the inputs. Once the poor farmer has harvested the cane, he or she cannot also charge interest on the factory in terms of the cane. So, interest is only chargeable one way on the inputs. So, in this Report and in subsequent amendment of the Act which we shall discuss, we are looking strictly at the handling of those inputs so that, Kenya Sugar Board (KSB) and any other organization which is civilized enough to understand that you do not have to come and sell like they were doing--- Thank you, Minister for Agriculture. When you were selling your fertilizer at Kshs2,200, Mumias Sugar factory was proudly selling theirs at Kshs6,000 per bag. You sell at Kshs6,000 per bag and then you over-supply. What happens at the end? Nearly all farmers will get debits. They call it *dibit* in that area and *dibit* is just simply where you do farming for your three to five acres and at the end of the time, you have to go and pay because you already owe more than you have produced after waiting for 18 months.

Mr. Temporary Deputy Speaker, Sir, what is even more scaring is the way it was designed; it was crop 100 per cent. That means they do not have food and they are faced with food challenges. They do not have school fees. They have nothing. It is subjecting a whole population to absolute poverty and we cannot allow this. No one would. We cannot sit down here to watch and make a few people – five to six Kenyans, get super rich at the expense of millions of Kenyans who have faithfully continued to work in those factories.

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

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

Mr. Temporary Deputy Speaker, Sir, this privatization process that we are beginning simply means, by any other word, that you are going to have new owners. You may give it a very good name, or a very English name, “privatization,” but the bottom line is that we are going to have new masters. How are you going to have new masters of Mumias land? This is land that they gave to those people there, and then you are going to have the John Mututhos of this world come and take over all that land. How are you going to sit and say that several counties all go up for sale because of the privatization process?

This Committee recommends that, without blinking, and listen to us, that in the process of production and overtime these farmers lost between 20 per cent and 30 per cent. Their equity contribution to what you are calling your wealth, in terms of those

factories, is 30 per cent. Therefore, we should be honourable enough to reciprocate by giving free shares to these farmers, who have all the years been contributing to this wealth, because this is now common wealth; they should have a non-transferable 30 per cent.

Mr. Temporary Deputy Speaker, Sir, the second step is to take 21 per cent of shares to be traded. This should be added to the 30 per cent to make 51 per cent. This can be done by the check-off system. That would cut off *matatu* operators from trying to acquire what they cannot manage. Ultimately you will have 51 per cent owned by the local people. Local people are not condemned to poverty. Local people are investors. Local people have put in their land. Local people have put in their family labour in total to produce cane. These people must be rewarded. Profits or no profits, this Government needs to feed its people. They need to educate their children and work on their health. You cannot work on those parameters if the poverty levels, as they are now, continue to be accelerated by these poor policy decisions taken before we came to this House, and enforced using the Sugar Act of 2001 and so forth.

There is the KSB, which is a political tool. It is about who is who. Madam Minister, you are here. You should step in and be able to come up with another board within the guidelines that we have set out, so that you have, just as they are doing to have a new Chief Justice and new everybody--- Maybe you can recycle some. However, make sure they are people who can stick to the policies that we setting out here. The inbuilt policy within the sugar framework should not be that of exploitation. It should not be that of creating poverty; it should be that of enhancing development and generating wealth from the people.

Mr. Temporary Deputy Speaker, Sir, we got a Common Market for Eastern and Southern Africa (COMESA) concession, you remember. This COMESA thing has been talked of more than actualized; now is the time. The Minister is here. These Ministers, in the memos they do to the Cabinet and other places, they must take this COMESA Treaty seriously. We are in slumber; they are working on the other side; how shall we safeguard our people when the time comes? Shall we continue asking for extensions? The extension of time will not solve the problem. The extension of time will only aggravate the problem.

I want to look at affordable credit in a nutshell. Why do we give credit which has inbuilt exploitation? I have already discussed the farm level credit, and said that the farmers are given farm inputs, but they are oversupplied. This means that if you require inputs for Kshs30,000, you are given inputs for Kshs60,000 and you have to pay for them. You are stuck with the inputs, and since they are overpriced--- As I said in the case of Mumias where they would sell DAP fertilizer at about Kshs6,000 per bag; you cannot be able to sell off that particular input. Again, if your intention is to give farm credit, then let it be genuine farm credit, which is pegged on reality. There is now the big story about new investors who have come in and, apparently, have been licensed. They too would like to have a piece of the cake. Yes, let us all have a piece of the cake, but let us also observe decorum. If you come to SONY, appreciate that Kshs2.8 billion worth of cane has been invested there by some people. Just like the banking loans, if you are holding a loan by the Barclays Bank of Kenya, there is nothing wrong with you going to the Equity Bank, as long you declare the same, so that there can be compensation to Equity Bank or vice versa. What we are saying is that if you are in the SONY area, you

have your cane and you have got a very good deal from Kibos, go ahead, but declare that. The Minister should come up with secondary legislation and regulations to guide how this business will be conducted. This will ensure that you do not tie people who want to do business to any particular factory. At the same time, you should not allow people to come and just enjoy what others have just planted.

During the last show – and I thank the Ministry of Agriculture again because you hold your annual shows even when there are challenges – you demonstrated that you can have a micro sugar processor in the sense that you can have a very small plant and produce white sugar in your household. We are not coming to that yet, but if it will be, then we must make necessary legislative framework to allow that to happen without cheating. If Mumias has invested in a particular farmer in terms of cane development, then that liability should be shifted to the new investor. That transaction should be done overboard and everything should be done clearly and clean so that everybody benefits at the end of the day. You cannot have somebody going to the middle of Mumias, put up a cane factory without investing and considering those other people and then continue harvesting cane. The price you will pay should include the establishment of that cane. The farmer does not own it wholly because already there is some investment by the factory and so on.

Mr. Temporary Deputy Speaker, Sir, on the Minister for Agriculture, we have serious doubt on the quality of cane seed which is produced. Really, at this moment in time - year of our Lord 2011 - we know it and everybody knows it. You have your research stations and the releases cannot be the same ones which were done in the 1940s or the 1960s. You must have good crop. We went all the way to the former Ramisi and shockingly, they are coming back to the original varieties. Everybody knows including Libya that they have been able to do a major evolution or revolution in terms of cane and cane varieties so that we have cane that matures in a shorter period. As long as our cane takes 18 months to mature, we are out of business because that is too long a time to wait. You better go with the trend and have high yielding cane, better varieties and that is within the capacity of the Ministry of Agriculture. Again, no good reason was given as to why that has not been happening. However, that is the situation we have on the ground. One of the key features of a Parliamentary Committee, as you can see, is to play the oversight role. This oversight was peculiar in the sense that it was public hearing which was well attended. It has lasted from 2009 and that is why I am speaking very slowly so that you can understand what we understand.

If you go through the trouble that the farmers have gone through, you will either not think of farming sugarcane again, or you just feel like quitting. You have already wasted your five, ten or 15 years on the cane. If you look at it, you will find that it is deep green and very good crop indeed. This is the case and yet you are still waiting for the skies and the Government to change from KANU, to the wonderful NARC and to even more wonderful ODM plus all the accessories, plus PNU. The bottom line is, how does the farmer benefit? The farmer lives by promises or in debts!

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Mututho, you will have another 18 minutes to go on when we get back to your Motion.

ADJOURNMENT

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow, Wednesday, 18th May, 2011, at 9.00 a.m.

The House rose at 6.30 p.m.