

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 25th April, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

MR. SPEAKER TO GIVE DIRECTION ON MATTERS BETWEEN
DR. OBURU AND MR. K. KILONZO

Mr. Speaker: Order, hon. Members! Hon. Members, there are two Communications one of which really ought to be due this afternoon. This is the one with respect to the matters that were in contention between the Member for Mutito, hon. Kiema Kilonzo and the Assistant Minister for Finance, Dr. Oburu. That Communication, in the form of direction, I will make it tomorrow afternoon at 2.30 p.m.

I will further make a Communication on the Supplementary Estimates which was originated by the Member for Gwassu also tomorrow in the afternoon at 2.30 p.m.

So, please, stay guided.

PAPERS LAID

The following Papers were laid on the Table:-

Report on the Estimates of the Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30th June, 2013 and projections for the years 2013, 2014 and 2015.

(By Mr. Keynan)

Report of the Departmental Committee on Defence and Foreign Relations on the Proposed Rules and Procedure for Election of Members of the East African Legislative Assembly (EALA)

(By Mr. Keynan)

The Budget Committee Report on the Budget Policy Statement for 2012/2013 Financial Year.

(By Mr. Mbau)

Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced Persons (IDPs) in Kenya.

(By Mr. Ethuro)

COMMUNICATION FROM THE CHAIR

MR. SPEAKER'S COMMENDATION TO DEPARTMENTAL COMMITTEES

Mr. Speaker: Order, hon. Members! I want us, as a House, this afternoon, to acknowledge the commitment and industry of the three Committees in discharging the duties which we vested upon them as a House. They all carried out a very heavy mandate. The commendation to them for their industry and commitment is well deserved. Please, keep it up. And, perhaps, even for special mention, the Committee on Budget, they had just seven days to prepare their Report and they have been able to do so.

(Applause)

NOTICES OF MOTIONS

ADOPTION OF REPORT ON PROPOSED RULES/PROCEDURE FOR ELECTION OF MEMBERS TO EALA

Mr. Keynan: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Proposed Rules and Procedure for the Election of Members to the East African Legislative Assembly (EALA) subject to the referral of the rules to the Committee of the whole House.

ADOPTION OF REPORT ON BUDGET POLICY STATEMENT FOR 2012/2013

Mr. Mbau: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Budget Committee Report on the Budget Policy Statement for 2012/2013 laid on the Table on 25th April, 2012.

ADOPTION OF REPORT ON RESETTLEMENT OF IDPS

Mr. Ethuro: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Parliamentary Select Committee on the Resettlement of the Internally Displaced Persons (IDPs) in Kenya laid on the Table on 25th April, 2012.

ORAL ANSWERS TO QUESTIONS

Question No.1004

PREMISES FOR KENYA HIGH COMMISSION IN UGANDA

Mr. Speaker: Member for Yatta!

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

Mr. Speaker: What is your point of order?

Mr. Kabogo: Mr. Speaker, Sir, I seek the indulgence of the Chair on the following matter. On Thursday, 19th April, 2012 two Questions were deferred by the Chair then, the Deputy Speaker, and he said that they would appear today in the morning. However, today in the morning, those two Questions, that is, Question No.1079---

Mr. Speaker: Order, Member for Juja! Please, resume your seat! I would have expected you to do better than that. If you are complaining that your Question is not on the Order Paper, you should not have waited until I called Question No.1004. This is because in effect you are interrupting business. So, that is not permissible. You can rise at the end of Question Time before we close Order No.6.

Mr. Kabogo: Mr. Speaker, Sir, with a lot of respect, I tried to do that this morning and the Speaker then shouted at me.

Mr. Speaker: Order, Member for Juja! I have directed you at what point you should have made your interjections. There are two points; either before I call Question No.1004 or before we conclude Order No.6. Really, there is no matter for contention there, the Member for Juja, with respect.

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

Mr. Speaker: Order, Member for Juja! If you persist, you know where we will go. Member for Yatta!

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

Mr. Speaker: What is your point of order, hon. Keynan?

Mr. Keynan: Mr. Speaker, Sir, two minutes before the sitting started, I was called by hon. Charles Kilonzo and he says that he is on an official function representing the Committee in a very important function where the Ministry of Foreign Affairs is also involved. So, he asked me to plead with the Chair---

Mr. Speaker: Fair enough, hon. Keynan! I will just confirm and you will act accordingly.

(Mr. Speaker consulted with the Clerk-at-the Table)

Order, hon. Members! In view of what hon. Keynan has said, I will give the benefit of the doubt to the Member for Yatta and I will defer this Question to Tuesday, next week. The Question will appear on the Order Paper on Tuesday, next week.

Hon. Members, I am reminded that Tuesday is already crowded.

Ms. Amina Abdalla: It is a public holiday!

Mr. Speaker: Order, hon. Amina Abdalla! You can do better than that! The Question is deferred to Wednesday morning.

(Question deferred)

Yes, the Member for Mutito!

Question No.1122

REHABILITATION OF KITUI-ZOMBE ROAD

Mr. K. Kilonzo asked the Minister for Roads when the Ministry will rehabilitate the section of the Kitui-Zombe Road at Ngai Ndethya corner in Kiongwe village, Thua Location.

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

My Ministry, through the Kenya National Highways Authority (KeNHA), has awarded a contract for the routine maintenance of the road at a sum of Kshs3,567,900. The contractor started work on 20th March, this year and it is expected that he will complete the repairs by the end of the contract duration.

Mr. K. Kilonzo: Mr. Speaker, Sir, I wish to ask for your indulgence because it is, indeed, very unfortunate that this Question is appearing for the fourth time. The Minister for Roads himself had to visit Ngai Ndethya in Mutito Constituency and he promised that there will be comprehensive repairs. If you look at the answer, you will find that the Assistant Minister is talking about Kshs3,600,000 to be spent on a stretch of 12 kilometres, in gullies which are supposed to have safe barriers and retarmacking.

Mr. Speaker, Sir, would I be in order to request that this Question be deferred so that they can give this House a better answer and an answer which is practical as the Minister promised?

Mr. Speaker: Mr. Assistant Minister, if you made a promise why do you not make a commitment to source for money and carry out comprehensive repairs?

Dr. Machage: Mr. Speaker, Sir, if the hon. Member would deny the immediate repairs I am making as I source for funds to comprehensively work on this road which I have already paid Kshs28 million to design--- The Ministry is really interested in rebuilding this road. What I am doing is temporary to make that road useful as I look for funds to rebuild it.

Mr. I. Muoki: Thank you, Mr. Speaker, Sir. I, first of all, want to confirm that in December, last year we visited that area with the Minister, hon. Bett; hon. Kiema Kilonzo and hon. Ngilu. The Minister, indeed, said that he will make sure that the road is maintained properly. I was there last week and the work which is being done is shoddy. It is as if this is a Class "C" Road. Could the Assistant Minister take this matter seriously and have these sections of the road tarmacked?

Dr. Machage: Mr. Speaker, Sir, I take seriously the sentiments that the work that is being done is shoddy and I will use the Floor of the House to instruct the officer on the ground to give me a report on the same. May I confirm that the Ministry is looking into proper repair of that road – I was there and I know the state of that road. I know that the road needs a complete rebuild. I am very much aware of the situation on that road. Please bear with us; we are on the ground and we are doing what we can.

Mr. K. Kilonzo: Mr. Speaker, Sir, now that the Assistant Minister has confirmed that he was there and something is being done, could he, please, ensure that at least there are sufficient funds? An amount of Kshs3,600,000 is nothing to Ngai Ndethya if he has been there and he

knows that people are dying every day when cars roll into those gullies. Could he ensure that more money is added almost immediately because the rains have started?

Dr. Machage: Mr. Speaker, Sir, the prerogative of ensuring that there are enough funds lies with this House. I have made my request; I hope it will be approved and I can build the road.

Mr. Speaker: Order, Mr. Assistant Minister! That may be a very generalized answer. Have you made a request for Ngai Ndethya for the next financial year? If you have, how much money?

Dr. Machage: Mr. Speaker, Sir, I am sure we have made that request---

Mr. Speaker: Order, Mr. Assistant Minister! You expressly said that this House passes the Budget. We are just following up on that! Have you made a request? If so, how much money did you ask for, for this road in the next financial year?

Dr. Machage: Mr. Speaker, Sir, that is exactly what I said. I may not be able to quote how much we have requested for the hon. Member but I can present that information as soon as possible. I am sure we have made that request for this House to approve.

Mr. Speaker: Order, Mr. Assistant Minister! I will direct that this Question appears again on the Order Paper six weeks from now, and I will expect that you come with a satisfactory answer that will clear the position.

(Applause)

Dr. Machage: Thank you, Mr. Speaker, Sir.

(Question deferred)

Question No.1167

2007/2008 BENEFICIARIES OF GOVERNMENT-FUNDED
E-LEARNING PROJECT

Eng. Rege asked the Minister for Education:-

(a) whether he could provide a list of institutions that benefited from the Government funding for the ICT for E-learning project during the 2007/2008 Financial Year;

(b) whether he could also provide the names of suppliers that the Government advised the various institutions to use for purposes of acquiring the services and what criteria was used to identify the suppliers; and,

(c) whether he is aware that M/s Bell Atlantic was paid Kshs.410,780 on 24th July, 2008 for a tender No. GHS/ICT/IT/01/2007-08 for supply, delivery and installation but the work was not done and, if so, what action the Minister is taking against the contractor.

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

(a) There was no funding for schools for ICT projects in the year 2007/2008 Financial Year. However, 71 schools benefited from Government funding for the project in the 2005/2006 Financial Year and 142 schools in 2006/2007. This covered the targeted 210 schools, one in each constituency which was the objective of the project.

(b) The names of the suppliers who provided the services were Copy Cat Limited, Bell and Atlantic Communications Ltd, Cyber Schools Technology Solutions, MFI Office Solutions, Mentor Systems, Telkom (L) Kenya, Legend Technologies Africa and Cob Data Systems. The suppliers were identified through competitive bidding, a pre-qualification process as provided for in the Public Procurement and Disposal Act, 2005. The Ministry advertised in the print media for the companies to express interest for installation of E-learning facilities in schools. Thirty two companies expressed interest, and out of these, 16 were shortlisted for further evaluation, and finally eight of them were prequalified for the tender. The schools were subsequently advised to enter into contract with any of the eight companies.

(c) I am aware that Gendia High School made a down payment of Kshs410,710 vide cheque number 00239 on 24th July, 2008 as per the ICT contract requirement, but the services were not rendered by Bell and Atlantic Communications. The board of governors, as a body corporate, is mandated by law to take legal measures against any defaulting firm with a view to protecting the school's property. In view of the fact that Gendia BOG has not taken action, I have instructed my officers to go to the ground and establish the position to enable me to take appropriate action against that contractor.

Eng. Rege: Mr. Speaker, Sir, first, I would like to congratulate the Ministry for a well thought out idea of computerizing schools, but I want to say that this was not the right way to do it; if the Ministry was going to do this, surely, they should have made themselves ready to supervise and make sure that computers were delivered to schools in a timely manner. Nonetheless, I can see from the communication between---

Mr. Speaker: Order, Eng. Rege! You know it is Question Time! I have allowed you some two minutes to say your piece, but come to the question.

Eng. Rege: Mr. Speaker, Sir, I would like the Ministry to take action to make sure that Gendia Secondary School gets its rightful computers regardless of what they cost right now.

Prof. Olweny: Mr. Speaker, Sir, my Ministry is going to take appropriate action to ensure that Gendia gets its computers and also the contractor goes to books.

Mr. Mbadi: Mr. Speaker, Sir, a school made payment to a contractor on 24th July, 2008 and it takes an hon. Member to ask a Question before the Ministry acts. I wonder whether this Ministry has auditors within its ranks. So what assurance is the Assistant Minister giving us that funds have not been lost in his Ministry as a result of this kind of negligence and lack of due attention to procurement and management of finances?

Prof. Olweny: Mr. Speaker, Sir, I am assuring him that we will ensure that we recover the funds.

Mr. Njuguna: Mr. Speaker, Sir, the Assistant Minister has just informed the House that during 2005/2006 Financial Year, 71 schools qualified for these funds. Could he inform this House clearly what criteria was used for the benefiting schools?

Prof. Olweny: Mr. Speaker, Sir, the schools are constituency based. If you got the number right it is 210 schools, which means one school per constituency and the selection was based on the information that the Ministry got from the District Education Boards, where hon. Members also sit. But unfortunately for this Parliament, this selection was done during the last Parliament because it was a project of 2005/2006.

Mr. Letimalo: Mr. Speaker, Sir, the Assistant Minister says that they considered one school per constituency. Could he tell us the progress that has been made by the schools that entered into this contract?

Prof. Olweny: Mr. Speaker, Sir, as far as I know, unless in a case like this one, the schools bought computers, installed them and they are functional. The project did very well!

Dr. Khalwale: Mr. Speaker, Sir, with the creation of the 47 counties, our understanding was that when resources like these are being shared, the size and the population of a county will be put into consideration. Could the Assistant Minister give the justification why Nairobi and Kakamega counties received a mere three schools like all the other counties when we know that these counties are the largest in the country?

More importantly, maybe on a point of order, is he in order to mislead the House that each constituency was given a school? Clearly, Musoli Girls is in Ikolomani in Kakamega, Shibuye Girls is in Shinyalu in Kakamega and Malava Boys is in Malava in Kakamega. Lurambi and Nabakholo in Kakamega County received nothing.

Prof. Olweny: Mr. Speaker, Sir, when this project was to be implemented, Kenya was not yet divided into counties. Counties are going to be effective from July this year as regards Government budgeting. As far as I know, these schools were selected in 2005/2006 by the District Education Boards. If at all the Member's constituency missed out, that is an issue which we can follow up.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. The point I am making is that if each of the 210 constituencies got, at least, one school, which constituency got the share for Lurambi Constituency? The Member of Parliament is here and none of his schools are in the list.

Mr. Speaker: Order, Member for Ikolomani! Like I indicated earlier on this year, we have had four years and three months of acquainting ourselves with the Standing Orders. That does not pass for a point of order.

Mr. Pesa: Mr. Speaker, Sir, we are talking about 210 schools and the list has just come to this House this afternoon. So, some of us may not be aware whether our schools, as mentioned, really got this equipment. Could the Assistant Minister assure this House that he will go and check in all schools to ascertain that the contractors did their work and report back to the House?

Prof. Olweny: Mr. Speaker, Sir, as a matter of fact, we have instructed our officers to go around the country to ascertain the condition of the project which was implemented that time. That is going to be done as the Member wants us to do.

Mr. Letimalo: On a point of order, Mr. Speaker, Sir. I have just seen the list that has been tabled by the Assistant Minister. He has said that they considered one school per constituency. I have looked at the Samburu County and the three schools that have benefited from this project are all from Samburu West. What happens to Samburu East? Is he in order to mislead the House? Could he go back and bring proper information?

Mr. Speaker: Member for Samburu East, that now passes for a point of order. Member for Ikolomani, if you take the HANSARD and read it again, you will find that, that will pass. Yours would not!

Prof. Olweny: Mr. Speaker, Sir, the distribution of the equipment was constituency-based, but the decision on which schools were to be given was to be handled by the DEBs. Probably, the two constituencies were running under one DEB. But if the Member did not present his case in the same DEB, then that is how he lost out in his DEB.

Eng. Rege: Mr. Speaker, Sir, could the Assistant Minister kindly give us a rough estimate of the time when he expects this money to be paid? Also, allow me to request you to give instruction, so that he can come back and tell us which schools got computers. We have just

received the names just now. We also want to go back and check whether these schools received the equipment.

Mr. Speaker: Order, Member for Karachuonyo! If you wanted to do that, you would have prosecuted that differently. Obviously, you have already asked a first question. Now you are asking for time to go and study the questions. Where are you?

Prof. Olweny: Mr. Speaker, Sir, I beg your indulgence. May I ask the Member to repeat the question that he wants me to answer?

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. The Assistant Minister indicated that his officers are going round compiling a report and he will make this report available to the House. Is it in order for him to say that without indicating when he will avail that report to the House showing which of the 210 schools in the 210 constituencies got these computers?

Mr. Speaker: Assistant Minister, that is valid!

Prof. Olweny: Mr. Speaker, Sir, I am actually in order because no Member had requested for the actual time when I shall bring the report. But now that the Member has put it forward, please, give me two months.

Mr. Speaker: Very well. Member for Karachuonyo, that falls in with what you were looking for. So, this Question will re-appear on the Order Paper two months hereafter for the Assistant Minister to update the House and table a report.

(Question deferred)

Question No.1169

UPGRADING OF KIRINYA TECHNICAL INSTITUTE

Mr. Speaker: The Member for Kirinyaga Central is not here. The Question is dropped!

(Question dropped)

Question No.1180

MINING OF RUBY AT SANDAI/EWALEL SOI LOCATIONS

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

(a) whether he could confirm that there are deposits of ruby in Sandai and Ewalel/Soi locations, Marigat District;

(b) whether any firms have been licensed to undertake any mining in the area; and,

(c) how the residents of Marigat will benefit from these natural resources.

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

(a) I confirm that there are deposits of ruby in Baringo County. This was discovered in 2001 by a prospector. Ruby deposits are found in the soils within the rocky terrain of Kwirintoi close to Waseges River to the east of Lake Bogoria, and at Kapleng'noi and Barsemoi to the west of the lake.

(b) Several firms applied for exploration licences after the discovery of the ruby. The current status of these firms is shown in the table below.

(1) Vitogems Enterprises was given 4.8 square kilometers and was granted a special licence No.215 which expired on 1st November, 2007. There is no evidence of any serious exploration work done.

(2) Barsemoi Self Help Group was given five square kilometres but failed to satisfy all the requirements to warrant granting of licence. Application is now treated as abandoned.

(3) Barsemoi 'A' Self Help Group, which was also given five square kilometres and granted a special licence on 18th November, 2009 for two years. There is no evidence of any exploration on the ground.

(4) Barsere Self-Help Group which was given 5.9 square kilometres and granted a special license No.257. There is no evidence of any exploration work done. The licence expired on 31st August, 2008. Baringo Minerals Limited was given 50 square kilometres. Application was approved for issuance on 6th June 2003 of a total area of five kilometres. Then Kwirintoi Mining Society was given four square kilometres. It was issued with general special licence No.224, but there is no evidence of any exploration work done. The licence expired on 31st March, 2007. Kokei Gemstone Limited was given five square kilometres. It was granted a special licence number 212. There is no evidence of any exploration work done. The licence expired on 31st April, 2010. Then Corby Limited was given six square kilometres. It was granted a special licence No.210 on 27th November, 2002 for two years with effect from 1st December, 2002. The company explored within the licence area, erected a pilot ruby washing plant, but a conflict with the surrounding community led to invasion and vandalism of the equipment. The Ministry advised the company to seek the assistance of the local area District Commissioner. The licensee is still interested in completing exploration in the area.

The Ministry has been sued by the company and is awaiting the determination of the case. However, none of the licensed companies is active on the ground. Twenty one day expiry notices have been sent to them, apart from Corby Limited, which sued the Government for compensation following the vandalism of their mining equipment. In the case of Barsemoi Self Help Group, the company had earlier applied for an area of five square kilometres, but only one square kilometre was availed, which was approved for grant of special licence on 20th December, 2004. However, the company did not pay the required fee for further processing of the licence.

Mr. Speaker: Order, Mr. Assistant Minister! How long do you still have to go? I notice that you have already done seven minutes. You have spent seven minutes giving an answer to a Question which is fairly straightforward and you appear to be telling a very long story. How much longer?

The Assistant Minister for Environment and Mineral Resources (Mr. Murgor): Mr. Speaker, Sir, I am just winding up.

Mr. Speaker: If you could just resume your seat for a minute. Question No. "a" reads: "Could the Minister confirm that there are deposits of ruby in Sandai and Ewalel Soi locations, Marigat District?" If you are confirming, you would have said: "Yes, I confirm."

Number two reads: "Have any firms been licensed to undertake any mining in the area?" You should say: "Yes, seven firms have been licensed." Number, "C" reads: "How will the residents of Marigat benefit from these natural resources?" So, this story you are telling, what Question are you answering?

(Applause)

What Question are you answering, Assistant Minister? Honestly! Try and conclude! I will accommodate you for the moment but, in future, please, answer the Question as asked.

The Assistant Minister for Environment and Mineral Resources (Mr. Murgor): Thank you, Mr. Speaker. I was also explaining the second question. So, on the third one, the residents of Marigat can benefit from those natural resources in several ways. There is employment, infrastructure, promotion of businesses and high standards of living. Additional benefits during mining include royalty earning by the community, the county council, development in the area and social improvement. Thank you.

Mr. Mwaita: Thank you, Mr. Speaker, Sir, for clarifying with the Assistant. However, I wish to congratulate the Assistant Minister for the detailed answer with regard to the ruby status in Baringo. I wish to ask him--- He has given a list of all those who have been licensed to do mining and, apparently, the local groups were given five square kilometres. Yet, in his answer, private companies were allocated 50 square kilometres. What criterion was used by the Ministry in giving out those licences? You gave the local people only five square kilometres and private companies 50 square kilometres.

Mr. Murgor: Mr. Speaker, Sir, the square kilometres are awarded according to requests. So, it depends on what the company asked for. It also depends on what they want to explore and how far it covers in the area.

Mr. Ethuro: Mr. Speaker, Sir--- (*off record*)---rather than employment. It is too generic!

Mr. Murgor: Mr. Speaker, Sir, yes, it also depends on what is available. As you can see from our findings on the ground, there is not really much going on in that particular area. It could be that miners are not finding much there and so, they just retreat slowly. So, I am sure that if miners find something, then we can actually talk and work out the modalities with the people on the ground as to how they will benefit when we find serious interested miners or explorers.

Mr. Njuguna: Mr. Speaker, Sir, the Assistant Minister has indicated that vandalism is threatening the smooth operations of the mining companies. What is the Government doing to reduce that vice?

Mr. Murgor: Mr. Speaker, Sir, as I had mentioned, we advised the particular company to seek help from the DC's office so that, maybe, the DC could work out as to what security situation would help him or help this particular company; so, we gave our advice as best as we could at that time.

Mr. Mwaita: Thank you, Mr. Speaker, Sir. The Assistant Minister has stated that there is not much action on the ground. I wonder whether the Ministry has carried out a detailed assessment on the quantity and quality of ruby within Marigat District.

Mr. Murgor: Yes, we did, and that is why we are able to report, even though we cannot really say authoritatively as to how much quantity there is. So, we did but found that there is, but as to the quantity, we are really not authoritative on that.

Mr. Speaker: The hon. Member for Nyaribari Chache.

Question No.1360

NON-PAYMENT OF BENEFITS TO DEPENDANTS OF LATE L.G. KANOTI

Dr. Monda asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he could explain why the beneficiaries of the late Mr. Lawrence George Kanoti (PF NO. 69019626), who worked as an Assistant Personnel Officer in the Ministry, until his death on 18th June, 1998, have not been paid the benefits;

(b) when he will pay the said benefits to the family; and

(c) what he is doing to ensure that family members of staff who die while in service are paid their dues promptly?

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

(a) The beneficiaries of the late Lawrence George Kanoti, Personal Number 69019626, have not been paid the benefits due to missing main personnel file which contains the following documents that are required when lodging terminal benefits claim: Letters of appointment, GP24A, GP24, all promotion letters and letters of confirmation of appointment. Please note that the late Kanoti's personal file was not forwarded to the Ministry of State for Provincial Administration and Internal Security when the deceased was transferred from the Ministry of Water Development way back in 1992.

(b) We have been able to trace complement control and record service cards that have assisted us in piecing together the service particulars of the deceased. We have sought the necessary authority to issue afresh the letters highlighted in place one to three above to enable us to pay the death gratuity claim and put this long outstanding case to rest.

(c) The Ministry is automating its data management system and educating staff to continually update their personnel files to make sure that all the necessary documents for service and death gratuity are intact, so that the case of death gratuity is processed promptly.

Dr. Monda: Mr. Speaker, Sir, I thank the Assistant Minister for the effort he has put in looking for this information. You have heard the Assistant Minister use the words "piecing together." The family of Mr. Kanoti lost the wife to Mr. Kanoti in 1989 and Mr. Kanoti himself, who worked with the Ministry, died in 1998. The children left behind have been attempting to reach the Ministry Headquarters to get assistance and they cannot produce the letters of appointment and the other letters that the Ministry requires.

Mr. Speaker, Sir, my question on part "b" is, what is the Government doing to pay these children and when?

Mr. Lesrima: Mr. Speaker, Sir, this is, indeed, a very sad case. But we have been able to reconstruct the records; we have been able to trace some records; we have been able to arrange for the necessary documentation posthumously with the authorization of the Directorate of Personnel Management, and also the Pensions Department. We tried to explain that certain documents were missing but we have been able to reconstruct, through the complement card, a record of service. We have now written to the relatives; in fact, the daughters have been with us as they have been coming to the office very often to give us the final documents that may be required for us to forward to the Treasury and to the Pensions Department. These are the identity card, certificates, confirmation of legal dependants and so on.

Mr. Speaker: Order, Assistant Minister! The hon. Member wants to know when you will pay.

Mr. Lesrima: Mr. Speaker, Sir, this cannot be done within a month by the Pensions Department. I can only undertake on behalf of the relatives to pursue this matter with the Pensions Department, because they were waiting for us to file documentation with them.

(Dr. Monda stood up in his place)

Mr. Speaker: What is it, Dr. Monda?

Dr. Monda: On a point of order, Mr. Speaker, Sir. I am sure you heard what the Assistant Minister is saying, that he will only be able to forward this case to the Pensions Department, but I consider them to be still the same Government. Is the Assistant Minister in order to run away from his responsibility of telling the country when families of those who have died ahead of us will be paid? When is it going to happen? Can you give an indication as the Government?

Mr. Speaker: Order, hon. Member for Nyaribari Chache! Assistant Minister, can you give a straight forward undertaking? You will follow up this matter to ensure that payment is effected within the next 60 days.

Mr. Lesrima: Yes, Mr. Speaker, Sir. Now that I have got all the records reconstructed and authorization and a promise from the Pensions Department, I can give an undertaking that we will do this within one month.

Mr. Speaker: Very well; within 30 days.

Proceed, hon. Mohammed.

Mr. M.M. Ali: I thank you, Mr. Speaker, Sir. It is normally very frustrating for relatives and families of civil servants who pass on while on duty following up such kind of cases. It is especially so frustrating for those of them who come from far-flung areas such as Moyale. Normally, people are asked to come back after one month; it is very tedious, costly and frustrating.

My question, Mr. Speaker, Sir, is, does the Government have a standard practice or a policy of some sort on when to pay the relatives and families of civil servants who die while on duty as in the case we are just addressing?

Mr. Lesrima: Mr. Speaker, Sir, the policy is to pay within a very short time, for example within a month, provided all the documentation is available; also the question of paying requires some confirmation as to who are the legal persons and dependants to inherit. I do agree with you that there is often delay in dependants accessing all the documentation, getting the chief, forwarding the documentation to the Ministry Headquarters; but I do hope that with devolution and computerization, we will speed up on most of these problems.

Mr. Speaker: Dr. Monda?

Dr. Monda: Mr. Speaker, Sir, in part “c” of the answer, the Assistant Minister talked of automation of the data management system by the Government to ensure that this kind of situation does not arise in future for those who have passed away and those who will pass away while in the Civil Service. Can the Assistant Minister give an indication as to when this system will come into operation and save the bereaved families the agony of following their dues to the Ministries for very a long time, as the case is for Mr. Kanoti’s family?

Mr. Lesrima: Mr. Speaker, Sir, indeed, this is a very, very important Question that the hon. Member has raised; I can say that we are actually in the middle of computerizing all the records, so that we are up to date continuously, and we do not have to look for manual files.

Mr. Speaker: The hon. Member for Kitui South.

Question No. 1403

STALLING OF CONSTRUCTION OF IKUTHA FRESH

PRODUCE MARKET

Mr. I. Muoki asked the Deputy Prime Minister and Minister for Local Government:-

(a) whether he is aware that the Fresh Produce Market projects, funded under the *Economic Stimulus Programme*, at Ikutha stalled at the foundation stage.

(b) what measures he will take to ensure that the project is completed.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Local Government (Mr. Nguyai): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the development of Ikutha Fresh Produce Market experienced a stoppage. Indeed, the contractor abandoned the works on the 15th of March, 2012.

Mr. Speaker, Sir, the contract for Ikutha ESP Market was awarded to Messrs. Rocio Construction Company on 3rd May, 2010, at a tender sum of Kshs8,963,708. However, during the site handover by the council on 5th November, 2010, it was noted that the site was not in vacant possession as there were existing kiosks which needed to be demolished. The council gave the traders a notice of 21 days to carry out the demolition. The contractor commenced the construction of the market on 23rd March, 2011. The first interim payment certificate for Kshs2,501,253 was presented on 12th October, 2011 and honoured on 31st October, 2011. That was a processing period of 19 working days. The contractor abandoned work on 21st October, 2011 when the market shed substructure was at slab level and 45 per cent of the market shed was complete. The contractor resumed works on 15th February and stopped works again on 15th March, 2012, having dug a foundation and built a substructure for walls, office block and dug toilet pits.

(b) My Ministry has served the contractor with a 14-day default notice. If the contractor does not resume operations within 14 days, the contract will be terminated and awarded to another contractor.

Mr. I. Muoki: Mr. Speaker, Sir, the Assistant Minister was not courteous enough to give me a written answer. But having said that, this project has taken this long and is still at the slab level. I have raised complaints with his officers, but nothing has been done. Could he move with speed and have this project completed because it has delayed?

Mr. Nguyai: Mr. Speaker, Sir, I apologize; I do not know why he did not get the answer. I will find out why because the answer was signed on 19th April, which is about a week ago. Due process has started. When a contractor defaults on a contract, termination process begins. The 14-days notice is in place and as soon as we terminate that contract, we will then advertise, so that we can award as quickly as possible.

Mr. Mureithi: Mr. Speaker, Sir, the issue of Economic Stimulus Programme is not unique to Ikutha. I would like the Assistant Minister to tell us what has happened to Ol Kalou Market where the contractor was awarded and then he disappeared; meaning that when he comes back, probably the value or project will go high. What action will he take to ensure that the projects under Economic Stimulus Programme, which include Ikutha and Ol Kalou Market, are completed and the public funds are not misused?

Mr. Nguyai: Mr. Speaker, Sir, I do not have the specifics of the Ol Kalou Market. If the contractor disappeared, then I will get the specifics, and, once again, take due action. Basically, we started the Economic Stimulus Projects (ESP) or programmes on the wrong footing. This is because as you remember, they were under the ESP and they first advertized under the Ministry

of Finance. Then, once the contract documents came and capacity was not sufficient, they were brought to our Ministry. We have tried our best to ensure that all requirements for a contract to commence are put in place. I think the problems that we used to experience last year have decreased and I am hopeful that the ESPs will be finished.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. On this matter, just probably a request for direction from you. Late last year, this Question came with this meaning, but in a slightly different format. The Minister did undertake to visit all the ESP projects around the country and table his findings in the House. Since what is obtaining in this particular Question applies to all the projects in the country, could the Chair direct that the Assistant Minister tables that report and also allows me to record that he never went to Ikolomani or Juja?

Mr. Nguyai: Mr. Speaker, Sir, what we did undertake was to provide a full report of all the constituencies. It will not be possible to visit 210 constituencies even if we took a day in each, I would still be going round on the visits. I know that there was a deadline on that, but I do not have it over here. But---

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. You have heard the Assistant Minister say that it is not possible for him. We were not referring to him in person, but the Ministry to look into the 210 constituencies. Is he in order?

Mr. Speaker: Order! Order! Mr. Assistant Minister, the Member for Ikolomani asserted that you undertook to visit different constituencies, compile and table a report in the House. Was that your undertaking?

Mr. Nguyai: Mr. Speaker, Sir, it was not the physical Minister or Assistant Minister for that matter, but the Ministry was going to compile, officials from the Ministry were to give a report. I was clarifying it in that manner because the Member for Ikolomani---

Mr. Speaker: Order! Order! If we stop there for a moment, so that we use our time properly, why have you not discharged that undertaking?

Mr. Nguyai: Mr. Speaker, Sir, I am sure that, that undertaking has been discharged. What I said is that I do not have the report here. I am sure that the report should be ready. I can give an undertaking to---

Mr. Speaker: Order, Assistant Minister! How can it be discharged if you have not tabled the report in the House? Obviously, you have failed up to where we are.

Mr. Nguyai: Mr. Speaker, Sir, I will have to find the report and certainly table it if you give me time.

Mr. Twaha: Mr. Speaker, Sir, the ESP included improvement of a hospital in every constituency, construction of *jua kali* sheds and markets. The hospitals and *jua kali* sheds contracts were awarded at the local level and most of them have been completed. Why did the Ministry find it necessary to award the contracts for the markets in Nairobi when we are devolving?

Mr. Nguyai: Mr. Speaker, Sir, as I have said before, the tendering process for the majority of the fresh produce economic stimuli projects were advertized through the Ministry of Finance, under the ESP. They were then brought to our Ministry after the contract documents had come. We then awarded following the due process.

Mr. I. Muoki: Mr. Speaker, Sir, you can see the interest shown by the hon. Members. I am a Member of the Committee on Transport, Public Works and Housing. We have gone round the country. All other ESP projects are more or less complete, except the markets. The problem with the markets, including Ikutha, is that while others were devolved to the constituencies, the Ministry of Local Government chose to do this one centrally. That has caused the delay all the

way down to the constituencies. In Kitui South, for example, it was advertised at the local level and the Committee awarded it to a contractor. It was then brought to the headquarters and the contractor was changed. So, the problem has been this centralization and the fact that it is an ESP project. Could the Assistant Minister take quick action, because this ESP in the Ministry has actually failed?

Mr. Speaker: Mr. Assistant Minister, that is a serious question!

Mr. Nguyai: Mr. Speaker, Sir, I undertake to take quick action to make sure that all the issues are addressed conclusively.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order, hon. Members! Question Time is up. I wish to direct that this Question reappears on the Order Paper two weeks hereafter. Mr. Assistant Minister, you will then be expected to table your report and respond to any issues that may arise after you table it.

(Applause)

(Question deferred)

I have inquired into the matter that you raised, although at the wrong point, and I have found that your Question, indeed, was set to appear today on the Order Paper, but because we did not have adequate time to accommodate all Questions, it was left out by our office. I am, therefore, directing that the Question appears on the Order Paper tomorrow at 2.30 p.m.

Mr. Kabogo: Mr. Speaker, Sir, you now understand why I was insisting. It is because I attempted to do this in the morning and the Deputy Speaker actually almost shouted at me. So, really if it were another hon. Member, he would have been said to have behaved himself in a less fitting manner.

Mr. Speaker: Order, hon. Member for Juja! You know I have taken care of this.

Mr. Kabogo: Mr. Speaker, Sir, I would like to raise one issue on that matter. If you look at the weekly list of Questions, my Question is listed there this morning as number two. If it is because of time that only four Questions were picked, I would have expected the first four to have been picked; since you have said that there is none, then it is important that the Office of the Clerk does follow this issue. You see, the Questions for this afternoon in the weekly list have been dealt with entirely. They are all in the Order Paper.

The second issue I wanted to raise on Questions - this is a matter that I raised in November - is that I did put in a Question requiring a written answer as per Standing Order No.45, on 22nd November, 2011; a reminder was sent to the Ministry on 21st December, 2011. The Standing Orders are such that these Questions should be answered in ten days. Now instead of ten days, it is four months. We need your direction on how hon. Members will be able to deal with such a problem. You will find that some Questions find their way into the House quickly, and other hon. Members' Questions may take months to find their way to the House. I do not know what an hon. Member needs to do so that their Questions are followed up from the Ministries. I seek your indulgence and I apologize for insisting earlier on.

Mr. Speaker: Order, hon. Member for Juja. I have noted, indeed, and I know that you had valid concerns but they have now been addressed. Normally when directions are given for Questions to be deferred to the next day or the nearest day thereafter, those Questions are meant

to take priority over those that are otherwise coming on that day, because the Questions coming on that day are presumed to be younger than the ones which are deferred. If for any reason that has not been happening, I will administratively ensure that that begins to happen with immediate effect.

Ms. Karua: On a point of order, Mr. Speaker, Sir. Mine is similar to the one raised by the hon. Member for Juja. My Question was No.4 on the weekly list, but in the morning it was left out. I raised the matter and as the hon. Member for Juja, I am saying even if it was due to time, you would expect that the Office of the Clerk would pick the first four Questions but not to pick No.1, No.6, No.3 thereby showing obvious bias. I am wondering, first, whether I can be assured that my Question similarly will appear tomorrow morning because it had been ordered so by the Speaker; secondly whether the Office of the Clerk can be told firmly that when Questions have to be dropped for any reason, even when they are not ordered by Mr. Speaker, it should be done as per the weekly list, so that it can be No.1 or the first four unless ordered otherwise by Mr. Speaker; they should follow the list strictly.

Mr. Speaker: Very well, hon. Member for Gichugu. The directions which I had earlier given with respect to the sentiments for the hon. Member for Juja will apply to your situation. I can vouch for the Clerk, in particular Mr. Patrick Gichohi, that he has not exercised those biases; but it is possible that there are slips on the part of lesser officers within his department. I want to encourage him just to check those officers and ensure that there is fairness.

Dr. Khalwale: Mr. Speaker, Sir, on the same point of order, obviously we are interrogating the administration of Questions by the Office of the Clerk. There is another aspect, and that is the processing itself. When it comes to Questions by Private Notice, we normally anticipate that within 72 hours at most, it will be here and that has been taking place. Ordinary Questions have been queuing for a long time and we have not had a problem. But there is something which continues disturbing me, that under Standing Order No.40 (2) (b) Questions directed to the Office of the Prime Minister to be covered during the Prime Minister's Question Time, seem to be treated as if they are dealt with at the pleasure of the Prime Minister to the extent that the Prime Minister can come here, find a Question on the Order Paper and say that he has come to give a Statement.

So that I am not seen to be pursuing a theory, before we went to recess, I put a Question to the Office of the Prime Minister and it was important; I asked him: "When is the date of the first general election under the new Constitution". Instead of him coming to address us here, we have been seen matters being raised by the President in the media. There is no official communication; even when the President talked yesterday, you notice he never addressed that issue. So, we cannot be treated at the pleasure of the Prime Minister. We want to be treated at the pleasure of the Standing Orders and the law. Could you guide us as to how long we should expect to wait in the case of a Question that has been listed to receive an answer during the Prime Minister's Time?

Mr. Speaker: Order, hon. Members. The matter canvassed by the hon. Member for Ikolomani is obviously legitimate. Standing Order, No.40 which introduced the Prime Minister's Time, much as it came about during the life of this Parliament beginning from 10th December, 2008, really ought not to have provided any challenges in implementation as it appears, or as it seems to do, up to where we are. For instance, this afternoon we have a letter that we have just received after we got into Prime Minister's Time, which would normally commence any time after 3.00 p.m. We have received a letter close to the end of Prime Minister's Time to the Clerk, addressed to him by his counterpart in the Office of the Prime Minister. It says that the Prime

Minister will be away. Obviously this kind of communication should have come earlier. It is not fair to the House that it comes, in fact, beyond the eleventh hour.

What is more significant is that the Prime Minister has two deputies. If the Prime Minister is not, for any reasons, available the Standing Orders are express that in the absence of the Prime Minister, a Deputy Prime Minister designated by the Prime Minister may make a Statement or answer Questions under this part. So, obviously, the House is justified in wondering why the Prime Minister, Hon. Raila Odinga, would not answer Questions because he is not in the country. So, let this go down. Mr. Khang'ati, please, take this message back home, that Questions or Statement that are due from the Office of the Prime Minister's Office should proceed whether or not the Prime Minister is himself present. That must be operationalized immediately.

Mr. Kabogo: On a point of order, Mr. Speaker, Sir. I rose on a point of order as regards Standing Order No.45 under which hon. Members ask for a written answer. I told you that I had asked a Question in November to the Ministry of Lands, and the Minister is here, but it has not come up with an answer, five months later. I was seeking your indulgence as to what we could do since the Standing Orders state that it should be answered within ten days, yet this is now four or five months. You did not respond to it. I would want to table this document so that the Minister may get the benefit of it.

Mr. Speaker: That is covered in the directions I gave earlier on, but if you have a number for that Question, I direct the Office of the Clerk to inquire into this matter and give the Speaker a report as to what has happened to that Question. I want to assure you, the Member for Juja that I will take action and you will be informed as to what action I would have taken.

Mr. Kabogo: Thank you, Mr. Speaker, Sir. This is Question No.1392 asked on 22nd November, 2012. I will lay it on the Table.

(Mr. Kabogo laid the document on the Table)

Mr. Speaker: Yes, within the next 24 hours from now, action would have been taken.

Mr. Ethuro: On a point of order, Mr. Speaker, Sir. On a similar point of order, in the morning, because of the business on the Order Paper, we concurred that some Questions were deferred and all the statements. Some of us were expecting statements on the state of insecurity in Turkana County which the Government had promised to deliver this morning. I am asking for your guidance so that we are given another date. Secondly, in addition to your direction on hon. Kabogo's Question, I agree entirely and hope that will be extended to some Ministerial Statements that Ministers have deliberately failed to deliver for a very long period including the one on Noise Pollution by the Lions Eye Hospital.

Mr. Speaker: That will be so. I direct that all hon. Members who have Questions that have been unattended to, beginning a week ago and going to infinite, please, furnish the Clerk's Office with that information, with a copy to my office so that action is taken immediately.

(Applause)

I will now want us to go to the next order.

Mr. Speaker: There are Statements that are due. We will take those first and then requests.

MINISTERIAL STATEMENTS

IMPLEMENTATION OF POLICE REFORMS

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Thank you very much, Mr. Speaker, Sir. I would like to make the following Ministerial Statement.

The Government has been implementing legislative, administrative, policy and institutional reforms in the security sector aimed at improving security in the country. These reforms are envisioned to have a well trained, equipped and motivated National Police Service which will partner with law abiding citizens and other stakeholders to guarantee quality security services.

As recommended by the Ransley Taskforce on Police Reforms, an Implementation Committee was put in place and has been able to implement quite a number of these recommendations. For instance, the three new police related legislations have been enacted and 7,000 additional police officers have been recruited under the new police recruitment criteria under a procedure that allows greater participation and accountability to the public. These officers have been trained under the new police training curriculum. Retraining of serving police officers has also been ongoing.

On housing, the Government has so far completed a number of stalled police housing projects and acquired new ones increasing the units to 6,833 for the Kenya Police and 4,830 for the Administration Police among other strides intended to improve the working conditions of the police.

Despite these achievements, the National Police Service has, in the recent past, appeared as though it is not committed at all to the reforms. This, of course, has been triggered by some incidences reported in different parts of the country. In this respect, I wish to comment on a few of these incidences. The first one has to do with the incidence that took place in Kerita in Trans Nzoia.

On the 5th of April, 2012, one of our television stations aired an act of torture alleged to have been committed by a police officer in Turkana. The Commissioner of Police commenced investigations immediately and, indeed, it was confirmed that the incident had occurred in Kerita GSU Camp, Trans Nzoia County, in February, 2009. On this case, I wish to confirm that investigations are now almost complete after my insistence that investigations be carried out. The file will, therefore, soon be forwarded to the Director of Public Prosecutions (DPP) in due course for further action.

The other incidence of great concern is the Limuru II (B). On 18th April, 2012, police officers dispersed gangs of rowdy youths who had turned up to attend a conference at Jumuiya Hotel in Limuru which had been cancelled due to security considerations. This meeting was cancelled after intelligence information revealed that some people had planned to take control of the meeting and commit criminal acts. However, while quelling the riots, some police officers used excessive force on the rioting youth. I, therefore, directed that investigations into this incidence be expedited and the file be forwarded to the DPP for further action. I want to confirm to this House that, indeed, investigations are being carried out expeditiously so as to deal with these officers who were captured on television whipping somebody who had put his hands up. This, I want to say, is not acceptable at all.

The other one has to do with an incidence in Dandora area where some shootings took place. This happened on 23rd April, 2012. Police officers from Dandora Police Station who had arrested a murder suspect were confronted by a rowdy mob who demanded the release of the suspect so that the crowd could kill the suspect. When the police officers refused to release the suspect, the mob became violent and attempted to seize the suspect by force. In an effort to disperse the crowd and save the life of the suspect, police officers fired in the air while in a moving vehicle, unfortunately, killing three persons who were on the fourth floor of a building.

In an effort to ensure that thorough investigations are carried out, six police officers have now been relieved of their duties or suspended and forwarded their arms to the ballistic expert to isolate the firearm which caused the injuries and deaths. Once investigations are complete, the matter will be forwarded, once again, to the court. Here, I have no apologies at all and I would like to state quite clearly that the incidence that resulted in the death of the three people is most unfortunate. Therefore, that is why I directed that immediate investigations be carried out and that those officers be reprimanded.

Therefore, on my behalf, and that of the entire Ministry, I wish to send a message of condolences to the families of the persons who died as a result of the Dandora incident. I wish to assure the families and all the concerned parties that the Ministry will ensure due diligence is applied in this case.

The other incidence, the fourth one is about what happened at the Hope International Church. On 22nd April, 2012, at about 1400 hours, Kasarani Police Station received a report through the telephone from one, Geoffrey Thuo who described himself as an aspiring candidate within Kiambu County, that he had been attacked by a group of youth while at Hope International Church at Garden Estate where he had gone to discuss some political issues with Maina Njenga. He was seeking urgent police assistance claiming that the youth had demanded his car and robbed him of Kshs100, 000. Kasarani Police Station then instructed a mobile police patrol which was on duty in the Garden Estate area to proceed to the Hope International Church and carry out inquiries on the report. When the police officers arrived in the church compound, they identified themselves to the youths, who seemed like ushers. But when they explained their mission, a large group of youths emanated from the church and attacked the police officers. The patrol team was robbed of their personal items including cash, ATM cards and, more alarmingly, their arms and certificates of appointment. Those officers exhibited high levels of restraint, despite having a justifiable reason that could have led them to use their firearms to protect themselves and their property. I, therefore, have directed that this case be urgently investigated so as to ensure that those responsible are dealt with in accordance with the law.

Mr. Speaker, Sir, in conclusion, I wish to appeal to both members of the public and the police to fully acquaint themselves with the new Constitution and various laws pertaining to law and order. All persons, regardless of their status in life, are subject to the Constitution and must respect and adhere to the rule of law to ensure that unnecessary confrontations between the police and members of the public are avoided in the future. Where there is a conflict or dispute between a Government department and any other party, the Constitution has provided the course of law as the avenue for solving such dispute. Every section of our society is collectively responsible for ensuring that the rule of law becomes a defined feature of our culture. Rioting and showing open defiance to the law should never be an option in addressing issues in our society and, as a Government, we will sustain the reform initiatives in order to professionalize the National Police Service and ensure that all police officers perform their duties within the law.

Mr. Speaker: Order, hon. Members! We will allow a maximum of five interventions because of the nature of business before the House. Hon. Karua!

Ms. Karua: Mr. Speaker, Sir, I want to begin by also giving my condolences to the families in Dandora and empathize with the police who were attached at Hope International, and to congratulate the Minister for acknowledging where there have been police excess and acting on them. However, I want to ask him: Since the incident at Limuru was televised and faces of the police officers who were clobbering that young man could be seen, why is it taking him so long to actually take action? Secondly, in the case of the Dandora incident, why were police using live bullets on people they wanted to disperse, instead of using tear gas and rubber bullets? Could he consider retraining the Police Force as part of the reforms and also deepening the police reforms?

Mr. Imanyara: Mr. Speaker, Sir, like my friend who has just spoken, I commend the Minister because for the first time, he has to come to this House and openly admitted that there are excesses within the Police Force in relation to the functions of their office and that action will be taken. Specifically, in the absence of the Police Oversight Authority, the manner in which the police investigate, arrest and prosecute suspects continues to raise concerns. Just this morning, the Director of Public Prosecutions (DPP) complained that police had rushed one of the accused persons in relation to Hope International to court without even completing investigations. Could the Minister tell this House if the Government, through intelligence reports, had the names and persons who were going to disrupt the Limuru meeting? Why did he not take action to arrest those people rather than cancel a legally constituted meeting?

Mr. Duale: Mr. Speaker, Sir, I want to thank the Minister for his Statement. He alluded to the issue of use of excessive force by the police and that we, as a nation, must follow the Constitution. Could the Minister clarify that the Prime Minister has directed him to discipline the Commissioner of Police following the Limuru 2B conference and whether he has done that? Secondly, if so, was the Prime Minister in order to address a Cabinet or a Government matter through the Press? Could he confirm that?

Mr. Mbuvi: Mr. Speaker, Sir, could the Minister clarify whether he is aware that police brutality and harassment has been extended even to Members of this honourable House? That is because as I stand here, I have a permanent big mark around my private parts area because when I went to Maringo Ward within my constituency to discharge my parliamentary and constituency duties, I was pinched by the police, who arrested me, using big pliers!

Mr. Speaker, Sir, with your permission, I am ready to step on this table and remove my trousers for the Minister to confirm that my allegations are genuine.

(Laughter)

Mr. Speaker, Sir, I also table a video clip.

(Mr. Mbuvi laid the video clip on the Table)

Mr. Speaker: Order, Mr. Mbuvi! You have made your point. As to me granting the permission for you to stand on the table and show us the marks, we will leave that for the time being. The Minister has the capacity to investigate that matter and get to the bottom of it. Hon. Odhiambo; that is the last one!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I would like to know from the Minister what confidence we, as a country, can have despite his very good Statement, because some of us

have no confidence in the Commissioner of Police. I keep saying it and I will say it over and over again. I was traumatized when I was attacked by a gang of six people and I wrote a statement at Mbita Police Station, and the Officer Commanding Police Division (OCPD) confirmed that. The Commissioner of Police went public and read a statement. He is the one who knows where he got it from. I was forced to go back and get my statement because, at one point, I thought I was going nuts. I discovered that what I said in this House is what I wrote in my statement. What confidence do we have in that Police Commissioner in the face of those police excesses? Is he not the one who is ordering them?

Mr. Speaker: Mr. Minister, would you kindly now respond?

(Eng. Maina stood up in his place)

Mr. Speaker: Order, Eng. Maina! If you are standing on a point of order, you had better be sure it is. Indeed, the Member for Ugenya has actually let you know what the consequences will be, although away from the microphone!

Eng. Maina: Mr. Speaker, Sir, I am standing on a point of order to request your indulgence because this matter is of high national importance.

Mr. Speaker: Order, Eng. Maina! Yes, that would be a valid point of order; that you are asking for the Speaker's indulgence to extend participation in the matter. But I am afraid I have already given directions and we are still under those time constraints. So, Minister, proceed!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, first, on the remarks made by hon. Karua questioning the long time it is taking to finalise investigation on the two incidents in Limuru and Dandora, I would like to say that in the case of Dandora I believe that the House will appreciate the fact that because guns were used and there were many police officers involved, it is absolutely important that thorough a investigation be carried out to ensure that the police officers who actually fired those guns are the ones who will be dealt with.

This is not a situation where one can actually try to say "it could have been so-and-so". The key thing I have said here is that action has been taken against the police officers who were involved in that particular accident. The guns have also been taken away from them for proper investigations. Those steps are very necessary.

With regard to the Limuru incident, there is no doubt at all. What was captured on camera forms fairly good evidence and it is on that account that the matter is being put into place, so that the Director of Public Prosecution (DPP) can be able to follow it up.

Mr. Speaker, Sir, hon. Imanyara referred to the question of the Independent Policing Oversight Authority (IPOA). Unless I am wrong, I believe that the House has actually approved the names of the persons who are supposed to appear on the Board.

Mr. Speaker: Not yet.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I hope that this can actually be accelerated by this House. The IPOA is extremely important because, once it is in place, accusations of the police using excessive powers will either be cut by a half or will be minimised a great deal.

The key thing here is that hon. Imanyara wanted me to table the evidence that the intelligence service had prior to the holding of that meeting.

(Mr. Imanyara stood up in his place)

Mr. Speaker: Order! Allow the Minister to finish.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, on the intelligence gathered, we cannot keep on spreading all the evidence. If we give all that information, we might compromise the security of this nation. However, there was security information to the effect that there would have been problems and, therefore, the only way to pre-empt the problem was to inform the organisers of that meeting that they should not go ahead with the meeting. We all know that people can have their meeting, but they know when they would need to notify the police and the police know when to notify them. Despite all that, the organisers continued with that meeting. However, as I have said, there is no justification for the police to whip the person we saw being whipped on television.

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. The Minister is not addressing the issue that I raised. They were aware that there were people who were going there for purposes other than having a lawful meeting. They knew these people from intelligence reports. Why did they not arrest those people, instead of cancelling a legally constituted meeting that was to counter another one that had taken place when he admits that they had evidence that there were people going to do illegal things there? Why did they not arrest those people before hand, if they knew them?

The Minister of State of Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, the key thing here is that the organisers were told that, indeed, there was evidence that the particular meeting would become riotous. This is important. So, the organisers had been advised. If they had not been advised and continued holding that meeting, that would be another subject, but they were kindly informed before the meeting. In fact, a night before the day of the meeting, they were informed that the meeting would create a lot of problems because there was going to be confrontation amongst different groups. Therefore, they were advised not to go ahead with the meeting, but they still decided to go on with the meeting.

Mr. Olago: On a point of order, Mr. Speaker, Sir. You have heard the Minister say repeatedly that they had information about the gang that was going to disrupt this meeting. You have also heard him say that they advised the organisers of the lawful meeting not to go ahead with the meeting. Is it in order for him to turn the law upside-down and, instead of them stopping what is illegal, stopping what is legal?

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, if, indeed, we had gone and apprehended those people, still, other people whom we may not have been able to arrest would have moved in and created the chaos. Therefore, the action that was taken by the police was to pre-empt a chaotic scenario. There would have been a situation where there would have been confrontation between two hostile groups. As a matter of fact, who knows? Even deaths would have taken place and I would be here being asked why I did not stop the deaths of the people.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. Is it in order for the Minister to conclude without telling us whether he has carried out the roadside instructions to sack the Commissioner of Police or do whatever it was meant by his boss?

Mr. Speaker: Order! Minister, as a matter of fact, I thought you had not completed responding to different issues raised. You have only gone as far as the clarification sought by the Member for Central Imeni, but there are three other clarifications. I thought you were taking notes. You are supposed to finish with the clarification sought by hon. Odhiambo, who was the last one. You still have to respond to the issue raised by the Member for Makadara.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, if I understood the remarks by hon. Sonko--- I am sorry, I meant hon. Mbuvi. I want to apologise for that.

Mr. Speaker: Order! Order, Minister! The Member for Makadara, in fact, has changed his name and he is officially known as “Sonko”.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): I am most obliged, Mr. Speaker, Sir. Thank you for bringing to my attention the fact that the current name of the Member for Makadara is, indeed, Sonko.

Mr. Speaker, Sir, the key thing here is that hon. Sonko did, himself, inform this House that he will be willing to strip, so that I can see the mark.

(Mr. Mbuvi stepped forward, ready to strip)

Mr. Speaker: Order! Order! Prof. Saitoti, you are the Minister in charge of security and you want to provoke insecurity in the House this afternoon! I have given directions, which have covered your position fairly well, which is that whatever has been tendered in the House, including a CD recording, is adequate to enable you carry out investigations and know what has happened to the Member for Makadara, including injuries that he has sustained, and then on that basis take action without the Member for Makadara having to tender further evidence. So, please, comply.

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, I oblige with what you have said. The aesthetic angle in which this thing was put is the one that stuck very much on my mind and I, therefore, wanted to address that particular angle, but of course, I will comply. I will carry out the investigations. So, hon. Sonko, you can rest assured of that.

(Mr. Mbuvi Sonko stood up in his place)

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

Mr. Mbuvi: Mr. Speaker, Sir, I have put it clearly to the Minister that I have a permanent mark around my “dipstick” within my private parts. The Minister should tell this House whether the Ministry will compensate me or it will take action against the police.

Mr. Olago: On a point of order, Mr. Speaker, Sir. The more I listen to hon. Sonko, the more I get disturbed about the type of language we are using in the House. You heard hon. Sonko refer to a “dipstick” that he has. What is that?

Mr. Speaker: Order, the Member for Kisumu Town West! I heard that and I do not want to provoke use of even more indecent language. It is possible that if you ask the Member for Makadara what “dipstick” means he may very well give you a biological name and I do not know if that will make it better.

(Laughter)

Proceed, Mr. Minister!

The Minister of State for Provincial Administration and Internal Security (Prof. Saitoti): Mr. Speaker, Sir, on the question asked by Mr. Duale, I would like to give the following answer. Prior to the statement by the Right hon. Prime Minister, I had already directed

investigations on this matter. Therefore, the statement by the Right hon. Prime Minister was not in contradiction with the action that had then been undertaken.

Mr. Speaker, Sir, I do note that a question was raised here as to whether there can be confidence in the ability of the police to be able to deal with these matters. I can only say that we have embarked on the police reforms. It should actually be appreciated that for a very long time, no serious and deep reforms had been carried out in the police force. This is going on. The reforms are intended to tame the culture of the police and ensure that the police will be seen by Kenyans as friends so that Kenyans do not run away and vice-versa. This will ensure that there is an amicable relationship between the police and *wananchi*.

So, the only thing that I would like, therefore, to assure this House is that to reforms, however, difficult it is -, and I want to say that it is not that easy - is firm and will continue. I have no doubt at all that when we do formalize the actualization of the three Bills, I think you will see a major change of the police attitude and other things. The intention is not to intimidate the police but to ensure that police are equipped with the capacity to undertake their work and they approach these matters broadly. The reason this has not happened is because the curriculum in the police training colleges which we are now overhauling was totally devoid of matters like human rights and all the various things.

Mr. Speaker, Sir, I want to say here that we are training especially the new entrants to the police academies on relevant issues like how to deal with the people. At the same time we are also re-training the serving officers. As a matter of fact, tomorrow, I will be meeting with them and insisting on the fact that in the course of their duty, they must always uphold the Constitution and the Bill of Rights. This has got to be continuous.

So, I therefore, want to finally say, please, give us a little bit of time and we will unveil the reforms and in actions.

Mr. Speaker: Order, hon. Members! We will want to take one more Statement considering the time that we have.

Mr. Ojode, how long will your Statement last?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I have got three Statements to make which I had promised---

Mr. Speaker: Which is the most urgent?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, they are all urgent but I will start with the one bordering on the life of my friend, Mr. Gitobu Imanyara. I also have one on the death and disappearance of Mohammed Kassim by Ms. Karua. I have another one on insecurity in Turkana County by Mr. Ekwee Ethuro. I also have another one. The reason I am indicating it to you, is for you to know that I had already promised the House that I will issue these Statements today, Wednesday.

Mr. Speaker: Order, Mr. Assistant Minister. Could you do the first two and then the next two you will do tomorrow afternoon.

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

Mr. Speaker: Proceed.

ATTACK ON HON. IMANYARA

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, Mr. Gitobu Imanyara requested for a Statement and he wanted to know whether the Government was committed to creating an environment in which all Kenyans can enjoy their constitutionally guaranteed rights and freedoms. He also wanted to know specifically what investigations the Government will carry out regarding this incident of his and what measures will be taken to protect not only himself but all the others who were the subject of a discussion during an alleged meeting that was held in Landmark Hotel a day after the Limuru conference.

Mr. Speaker, Sir, I wish to state as follows. On 17th April, 2012, at around 11.30 p.m. Mr. Gitobu Imanyara left Cedars Restaurant situated along Lenana Road and drove along State House Crescent and as he approached the Serbian Embassy he said that he was blocked by a white saloon car from where four men emerged armed with knives.

In his statement to the police, Mr. Imanyara stated that the four men demanded that he surrenders to them his gun and later forced him to kneel down facing Mt. Kenya and ordered him to shout three times that: "*Uhuru tuko pamoja*".

Mr. Speaker, Sir, the hon. Member made a report to that effect on 18th April, 2012, at Parliament Police Station vide OB Entry No.17 of that day at 11.40 a.m. He also made a self recorded statement in respect of what he alleged occurred on the previous night of 17th April at around 11.30 p.m.

The police officers recorded a statement from a witness who confirmed that Mr. Imanyara was at Cedars Restaurant at around 7.00 p.m. on 17th April, 2012. Hon. Chachu Ganya, one of the other witnesses, confirmed in a statement that they were with him at the said restaurant but he left earlier at around 10.00 p.m. leaving him behind.

Mr. Robert Osero Somerset, a guard who was guarding the Serbian Embassy on 17th April at night as well recorded a statement and stated that he did not witness anything unusual happening outside the embassy on that night. He was on duty until 6.00 a.m. the following day.

On the allegations of a meeting held in Landmark Hotel, the General Manager, Mr. Charles Kinyua stated in his statement that there was no meeting or conference convened by politicians at the hotel between 15th April and 19th April, 2012. Based on this and following the allegations, an inquiry file No.15/2012 was opened by the PCIO Nairobi and investigations are ongoing. I want to say that once we get any report I will be updating the House on what the police have found on the ground.

Mr. Speaker, Sir, another incident that involved the hon. Member's son occurred on 19th April, 2012 at around 6.30 a.m. at Katuluni Estate within Machakos Town when three strange men were allegedly spotted at the gate of Mr. Mutuma Imanyara, the son of hon. Gitobu Imanyara, an employee of Water Resource Management Authority.

Mr. Speaker, Sir, the report emanated from a neighbour, one Onesmus Mutinda Makau, who called Mr. Mutuma informing him that on his way to a nearby shop, he saw three strange men standing near the gate of his house, who stopped him and requested assistance to locate Mr. Mutuma's house, which he declined to give as he suspected them of ill motive. He further alleged that the men had a paper which they were using for directions. The men left on foot to an unknown direction. Upon receiving the information, Mr. Mutuma Imanyara was convinced that the three men had an ill motive following his father's allegations that he was accosted by strange persons in Nairobi along State House Road the previous day. He reported to his boss through his phone who also reported to the OCPD, Machakos. Later the Criminal Investigations Department (CID) office, Machakos, took up the matter for investigations. The scene was visited and

statements recorded. An inquiry file No.3/2012 was also opened and investigations are ongoing. Regarding the same, I will be updating the House on what we have as a report.

I want to reiterate here that the Government takes the security of hon. Members and, indeed, that of Kenyans seriously. It is incumbent on every hon. Member to take matters of his or her personal security with the seriousness it deserves. I want again to plead with hon. Members to always use the bodyguards they have been provided with; if anyone feels uncomfortable with his or her bodyguard, we are ready – I am ready – even today to replace the ones they have. In fact, hon. Members are privileged because they can pick bodyguards of their liking or their choice. Let us co-operate to avert such incidents in future.

Mr. Speaker: Very well! We will allow three interventions if there are any. Proceed, Ms. Karua and Mr. Ojode, please keep notes.

Ms. Karua: Mr. Speaker, Sir, just to wonder whether the investigators have asked the Serbian Embassy watchman whether his work station is outside or inside the embassy. Where does he normally sit, because we have just been told that he did not notice anything?

Mr. Njuguna: Mr. Speaker, Sir, as the life of Mr. Mutuma Imanyara currently is in danger, what is the Government doing to make sure that this person is calm, peaceful and he is not under threat?

Dr. Khalwale: Mr. Speaker, Sir, on such a sensitive issue, one cannot possibly try to question the veracity or otherwise of that Statement; but something very curious to my mind--- I have two things and I would like the Assistant Minister to react to them. What does he have to say to reports emanating from Mr. Imanyara that he is interfering with the investigations into this matter? Could he also react to a statement by none other than the First Lady who apparently referred to people using the name of the First Family? Was it in connection with the same? If it was, what action is the police going to take so that they go to the full depth of what she might be knowing in this matter?

(Mr. Imanyara stood up in his place)

Mr. Speaker: Order, Mr. Imanyara! I gave directions that we will allow three interventions and all along, the persons who have been picketing were four, excluding you. Because this matter concerns you, I may make the exception but I would like to live within the directions which I make as the Speaker from the Chair. But I will make that exception because it concerns you.

Mr. Imanyara: Mr. Speaker, Sir, it was actually not my intention to rise given the fact that the Assistant Minister has stated that investigations are ongoing, and this is in the nature of a progress report. But the HANSARD report will confirm that one hon. Member of this House reacting to my Statement rose and said he was present at the Landmark meeting. In fact, those are the words he spoke in this House and said he was present; so I would like the Assistant Minister, when making these investigations to go back to the HANSARD and see which Minister of the Government said he was present at Landmark Hotel and take that in juxtaposition with what he said the General Manager of the hotel told him.

Finally, I want to say that there has been action taken as a result of my Statement in this House and a report to the police station, but the comments that have been made by politicians, including at a meeting in Kitale to celebrate the appointment of one of the newest Cabinet Minister, references to my Statement in Parliament were made and specific allegations made that the information I had given was not true, even before investigations had been completed;

this points out to me that unless this Government is serious, then what they are doing is not investigations but misdirection in investigations. I say this because until I complained to the Commissioner of Police, the investigating officer had been changed and the PCIO, Nairobi, had asked me to go and report to him. When I challenged him why the sudden change of investigations and pointed out to him that I was not willing to go to him to start fresh investigations--- That was when the police at the Parliament Buildings were allowed to continue with their investigations. While that was going on, a journalist in Kisumu telephoned me in relation to what Dr. Khalwale is saying and stated to me that the Assistant Minister had made references to the arrests of Mr. Midiwo and continued that Mr. Imanyara was next. That is the point I raised to the Assistant Minister but he gave me assurances that that was erroneous. I needed to say that and that was why I rose after Dr. Khalwale had stood up; I wanted to correct that aspect of the Statement. So the Assistant Minister is in a position to know what my stand is on that.

Mr. Speaker: Very well! Mr. Assistant Minister, you may now respond.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, matters of death must be taken seriously. These are my colleagues and we must thoroughly investigate this matter to the very end. I mentioned to him that unfortunately I was not in the country and there are people who are speculating and then they want to bring politics to a grave matter of this nature. I want to assure this House that, first of all, we commissioned the PCIO himself, because he is the senior most fellow in the department of investigations within Nairobi, to investigate his matter. I want to assure the hon. Member that those who are now investigating this matter are people who are very sober and who will not involve themselves in anything to do with politics.

On the issue of the Serbian security guard, I would not know because I was not involved in the investigations. I would not know whether he sits inside or outside, but that will be known, obviously, once we have the final report on this particular matter.

On the issue of the security of Mr. Imanyara's son, yes, as at now, he is safe and I do not think there will be anything bad which might happen to him wherever he is. I wish that he stays safe as any other Kenyan.

On the issue of the First Family, that is imagination; I have no words to use in saying anything to do with the First Family; I have never been to State House for the last eight years and that means that I have never got time even to speak to her with regard to certain issues which she was raising. But I think what she meant was that Crescent State House Road is such a safe area where she would not want anybody to come to and start talking of people being mugged or kidnapped. As usual, the First Lady is a very straightforward lady and she speaks her mind; she can comment on anything which portends peace. She is a law abiding citizen of this country!

Can I now rush to the second comment on the murder of Samir Khan and the disappearance of Mohamed Kassim?

ABDUCTION/MURDER OF SAMIR KHAN/
DISAPPEARANCE OF MOHAMED KASSIM

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, Ms. Karua wanted a Statement on the abduction and subsequent murder of Samir Khan and the disappearance of Mohamed Kassim. The hon. Member wanted a confirmation that the two were abducted by police officers. She also

wanted to know the actions that have been taken regarding the murder of Samir Khan and the extra judicial killings generally.

Lastly, she wanted to know when the police reform will be completed, especially the formation of a civilian oversight authority. On the same order, hon. Yakub wanted to know the person who found the body and the police officers he reported to. Lastly, he wanted to know the whereabouts of Mohammed Kassim. I wish to state as follows:-

On 11th April, 2012, at about 10.00 a.m., three police officers attached to Highway Patrol Unit, Mutito Andei, namely, Corporal Stanley Sailuki; PC, Fedrick Mberia and PC Sitandes were patrolling Walia Area along the Mombasa/Nairobi Highway when a truck driver heading to Nairobi reported that he had seen a dead body lying in a thicket on the roadside at Man Eaters area. On arrival, the officers realized that the scene was under the Taita Taveta County and that the victim did not appear to have met his death in a road accident as they had initially presumed. The officers secured the scene and called the OCS, Voi, Mr. Siai Duncan Ngigi, on phone who arrived accompanied by crime scene support services personnel. After carrying out initial investigations, the body was removed to Wiso Hospital Mortuary for preservation awaiting identification and postmortem. The deceased did not have any identification document on him or at the scene.

Thereafter, the OCS released a signal to all police stations giving descriptions of the deceased requesting police stations for any information regarding the disappearance of any person bearing such descriptions within their areas of operation.

Later at about 10.30 a.m., the PPO, Coast, received a call on his mobile phone from a person who identified himself as Mr. Fahad inquiring to know whether the police had arrested a person by the name Samir Khan within the Coast area. After the caller gave the description of the said Samir Khan, the PPO found that they fitted those of the deceased and he advised the caller to contact the DCIO, Taita Taveta, S.P. Mukuria. The family proceeded to Voi where they helped the police identify the deceased as Samir Khan and postmortem was subsequently carried out and the body released for burial.

Owing to the seriousness of the case, the Commissioner of Police detailed four senior homicide investigators from the CID Headquarters to proceed to Mombasa with clear instructions to carry out indepth and comprehensive investigations with a view of arresting and prosecuting the culprits involved. Several statements have been recorded and investigations are ongoing vide Voi Police Station Inquest No.4/2012.

On 18th April, 2012, Mrs. Salima Ali Abdalla reported at the Central Police Station, Mombasa, the disappearance of her husband, Mohammed Kassim and the report was recorded as OB No.27. Investigations commenced immediately and the case was transferred to Diani Police Station from where he was alleged to have disappeared. The Diani Police Station Inquiry File No.3/2012 has been opened and efforts are being made to establish the circumstances surrounding the disappearance with an aim of finding him.

Allegations that the late Samir Khan and Mohammed Kassim were abducted by police are being investigated though so far, no evidence had been collected to support such allegations. Subsequently, the Government would wish to appeal to anybody with information regarding the alleged abduction and murder of Samir Khan and disappearance of Mohammed Kassim to come forward and assist the police with investigations. Such information will be treated with utmost confidence.

The Government has never and will never tolerate extra judicial killings as it has never been its policy as my colleague, hon. Saitoti, has mentioned. Indeed, any officer found guilty of

not upholding and respecting human rights as enshrined in the Constitution will be held accountable for his or her actions.

Lastly, the Government is fully committed to the police reforms which are still ongoing and the Independent Police Oversight Authority will soon be in place.

Mr. Speaker: Very well. Three interventions again!

Ms. Karua: Mr. Speaker, Sir, the Assistant Minister has told us that the Government does not condone extra judicial killings, but if I remember the report by the Human Rights Commission and Professor Ashton shows that the Government has condoned repeated police brutality.

Could he confirm that the body of the late Samir Khan was discovered in Voi, but taken all the way to Wundanyi, about 12 kilometres away from the scene while the Voi Mortuary was the nearest? He should also confirm, like I had asked when asking for a Ministerial Statement, whether the members of the Anti-Terrorism Police Unit (ATPU) who were investigating the allegations against Samir Khan which were in court have been interviewed? This is because it is suspected that police who were investigating him could know something about his abduction. He should also tell us whether there are CCTV cameras in Mombasa Town and particularly Likoni, Nakumatt, where these two gentlemen were abducted.

Mr. M.H. Ali: Mr. Speaker, Sir, you heard the Assistant Minister say that the allegations that the police abducted these two persons are being investigated by the police themselves. Is he confident that the police will do proper investigation on themselves?

Mr. Yakub: Mr. Speaker, Sir, the late Samir Khan had complained to his lawyer, Lawyer Abdi Nassir, that the police officers were going to kill him and in ten days, the death of Samir Khan happened. When I stood for a Ministerial Statement on 18th April, last week, I asked the name of the Kenyan who first saw the body of the late Samir Khan. This was the report by the PPO, Coast. The police in Voi were called on phone by a Kenyan who claimed that he saw the body. I had asked very clearly that we need to know the first person who saw the body of the late Samir Khan. I had also asked that we should get a copy of the report, so that the family of the late Samir Khan can go through it.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you will agree with me that some of the interventions are what we are investigating. Hon. Karua asked whether the body was taken to Wundanyi. Those are some of the cases which we are now investigating to know whether the body was taken to Wundanyi and by who.

Hon. M.H. Ali asked whether I have confidence in the police investigating this matter. Yes, I have a lot of confidence in the police because if it is a question of investigation, we have the best police officers in investigations. If the Member is challenging that, then he should have given us a contradicting one or suggested any, but I believe that our police detectives are the best. In fact, I understand that we are the second best after Egypt. We are the second best in Africa.

With regard to the issue raised by hon. Yakub, I will ask for the postmortem report to be given, so that I share it with the Member. If they performed the postmortem, I will definitely ask for a copy, so that I can share it with the Member. I will be updating my colleagues on what we have found on the death of Samir Khan, the case of hon. Imanyara and the other cases which are still pending.

Ms. Karua: On a point of order, Mr. Speaker, Sir. The Assistant Minister has not answered whether there are CCTV cameras and whether they have interviewed the members of

the ATPU. He also refused to answer a specific question: Was the body taken to Voi or to Wundanyi? He cannot tell us that this is about investigations. This is a fact. What do the records say? Is it in order for him to refuse to answer these three questions?

Mr. Speaker: He is not in order!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I did mention here that there are certain facts which I do not have because the investigation is still going on. You remember I also promised this House that I will be updating it. So, those are some of the cases that I would come up with. I will inform the House whether the body was taken to Wudanyi or Voi and whether there was CCTV. But, as far as I am concerned, there is no CCTV within that area. The body was found in a thicket outside the town.

Mr. Speaker: Order, Mr. Assistant Minister! That is an area that you must really investigate. The Member for Gichugu has been specific that some information may be around Nakumatt Likoni. Nakumatt Likoni has CCTV cameras. So, please, just note to investigate that area.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, with due respect, I will ask the detectives to investigate that particular concern in order for us to come up with something tangible. That is because the public also wants to know who killed that particular person.

Ms. Karua: On a point of order, Mr. Speaker, Sir. I am just concerned that the Assistant Minister is taking the matter of loss of life of that Kenyan very casually, which is not kind to the family and even to us, as a House.

(Mr. Ruto consulted the Chair)

Mr. Speaker, Sir, when we ask for Ministerial Statements - if my colleague could let the Speaker hear--- Hon. Ruto, if you could allow the Speaker to hear.

Mr. Speaker, Sir, I am just very sad that the Assistant Minister is taking the matter casually. When we ask for Ministerial Statements, it is because, as a House, we are entitled to information and Kenyans are entitled to information.

(Mr. Ruto resumed his seat)

Last week, the Assistant Minister - because the Ministerial Statement requested was on Wednesday - asked for a whole week in order to give a comprehensive statement. It looks like the Assistant Minister has not even attempted. If he is telling us a week later that he does not have facts as to where the body was taken, then there is no Statement he has issued. It is a mere public relations exercise.

Mr. Speaker, Sir, I am at a loss as a House as to what we should do and I seek your indulgence to order this Assistant Minister to go back and bring a proper Ministerial Statement, and to take this House and issues of security and specially loss of life more seriously than he is doing at the moment.

Mr. Speaker: Very well! Assistant Minister, I want to hear your reaction to that.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I do not know how serious my colleagues would want me to be, because this is a murder case. I have never investigated murder cases.

They are investigated by my agents, the officers or detectives. Whatever they come up with is what I share with my colleagues.

Mr. Speaker, Sir, the reason why I am so serious especially with cases involving murder-- - I said that I will be updating the police as we get---

(Mr. Mbuvi stood up in his place)

Mr. Speaker: Order, Member for Makadara!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I will be updating my colleagues on any report that I get. As at now, even if you force me to come up with another Statement, it will be the same if the investigation report is the same as the one which I brought earlier. I depend entirely on the police report.

Mr. Speaker: Fair enough, Mr. Assistant Minister! You have said your piece. But I would want you to indicate how long you require to give the House an update. Secondly and significantly, the Member for Gichugu has made a very important point. A matter like where the body was taken to - which mortuary - whether it was Voi or Wudanyi, as far as I am concerned, that is a very simple one. It does not require too much time to come up with the answer to that aspect.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you are right but a dead body, whether it is taken to Voi or not--- I thought I would not ask that question. But that is a simple question. I can even come tomorrow and answer where the body was taken.

Mr. Speaker: Where was it taken, Mr. Assistant Minister! It is so simple!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, it is simple when you have been briefed where the body was taken. Unless, you want me to give a misleading answer---

Mr. Speaker, Sir, am I in order to give---

Mr. Speaker: Mr. Assistant Minister, that is a murder case. You were here last week. You said you will come and give a report or information to the House. This is basic information.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, on that particular date, let me give an indication on where the body was taken to---

Mr. Speaker: No, Mr. Assistant Minister! That is not good enough. We would now be expecting a more through and serious update, not just where the body was taken. So, how long do you require?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, about two weeks, I will update this House.

Mr. Speaker: Fair enough. We will accord you two weeks to come with something more comprehensive. So, I direct that this matter will be raised again in the House by way of Ministerial Statement, two weeks hereafter. Member for Gichugu, please note!

Hon. Members, we will now take requests!

POINTS OF ORDER

GOVERNMENT COMMITMENT TO IMPLEMENTING THE CONSTITUTION

Mr. Ruto: On a point of order, Mr. Speaker, Sir. About three months ago, I asked the Leader of Government Business to give us a Statement as to whether the Government is serious about implementation of the laws as per the Sixth Schedule in a timely manner, and whether the Attorney-General is taking his work seriously as per Article 261 of the Constitution, which gives him the responsibility to ensure that the Bills are drafted; and that, it is not necessarily himself drafting them but he has to oversee the process together with the Commission for the Implementation of Constitution (CIC).

Mr. Speaker, Sir, to date, I have not seen that Statement. Parliament has been pushed to passing Bills with mistakes in a hurry. Right now, the County Governments Bill is in limbo because of lack of seriousness on the part of the Government.

Mr. Speaker, Sir, I would like to know from the Leader of Government Business why they have not made the Statement and give us as commitment that the laws due by August will be brought to Parliament in good time.

Mr. Speaker: Yes, Member for Chepalungu has a valid concern there. I think it was the Leader of Government Business who undertook to issue that Statement, and he has not done so. Three months away from the time the request was made is too long. Minister of State for Public Service!

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, we will convey the information and the Minister should come with the Statement. Could you give us Tuesday next week?

Mr. Speaker: Yes, indeed, I will. I direct so.

An hon. Member: Tuesday is a holiday!

Mr. Speaker: Sorry. Once again, I am reminded it is a holiday. Wednesday morning. It is actually a pretty urgent matter.

Proceed, Member for Central Imenti!

Mr. Imanyara: On a point of order, Mr. Speaker, Sir. In view of the complaints by the Director of Public Prosecutions this morning, when he was taking over certain prosecutions at the Nairobi Law courts, I seek a Ministerial Statement from the Minister in charge of the administration of justice with regard to what is the Government policy on prosecutions, bearing in mind that, under Article 157(6), the Director of Public Prosecutions shall exercise State powers of prosecution and under Sub-Article 11, in exercising the powers conferred by this Article, the Director of Public Prosecutions shall have regard to public interest, the interest of the administration of justice and the need to prevent and avoid abuse of the legal process.

Mr. Speaker, Sir, in the Statement, I would like the Minister to explain what measures have been taken by his Ministry to avoid abuse of legal process by the police when arresting and rushing people to court without full, proper and through investigations and, more importantly, when the Ministry intends to bring legislation envisaged under Sub-Article 12 of Article 57, which requires Parliament to enact legislation conferring powers of prosecution on authorities other than the Director of Public Prosecutions so that we may know exactly what is the exact role of the police and the extent to which they may rush people to court without seeking even authority of the Director of Public Prosecutions, under circumstances such as they did when they arrested Maina Njenga and his company yesterday.

Mr. Speaker: Hon. Dalmas Otieno, could you give the requisite commitment and be careful to indicate to the House whether it will be the Attorney-General or the Minister for Justice, National Cohesion and Constitutional Affairs?

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, I will convey the request to both the Attorney-General and the Minister for Justice, National Cohesion and Constitutional Affairs, and they must agree who between them will issue the Statement.

Mr. Speaker: That is fair enough. We will want the Statement to come on Thursday at 2.30 p.m.

Very well. Thank you, hon. Member for Imenti Central. We now want to move to the next order.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

The Minister for Lands (Mr. Orengo): Mr. Speaker, Sir, I beg to move:-

THAT, notwithstanding the provisions of Standing Order 20(2), this House resolves that the sitting time of the House be extended from 6.30 p.m. until 8.00 p.m. on Wednesday 25th (Afternoon Sitting) and Thursday 26th April 2012.

Mr. Speaker, Sir, since we are constrained by time, I would say in summary that the business as appears on the Order Paper contains the three critical Bills relating to land; The Land Registration Bill, The National Land Commission Bill and The Land Bill. By the wisdom of this august House, the period provided in the schedule to the Constitution, and more particularly the Fifth Schedule, was extended by 60 days; those 60 days expire by midnight tomorrow. If this Business is not completed, then these two Constitutional Bills or any other business falling within the constitutional dispensation will not be able to be piloted and enacted as required by the Constitution. I must say that in the request for the extension of time, which this Parliament approved after a Motion had been moved ably by the Chair of the Departmental Committee, hon. Mutava Musyimi, that the engagement of that Committee with stakeholders and, indeed, with our Ministry, was worth the while. I want to emphasize the words “worth the while;” what has turned out – without anticipating debate – is a better piece of legislation if the report actually finds favour with the House.

So, Mr. Speaker, Sir, without any further ado, I beg to move.

Mr. Speaker: Who is seconding, Minister?

The Minister of State for Public Service (Mr. Otieno): Mr. Speaker, Sir, this is a request we have always had to make when we are constrained by the deadline in the legislation that has to comply with the schedules in the new Constitution. We thank hon. Members for having cooperated in the past. Again, today we have this challenge at least to finish these three Bills by tomorrow. As you notice, there is intense interest in these land Bills and we should give as much time as possible to consider the amendments that have been proposed by different parties.

So, Mr. Speaker, Sir, I beg to second.

(Question proposed)

Mr. Ogindo: Thank you, Mr. Speaker, Sir. I beg to support. I know that we are in pursuit of perfection with our laws, but this cannot be achieved overnight. If, for any reason, we shall

not have passed a perfect law, the House is here; we shall amend them later. But let us meet the deadline in the Constitution.

Thank you, Mr. Speaker, Sir.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

[The Temporary Deputy Chairlady

(Dr. Laboso) took the Chair]

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are now in the Committee of the Whole House to consider the three Bills. We will start with the Land Registration Bill, Bill No. 4 of 2012.

THE LAND REGISTRATION BILL

Clause 2

Mr. Musyimi: Thank you, Madam Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 2 of the Bill be amended by deleting the definition of the word “public purposes”.

The reason is that, this is provided for in the Land Bill, 2012 and also cross reference. Thank you, Madam Temporary Deputy Chairlady.

(Question of the amendment proposed)

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

(Clause 2 as amended agreed to)

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Martha Karua?

Ms. Karua: Madam Temporary Deputy Chairlady, you did not propose so that there was a discussion; we went straight into voting.

The Temporary Deputy Chairlady (Dr. Laboso): I did propose and allow timed, and nobody stood up to make a comment.

Ms. Karua: Mrs. Odhiambo-Mabona stood up.

The Temporary Deputy Chairlady (Dr. Laboso): We continue, hon. Members.

(Clauses 3, 4, 5, 6, 7 and 8 agreed to)

Clause 9

Mr. Musyimi: Thank you, Madam Temporary Deputy Chairlady. I beg to move:-
THAT, Clause 9 be amended-

(a) in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall”;

(b) in sub-clause (2) by inserting the words “where necessary” immediately after the words “authorized and” appearing in paragraph (b).

The amendment is intended to make mandatory---

The Temporary Deputy Chairlady (Dr. Laboso): I think you just need to, may be, explain a little bit what the amendment is so that the hon. Members can be in the picture. Explain just very briefly.

Mr. Musyimi: I think this is self-explanatory, Madam Temporary Deputy Chairlady, because we are deleting the word “may” and substituting for it the word “shall;” the reason is that we want to make it mandatory for the Registrar to maintain the Register.

(Question of the amendment proposed)

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

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

(Clause 9 as amended agreed to)

Clause 10

Mr. Kioni: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 10 be deleted.

Madam Temporary Deputy Chairlady, the reason is that the provisions really serve to water down the same reasons we are giving authority to the register.

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. Just further to what you had indicated, we would really like to request as we are waiting for copies of the Bills to come, if they could just explain a little more. Just saying that it gives or removes strength, we do not know what these strengths or weaknesses are. Otherwise, we will be opposing because we do not know what these things are all about.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Millie, I understand your concern, but I hope that the hon. Members know that we are in the Committee of the Whole House and may not be able to actually prosecute all the business if we have to go into details on each of the clauses. So, I hope that hon. Members should have by this stage actually read the

Bill. I also hope that we will get more copies, so that the hon. Members can update themselves on what is under discussion.

(Question of the amendment proposed)

Ms. Karua: Madam Temporary Deputy Chairlady, I just want to give my colleague, hon. Millie Odhiambo, comfort. I am looking at my HANSARD contribution and actually, I thought that Clause 10 was redundant, in view of Clause 30. It was just merely stating the obvious.

The Temporary Deputy Chairlady (Dr. Laboso): So, are you supporting the amendment by hon. Kioni?

Ms. Karua: Madam Temporary Deputy Chairlady, I support the amendment.

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

The Temporary Deputy Chairlady (Dr. Laboso): This, therefore, means that hon. Musyimi's amendment is invalid.

(Clause 10 deleted)

Clause 11

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 11 be amended by deleting the words "and on conditions satisfactory to the Registrar" and substituting therefor the words "as the Chief Land Registrar may reasonably prescribe".

Madam Temporary Deputy Chairlady, the amendment is intended to manage the discretion of the Registrar and require him to act reasonably in prescribing conditions.

(Question of the amendment proposed)

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

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

(Clause 11 as amended agreed to)

(Clause 12 agreed to)

Clause 13

Mr. Kioni: Madam Temporary Deputy Chairlady, I wish to withdraw the amendment.

(Mr. Kioni's proposed amendment withdrawn)

(Clauses 13 and 14 agreed to)

Clause 15

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 15 be amended-

(a) by deleting the word “Deputy Land Registrar” appearing immediately after the words “The Chief Land Registrar”;

(b) by deleting the words “administer oath or take declarations” appearing in paragraph (d) and substituting therefor the words “cause oaths to be administered or declarations taken”.

Madam Temporary Deputy Chairlady, the position of the Deputy Registrar that we proposed to be deleted is not defined or otherwise provided for under the Act. Part “b” is really for clarity.

(Question of the amendment proposed)

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

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

(Clause 15 as amended agreed to)

(Clauses 16, 17 and 18 agreed to)

Clause 19

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 19 be amended by inserting the word “with” immediately after the words “in accordance: appearing in sub-clause (2).

Madam Temporary Deputy Chairlady, this is a typo.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

(Clause 20 agreed to)

Clause 21

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 21 be amended in sub-clause (2), by deleting the words “in a permanent manner” appearing immediately after the words “any boundary” and substituting therefor the word “mark.”

Madam Temporary Deputy Chairlady, this is really to simplify the language used under the Act, so that understanding is easier by all.

(Question of the amendment proposed)

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

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

(Clause 21 as amended agreed to)

(Clauses 22, 23, 24, 25, 26 and 27 agreed to)

Clause 28

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 28 be amended in the marginal note by deleting the words “voluntary transfer” and substituting therefor the words “Transfer without valuable consideration”.

Madam Temporary Deputy Chairlady, this is for clarity.

(Question of the amendment proposed)

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

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

(Clause 28 as amended agreed to)

Clause 29

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 29 of the Bill be amended in paragraph (a) by deleting the words “spousal rights over matrimonial property” and substituting therefor the words “interest of spouses in actual occupation of the land or home, during and on termination of marriage”

Madam Temporary Deputy Chairlady, protection of spousal rights should not only be restricted to matrimonial home as defined in the land law, except for the matrimonial home in which the other spouse and the family resides. It would be difficult for third parties to ascertain whether the premise is a matrimonial property, especially when the family does not reside there.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, Sir, I stand to oppose that amendment because it is unconstitutional. The Constitution is very clear about spousal rights in land, especially in material land. The amendment that is put is only giving rights in actual occupation and the Constitution does not limit it to actual occupation.

I oppose.

Ms. Karua: Madam Temporary Deputy Chairlady, Sir, the Mover does not appear to be actually clear on what he is moving. He is saying that we delete spousal rights, so that we do not restrict it to spousal rights. If that was the case, you would not delete but make an addition. I want to urge my colleague to withdraw the amendment. The spousal rights clause is put there and is just repeating what is in the Bill of Rights word for word. It is meant to safeguard parties to the marriage, both men and women. When the Bill withdraws wording that is in the Constitution, you are actually making it weak and setting the stage for people to act unconstitutionally. I would urge the Mover, my esteemed colleague, to withdraw it. I know that the Minister for Lands knows what I am talking about. I am also expecting support from my colleague, the Minister for Education, because they both know what this clause means in terms of entrenching respect for the Constitution and for everybody's rights.

I beg to oppose.

The Temporary Deputy Chairlady (Dr. Laboso): Hon Isaac Ruto. I hope the Minister will have a word on this.

Mr. Ruto: Madam Temporary Deputy Chairlady, I beg to support the amendment. This is meant for clarity because when you say "by deleting the words spousal rights over matrimonial property", I think this is in the interest of spouses in actual occupation of the land or home during and on termination of marriage. We know in certain communities, there are so many spouses. If you now start saying that all the spouses should come to fight over a matrimonial home that was actually occupied by one during marriage--- In this situation, the Committee had very good intentions to protect the rights of the spouses who were actually occupying the land.

The Minister for Education (Mr. M. Kilonzo): Thank you, Madam Temporary Deputy Chairlady. Of course, since my name has been mentioned, I stand to oppose the amendment. I think this country must come to terms with the fact that we have a new order in which spousal rights have to be respected. The amendment is taking us back, and I am a bit surprised that it is coming from a pastor. The fact of the matter is that this amendment does not clarify anything because the clarity is already there in the Constitution. The country will be bringing forth laws on matrimonial property and domestic violence. If anybody wants any clarity, that will be the time to put it in; to put it in the laws that we are passing now is unfair.

I oppose the amendment. I think Ms. Karua will confirm that I have spoken correctly.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Minister before we put it to the vote?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I must, first of all, confess that when this matter was being discussed by the Committee, I was there. Therefore, I do not want to be seen to be renegeing on the position that was taken by the Committee. I was there by invitation of the Committee. Just to put some light on this whole matter, if you look at the Bill, what it seeks to record as an overriding interest is “spousal rights. What is “spousal rights?” You are not going to find them in this Land Registration Bill. They are not any right but spousal rights that exist either in written law or under customary law. What it seeks to protect is already a right that is recognized by the Constitution. If you look at the wording of the Constitution, it says that “Parliament shall enact legislation to regulate the recognition and protection of matrimonial property and in particular the matrimonial home during and on the termination of marriage.” Just to be candid, although I have no problems either way, the truth of the matter is that the proposed amendment will take away quite a bit of what the Constitution provides. That is the problem. I had indicated to the Committee that either way, this is something the House has to decide. That is why we are in the Committee Stage.

My friend, Mr. M. Kilonzo, knows that at some other forum some people never want to hear anything about spousal rights, but I think this is “times gone” and not “times that are here with us”. I would urge the Chair that so long as this clause is talking about protection of a spousal right, it is not protection of any rights but protection of spousal right. If you look for that right, you are not going to find it in the Land Registration Bill. It exists in many other legislations. The reason why it is important additionally is that the Constitution recognizes the family as a very important unit. So, if you have elected to live as a unit, which has obligations and rights, then you should not be seen to be doing anything running away from the family as an important unit that is recognized under the Constitution. This is something that I would rather leave to the House and the Committee.

Mr. Musyimi: Madam Temporary Deputy Chairlady, can I just say that when we sat down to look at this amendment, we invited the Committee for Implementation of the Constitution (CIC) just to make sure that we were on the right track. We also invited the Law Reform Commission and other bodies. Given the sentiments expressed and the level of articulation, I beg to withdraw the amendment.

(Amendment withdrawn)

(Clause 29 agreed to)

(Clauses 30, 31, 32 and 33 agreed to)

Clause 34

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 34 be amended-

- (a) in subclause (1) by deleting the word “new” appearing immediately after the words “ issue of a” and substituting therefor the word “duplicate”;
- (b) in subclause (3) by deleting the word “new” appearing immediately after the words “Registrar may issue” and substituting therefor the word “duplicate”

The amendment is intended to clarify that the document issued is a replacement certificate.

(Question of the amendment proposed)

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

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

(Clause 34 as amended agreed to)

(Clauses 35 and 36 agreed to)

Clause 37

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 37 be amended in sub-clause (4) by inserting the words “of the Constitution” immediately after the expression “Subject to Article 67(2) (c)”.

This amendment is intended to give further clarity.

Ms. Karua: Madam Temporary Deputy Chairlady, unfortunately the Mover has not explained well the amendment to Clause 37. When you look at Clause 37, it allows in sub-clause (2) unregistered instruments to operate as contracts. I remember saying before this House that this will perpetuate fraud. This is not what is being addressed by this amendment. What is then being addressed so that we, as a House, move consciously into the amendment?

Ms. Karua: Madam Temporary Deputy Chairlady, I am appealing to the Minister to move the deletion of clause 37(2) to prevent the people who are not educated in the countryside being duped into signing things that are unregistered and later losing their land. I urge the Mover to explain what he is belabouring.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Minister, they just need clarification. You said that this is for further clarification. Clarify it simply in a sentence.

The Minister for Lands (Mr. Orenge): Madam Temporary Deputy Chairlady, I am not sure that I am looking at the same clause. I thought the amendment was in 37(4). All that it is saying is that subject to Article 67 and it does not say of what. So, the amendment seeks to insert the words “of the Constitution”. I think that is unnecessary amendment. However, in Clause 37(2), there is no amendment. The reason for this is that under the law of contract, if my learned friend knows, it says that you cannot enforce a contract for purposes of property, particularly land unless it is in writing. This just consists of the law of contract. So, whether we leave it or not, you will still be caught up by the law of contract. It is good. I mean, we should move forward. Anything concerning something as important as land should be there in writing. This is because it is the same people who are cheated when something is not in writing. So, I think this is an important clause.

(Question of the amendment proposed)

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

(Clause 37 as amended agreed to)

Clause 38

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 38 of the Bill be amended in sub-clause (1) by inserting the words “or in such other form as the Registrar may in any particular case approve” immediately after the words “prescribed form”.

The amendment is to allow for approval of forms where transactions require use of amendments to prescribed forms to capture the spirit, particulars and circumstances of the transaction.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orenge): Madam Temporary Deputy Chairlady, I think the reason raised by hon. Martha Karua, the formulation of the Committee by clause 38 is very important because sometimes documents are thrown away because they are not in the prescribed form. If a dot is missing, that document is rendered a nullity. However, if there is some discretion, this would help a lot of documentation that is happening in the villages and with communities. So, I support this amendment.

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

(Clause 38 as amended agreed to)

(Clause 39 agreed to)

Clause 40

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 40 be amended in sub-clause (1) –

(a) by deleting the word “a” appearing immediately after the word “create” and substituting therefor the word “an”; and

(b) by deleting the words “or that the land is freehold” appearing immediately after the words “of the land” in the fifth line.

Madam Temporary Deputy Chairlady, “a” is just a typographical error.

The Temporary Deputy Chairlady (Dr. Laboso): Maybe it is easier to just move; “as it appears on the Order Paper.”

(Question of the amendment proposed)

(Question, that the words to be left out be left out,

put and agreed to)

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

Mr. Musyimi: Madam Temporary Deputy Chairlady, there is 40(b).

The Temporary Deputy Chairlady (Dr. Laboso): I seem to have a document that does not have the same. Hon. Chair of the Committee, you know that we have already passed it. Did you say Clause 40(b)?

Mr. Musyimi: Yes. I moved 40 (a) and left it to you to guide the House. So, could I move it with your permission?

The Temporary Deputy Chairlady (Dr. Laboso): Yes.

Mr. Musyimi: The amendment is there because the Registrar is the custodian of the register and he is the one who will confirm that the tenure is freehold.

The Temporary Deputy Chairlady (Dr. Laboso): In future, Chair, execute all the amendments of a particular clause.

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

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

(Clause 40 as amended agreed to)

(Clauses 41 and 42 agreed to)

Clause 43

Dr. Otichilo: I do not have an amendment, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): The hon. Otichilo does not have an amendment but the Chair of the Committee does.

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 43 of the Bill be amended by deleting the words “new registers have been opened in respect of each subdivision” and substituting therefor the words “duly registered each new subdivision”

The amendment seeks to avoid details. We feel that a general provision would be favourable under the circumstances.

Thank you.

(Question of the amendment proposed)

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

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

(Clause 43 as amended agreed to)

(Clause 44 agreed to)

Clause 45

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 45 be amended in sub-clause (5) –

(a) by deleting the word “ pin” appearing immediately after the words “a copy of “ in paragraph (b) and substituting therefor the words “ Personal Identification Number”.

(b) by deleting the word “ be” appearing immediately after the word “may” in paragraph (e).

(Question of the amendment proposed)

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

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

(Clause 45 as amended agreed to)

(Clauses 46, 47, 48, 49, 50, 51, 52, 53 and 54 agreed to)

Clause 55

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 55 be amended-

(a) by inserting the following new sub-clause immediately after sub-clause (3)-

“(3a) The land register maintained under clause 7 of this Act, shall be deemed to be the land register for purposes of the Sectional Properties Act.”

(b) by deleting subclause (4) and substituting therefor the following new subclause-

“(4) The registrar shall register long-term leases and issue certificates of lease over apartments, flats, maisonettes, townhouses or offices having the effect of conferring ownership, if the property comprised is properly geo-referenced and approved by the statutory body responsible for the survey of land”.

This again is just to give clarity to the provision.

Madam Temporary Deputy Chairlady, this amendment seeks to ensure that the Sectional Properties Act which applies under the RLA as the registration statutes of sectional properties

continues to apply. The amendment in part (b) again seeks to clarify the provisions and ensure that the certificate is issued in the said transactions.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, something just occurred to me. I do not know how to go about it since, probably, it is a typographical error. Under the amendment in part (a), it reads: “The land register maintained under Clause 7 of this Act.” The word clause should not appear. It should be Section 7 because we are talking about the Act. So, you should allow him to move that there be a further amendment of the deletion of the word “clause.”

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

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

(Clause 55 as amended agreed to)

Clause 56

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 56 be amended-

(a) by deleting paragraph (1);

(b) by renumbering the existing sub-clause (2) as clause 56.

Madam Temporary Deputy Chairlady, Clause 56(a) (1) is anti-business and so we propose that it be deleted. For reasons of clarity, I beg to move that Clause 56(b) be amended as shown in the Order Paper.

(Question of the amendment proposed)

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

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

(Clause 56 as amended agreed to)

Clause 57

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 57 be deleted,

The amendment seeks to clarify the provisions. Indeed, the same has been provided for in Clause 70, Sections 1 and 2, and the Land Bill, 2012.

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

(Clause 57 deleted)

Clause 58

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 58 be amended in sub-clause (6) –

(a) by deleting the word “charge” appearing immediately after the words “ the exercise by the” and substituting therefor the word “ chargee”.

(b) by deleting the word “harge” appearing immediately after the words “payment to the” and substituting therefor the word “ chargee”.

Again, Clause 58(a) and (b) are just typographical errors.

(Question of the amendment proposed)

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

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

(Clause 58 as amended agreed to)

(Clauses 59 and 60 agreed to)

Clause 61

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 61 be amended by deleting the word “willnot” and substituting therefor the words “will not”.

Again, this is a typographical error.

(Question of the amendment proposed)

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

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

(Clause 61 as amended agreed to)

(Clauses 62, 63, 64, 65, 66, 67, 68, 69,

70, 71, 72, 73 and 74 agreed to)

Clause 75

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 75 be amended in sub-clause (5) –
(a) by deleting the word “ chargor” wherever it occurs and substituting therefor the word “ chargee”.
(b) by deleting the expression “section 95 of the Land Act” and substituting therefor the expression “the law relating to land”.
Again, this is a typographical error in both (a) and (b).

(Question of the amendment proposed)

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

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

(Clause 75 as amended agreed to)

(Clauses 76, 77, 78, 79 and 80 agreed to)

Clause 81

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 81 be amended in paragraph (c) of sub-clause (1)-
(a) by deleting the word “but” appearing immediately after the word “incorrect”; and
(b) by inserting the words “in writing” immediately after the word “notice”.
Clause 81(a) is just a typographical error. In Clause 81(b), the amendments which provide for the Registrar to give notice in writing to protect those interested for not having been informed.

(Question of the amendment proposed)

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

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

(Clause 81 as amended agreed to)

(Clause 82 agreed to)

Clause 83

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 83 be amended in the proviso by deleting the words “be indemnified by the Government out of Funds provided by Parliament” and substituting therefor the word “indemnity”.

Again, this is for clarity.

(Question of the amendment proposed)

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

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

(Clause 83 as amended agreed to)

(Clauses 84, 85, 86, 87, 88, 89, 90, 91 and 92 agreed to)

Clause 93

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 93 be amended in subclause (8) by deleting the word “an” appearing immediately after the words “shall take effect” and substituting therefor the word “a”.

Again, this amendment is for clarity.

(Question of the amendment proposed)

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

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

(Clause 93 as amended agreed to)

(Clause 94 agreed to)

Clause 95

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 95 be amended-

(a) in subclause (1)(a) by deleting the words “tenants in common” appearing immediately after the words “land as” and substituting therefor the words “joint tenants”.

(b) in subclause (1)(b) by deleting the word “tenants in common” appearing immediately after the words “spouses as” and substituting therefor the words “joint tenants”.

(c) in subclause (4) by deleting the word “voidable” and substituting therefor the words “void”.

The reasons I have for this amendment is to protect the rights of the surviving spouse to the matrimonial home and land. The presumption should be that the spouses own the land as “joint tenants” and not as “tenants in common”.

(Question of the amendment proposed)

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

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

(Clause 95 as amended agreed to)

Clauses 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 agreed to)

Clause 106

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 106 be amended in the marginal note by deleting the word “SavingRegisters” and substituting therefor the words “Saving Registers”.

This amendment arises from a typographical errorgraphical error and, therefore, it is for clarity.

(Question of the amendment proposed)

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

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

(Clause 106 as amended agreed to)

Clause 107

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 107 be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

(2) In compiling the land register, the Registrar shall register—

(a) the Commission in trust for the county and national government as the proprietor of all public land in the area; and,

(b) subject to the Land Adjudication Act and the Land Consolidation Act, the Commission as the proprietor of all unregistered trust land and unregistered community land in the area, subject in each case to any grant or lease affecting the land.

The amendments address the fact that the Draft Clause contravenes Article 62(2) and Article 63(3) of the Constitution in calling for the registration of public lands and community lands in the name of the National Land Commission rather than in the names of the National Government or County Government in the case of public lands or in the name of communities in the case of community lands. This issue could be addressed by simple amendments to Clause 107 such as we have proposed.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Minister!

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I just want to bring to the attention of the Chair the fact that I have been trying to read the amendment that has been proposed by the Committee and it goes in the opposite direction. It reads as follows:

“in compiling the Land Registrar, the Registrar shall register the Commission in trust of the County and National Government as the proprietor of public land”

Madam Temporary Deputy Chairlady, that will be contrary to the Constitution, which says that public land shall either vest and be held by the National Government or by the County Government. I think if it is done in this way, it may be in conflict with the Constitution.

There is the danger that the Commission will undermine or abuse the fact that the land is registered in their name. I am, therefore, proposing an amendment to this proposed amendment, so that after the word “register”, it should read “in the name of the County and National Government as proprietors of public land in the area” instead of being trust. This is because the moment you say “as proprietors”, it goes against the Constitution, which says that is just like an estate.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, you may need to repeat your amendment. Are you further amending the amendment proposed by the Committee?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I beg to move:

THAT, Clause 107 be further amended-

By deleting the words “the Commission in trust for” after the words “shall register” and substitute therefor “shall register in the name of the county and national governments as the proprietors of public land in the area.”

I do not know whether that makes sense.

On part (b) of the amendment, also, it will be very dangerous to have the Commission registered as the proprietor of trust land and unregistered community land. This has been dealt with very carefully in the Constitution. Whereas there is a role for the Commission in respect to public land, in respect of community land, under the Constitution, it would appear that the Commission should not really have a role but we have gone a step further to have community land and trust land to be registered in the name of the Commission. That is getting back to where we are today.

So, I would seek a further amendment to the proposed amendment by deletion of the proposed amendment under part (b).

The Temporary Deputy Chairlady (Dr. Laboso): Minister, are you proposing a deletion of the whole---

The Minister for Lands (Mr. Orenge): Madam Temporary Deputy Chairlady, I am proposing a deletion of the whole of part (b) of the amendment, so that when it comes to the registration of community land, it can be dealt with under the community land register because I think this is very complicated.

Ms. Karua: Madam Temporary Deputy Speaker, I did not hear clarity from the Minister either. I am looking at Article 62(2) of the Constitution, which clearly says that public land shall vest in and be held by a county government in trust for the people resident in the county and shall be administered on their behalf by the National Land Commission.

(Hon. Mutula Kilonzo consulted with another hon. Member)

If my colleague, hon. Mutula, and my other friend could lower the tone of their consultation a little bit, so that I do not hear them, I will appreciate!

Madam Temporary Deputy Chairlady, therefore, the amendment is contrary to the Constitution to the extent that it is calling the county government and the National Government as proprietors. It must be very clear. The wording must be exact as in the Constitution – that they are holding it in trust for the people of Kenya. In the case of the county, it is holding it in trust for the residents of the county lest they get big headed and start issuing title deeds to friends and cronies as has been now.

So, I am suggesting that the Committee substitutes the wording to be exactly as in Article 62(2) of the Constitution. The amendment is well intentioned, but the wording should be exact as in the Constitution to avoid any confusion whatsoever.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, Minister!

The Minister for Lands (Mr. Orenge): I think Ms. Karua's legal mind is very clear and that is why I cannot fault her. Her idea is even better than mine. To that extent, what I proposed we could have in addition thereof, the words "in trust for the people" as it is in the Constitution.

The Temporary Deputy Chairlady (Dr. Laboso): Now where would that be because we will have to transact these in two steps?

The Minister for Lands (Mr. Orenge): (a) It will be registered in the name of the county and national government not as proprietors but in trust for the people resident in the county or for the people of Kenya. So, it can read like this. I am thinking while on my feet---

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Minister, you are thinking while on your feet and it is difficult for us.

The Minister for Lands (Mr. Orenge): Let me go slowly. It shall register in the name of the county and national Government in trust for the people of the county or the people of Kenya

respectively. The word “respectively” will apply to the word “county” and “national”. I do not know whether you got that. I can go back to that.

I think that is a very fundamental point, and I thank Ms. Karua for bringing it out because the abuse in the current system is that the notion that the Government was holding land in trust for the people. That entire idea was dead in the current practice. So, I stand guided by the Clerks-at-the-Table. I do not know whether I have come out clearly.

After the word “register”, you write “in the name of the county and national government in trust of the people of the county or for the people of Kenya respectively.”

(Ms. Karua consulted loudly)

Ms. Karua, I was hoping that you will listen to what I am saying to find out whether it covers what you are---

Ms. Karua: I am asking whether---

The Temporary Deputy Chairlady (Dr. Laboso): It is Clause 107.

The Minister for Lands (Mr. Orengo): Yes. In compiling the land register, the registrar shall register - and there begins the amendment - (a) in the name of the county and national government in trust for the people resident in the county or for the people of Kenya respectively.”

The Temporary Deputy Chairlady (Dr. Laboso): Respectively or as the case may be?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, or as the case may be. Probably that is clearer.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Chairman, are you satisfied with that?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I agree that Clause 107 be amended as proposed but do not have the words contained in (b) because it is rather complicated. I am now putting into focus what Ms. Karua is saying. The Constitution does not contemplate the National Land Commission playing any role other than registration and even administering community land. So, I propose that that issue comes under the Community Land Bill which is still proposed.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I think we need to prosecute this in two steps. We will, first of all, prosecute the first part which is what is contained in the Order Paper and then do a further amendment. This is what we will include in the further amendment.

(Question of the amendment proposed)

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

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

(Clause 107 as amended agreed to)

(Clauses 108 and 109 agreed to)

Clause 110

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 110 be deleted and replaced by the following new clause-

Saving and transitional provisions with respect to rules, orders e.t.c

110. Until the Cabinet Secretary makes the regulations contemplated under section 112, any rules, orders, regulations, directions, notices forms, notifications or other administrative acts made, given, issued or undertaken before the commencement of this Act under any of the Acts of Parliament repealed by this Act or any other law, shall continue in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring them into conformity with this Act”

These are transitional provisions to save the rules and orders issued under the laws that were repealed.

Thank you.

(Question of the amendment proposed)

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

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

(Clause 110 as amended agreed to)

(Clause 111 agreed to)

Clause 112

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 112 be amended by deleting the word “may” appearing immediately after the words “Cabinet Secretary” and substituting therefor the word “shall”.

Madam Temporary Chairlady, again this is for clarity to ensure that the Cabinet Secretary makes rules and regulations.

(Question of the amendment proposed)

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

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

Mr. Kioni: Madam Temporary Deputy Chairlady, I have a further amendment on the Order Paper and it is to require those rules to be brought and tabled in the House for approval.

Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 112 be amended in subclause (2) by inserting the words “and such regulations or rules shall be tabled before Parliament for approval” immediately after the word “Constitution”.

The purpose for it is to ensure the rules made by the Cabinet Secretary are also brought and tabled in the House for approval by Parliament.

(Question of the further amendment proposed)

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

(Clause 112 as amended agreed to)

Clause 113

Mr. Musyimi: Madam Temporary Deputy Chair, I beg to move:-

THAT, Clause 113 of the Bill be deleted.

We are proposing that it be deleted because it is ambiguous; it does not add value.

The Temporary Deputy Chair (Dr. Laboso): I hope the Minister agrees with you.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chair, there is some cocktail of legislation which has gone through this House where you find this particular provision, but I think it is totally unnecessary because of the constitutional provisions, especially in Chapter One. I agree with the Committee.

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

(Clause 113 deleted)

(Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chair (Dr. Laboso): Hon. Members, do we report progress on the first Bill? Let us go to the next Bill.

THE NATIONAL LAND COMMISSION BILL

The Temporary Deputy Chair (Dr. Laboso): Mr. Minister, we are now on the next Bill; the National Land Commission Bill, Bill No5 of 2012.

Clause 2

Mr. Musyimi: Madam Temporary Deputy Chair, I beg to move:-

THAT, Clause 2 of the Bill be amended in the definition of the word “irregularly” by deleting the words “by the Ministry of Lands or other relevant authority” and substitute therefor the words “under this Act or any other written law”.

I further beg to move:

THAT, clause 2 of the Bill be amended

(b) By deleting the definition of the word “unlawful”.

The definition of the words “irregularly” and “unlawful” was proposed on the grounds that the words do not add value. These words do not normally require definition in legislation.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 5 of the Bill be amended-

(a) in subclause (2) by inserting the following new paragraphs immediately after paragraph (c)-

“(d) manage and administer all unregistered trust land and unregistered community land on behalf of the county government”;

“(e) develop and encourage alternative dispute resolution mechanisms in land dispute handling and management”;

(b) by inserting the following new sub-clauses immediately after sub-clause 2-

“(3) Notwithstanding the provisions of this section, the Commission shall ensure that all unregistered land is registered within 10 years from the commencement of this Act.

“(4) Parliament may, after taking into account the progress of registration, extend the period set by the Commission under sub-clause (3)”.

With regard to (b), this amendment is supposed to comply with the Constitution. With regard to (e), this is to encourage alternative dispute resolutions on matters of land following the abolition of tribunals.

(Question of the amendment proposed)

Dr. Otichilo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 5 of the Bill be amended in sub-clause (2) by inserting the following paragraph immediately after paragraph (c)-

“(ca) to ensure that public land and land under the management of designated state agencies are sustainably managed for their intended purposes and for future generations”.

The import of this is to ensure that among the functions of the Commission should be to oversee and ensure that public land and any other land which is managed by other national agencies is properly managed under the management of this Commission.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 5 be further amended by deleting “(d)” and deleting the words “by the Commission in (4).

Part (d) talks about manage and administer all unregistered trust land and unregistered community land on behalf of the county government. Again, it can never be on behalf of the county government. This is for the people. Community land belongs to communities as defined in the Constitution. If you look at the relevant provisions of the Constitution, the intention was to keep the National Land Commission away from community land and how it is going to be managed and administered, the proposal is that those are going to be contained in the provisions.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Minister, where are you? Which one are you further amending?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, under Clause 5, there is a proposal in sub-clause (2) to insert new paragraphs after paragraph (c). This is on page 325. The proposal by the Chairman to amend Clause 5 is that (a), in sub-clause (2) by inserting new paragraphs. I am saying that that paragraph (d) which is proposed would not be in the letter and spirit of the Constitution since the intention which is very obvious is that the management and administration of community land or even trust land can never be done on behalf of the county government. It can also not be done for the benefit of the county governments. So, I was proposing that that entire (d) be deleted and we remain with (e) as proposed. I do now know whether I am clear.

If you want further clarity, I can read what is contained in the Constitution. Article 63(1) reads that:-

“Community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community interest”.

When it comes to unregistered community land, it shall be held in trust by county governments on behalf of the communities for which it is held. To give these powers to the Commission to manage community land and in the spirit of devolution, this will complicate matters. If you have land out there in Bomet, and you are saying that that community land should be administered by the National Land Commission, it is very dangerous. That should be kept out.

The Temporary Deputy Chairlady (Dr. Laboso): So, your proposal is complete deletion of the amendment (b)?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, it is (d). I am happy with (e) and then (b) in the proposed amendment, because it is dealing with the entire Clause 5 where it says “by inserting the following new sub-clauses immediately after sub-clause 2-. In (4), it says that Parliament may, after taking into account the progress of registration, extend the period set by the Commission under sub-clause (3)”. The period is already set by that sub-clause 3. So, you should delete the words “by the Commission”, because if you look at that sub-clause, the period has already been set by Parliament, namely, ten years. So, the Commission does not have to set the period. Only Parliament sets and Parliament can extend.

The Temporary Deputy Chairlady (Dr. Laboso): Allow the Chair first, hon. Issack!

Mr. Musyimi: Just so that we may be on the same song-sheet with the Minister, could I ask the Minister to look at---

(Loud consultations)

The Temporary Deputy Chairlady (Dr. Laboso): Order Members! The consultations are too loud!

Mr. Musyimi: Thank you, hon. Madam Temporary Deputy Chairlady. Could I ask the Minister to look at 5(c), notwithstanding the provision of this section, the Commission shall ensure that all un-registered land is registered within ten years from the commencement of this Act. Given the changes that he is proposing, is he happy with that as it is?

The Minister for Lands (Mr. Orengo): Yes, I am happy with that because that sub-clause sets the period.

The Temporary Deputy Chairlady (Dr. Laboso): So, are we in agreement, Chair of the Committee? Chair of the Committee, you are in agreement with the Minister?

The Minister for Lands (Mr. Orengo): I forgot. Hon. Dr. Otichilo’s amendment is beautiful and I support.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I, therefore, put the Question, which is that Clause 5 be amended as proposed by the Committee and further amended by the Minister and also amended by hon. Dr. Otichilo.

Hon. Dr. Otichilo, you have moved your amendment, have you not? Yes, you have moved your amendment. So, therefore, all the three--- I am putting the Question that Clause 5 be amended as proposed by the Committee through their Chair and further amended by the Minister and also amended by hon. Dr. Otichilo.

(Question of the amendment proposed)

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

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

(Clause 5 as amended agreed to)

Clause 6

The Temporary Deputy Chairlady (Dr. Laboso): I propose that Clause 6 be part of the Bill. Hon. Dr. Otichilo you have an amendment.

Dr. Otichilo: Madam Temporary Chairlady, I beg to move:-

THAT, that Clause 6 be part of the Bill as--- Sorry!

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Dr. Otichilo that is not your responsibility. Just propose your amendment.

Dr. Otichilo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 6 be amended by inserting the following new subclause immediately before the existing subclause (1)-

“(1) the Commission shall be a body corporate with perpetual succession, and a common seal and shall in its corporate name, be capable of-

(a) suing and being sued;

(b) taking, purchasing or otherwise acquiring, holding and disposing of movable and immovable property;

(c) establishing such units or divisions as will enable it to perform its functions particularly with regard to land administration and management and natural resources management;

(d) delegating the performance of its functions to any lawful and specialized agency or entity;

(e) enforcing the implementation of approved land uses and land use plans;

(f) entering into contracts; and

(g) doing or performing all such other things or acts necessary for the proper discharge of the functions under this Act, which may be lawfully done or performed by a body corporate”.

(b) by renumbering the existing subclause (1) as subclause (2);

(c) by renumbering the existing subclause (2) as subclause (3);

(d) by renumbering the existing subclause (3) as subclause (4);

I beg to move a further amendment that Section 6(1) of the clause be deleted.

The Temporary Deputy Chairlady (Dr. Laboso): You want to explain?

Dr. Otichilo: Yes, I wish to delete section 6(1) because I have been informed by the Legal Office that because this is a Commission, we do not need to show that it can become a corporate organization or a corporate body. That is because, already, it is in the Constitution. That is what I was informed by the Legal Office.

The Temporary Deputy Chairlady (Dr. Laboso): So, hon. Dr. Otichilo, what are you doing? Are you deleting your amendment or withdrawing your amendment?

Dr. Otichilo: Yes, I am withdrawing section 6(1) of the clause as proposed and retaining “d”, “e” and “f”.

The Temporary Deputy Chairlady (Dr. Laboso): So, let me understand you; you have an amendment to Clause 6?

Dr. Otichilo: Yes.

The Temporary Deputy Chairlady (Dr. Laboso): And upon guidance, you are withdrawing part of your amendment?

Dr. Otichilo: Yes.

The Temporary Deputy Chairlady (Dr. Laboso): Which is part 6(1)(a) and (b)?

Dr. Otichilo: Yes and I am retaining “d” “e” and “f”.

Ms. Karua: On a point of order, Madam Temporary Deputy Chairlady?

The Temporary Deputy Chairlady (Dr. Laboso): What is your point of order, hon. Karua?

Ms. Karua: Madam Temporary Deputy Chairlady, I think to avoid confusion--- What I have is that the whole of 1(a) to (e) ought to go with the withdrawal, the way he has said it. What ought to be retained according to mine, would be (b), (c) and (d). Could he be asked to read out what is being retained so that we do not have confusion?

The Temporary Deputy Chairlady (Dr. Laboso): Yes; hon. Member, please clarify what exactly you are---

Dr. Otichilo: Madam Temporary Deputy Chairlady, what I wish to be retained is:- The Commission should have power of “(d) establishing such units or divisions as will enable it to perform its functions particularly with regard to land administration and management and natural resources assessment;

(e) delegating the performance of its functions to any other lawful and specialized agency or entity;

(f) enforcing the implementation of approved land uses and land use plans”

The Temporary Deputy Chairlady (Dr. Laboso): I see over the page on the Order Paper – the one that has been circulated – “entering into contracts.” Is that part of what you are retaining? Is that part of your amendments?

Dr. Otichilo: No, Madam Temporary Deputy Chairlady.

(Mr. Bahari stood up in his place)

The Temporary Deputy Chairlady (Dr. Laboso): What is your point of order, hon. Bahari?

Mr. Bahari: Thank you, Madam Temporary Deputy Chairlady. I wanted to find out if, maybe, Dr. Otichilo can explain why he wants to be very, very specific with regard to the functions and whether it will not be very restrictive from the way he has defined it, because it is narrowing it down. Why not retain it as fairly general?

Dr. Otichilo: Madam Temporary Deputy Chairlady, I think the Commission should be able to have latitude to be able to establish divisions and departments as it may deem necessary as regards its functions.

Secondly, Madam Temporary Deputy Chairlady, the Commission should be able to delegate its functions to any other lawful or specialized agency or entity, if it finds it necessary. Lastly, the Commission should be able to have the powers, because this section deals with the powers, Clause 6. It should be able to have powers to enforce the implementation of approved land uses and land use plans.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Bahari. I would like to hear something from the Minister and the Committee on this amendment.

Mr. Bahari: Madam Temporary Deputy Chairlady, actually in principle, I agree with him. But it is only the way the amendment is put. He is not giving the Commission that leeway because he says:-

“(d) establishing such units or divisions as will enable it to perform its functions ---”

And then it goes on to say:-

“...particularly with regard to land administration and management and natural resources management”

So, I wish he removes that. Let us put it like its functions so that the details do not come in. Those details could be restrictive and could work against the principle which you want to apply here.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, do you have anything to say on this amendment?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I think we are safer off without this amendment. Initially, and I agree with the Parliamentary Legal Counsel, the main focus for this amendment was to establish the Commission as a body corporate which, as rightly pointed out under Article 253 of the Constitution, the provisions in relation to incorporation of commissions and independent offices are clearly spelt out. The functions that Dr. Otichilo, with respect, wants to give to the National Land Commission, I think are not being brought to the right legislation. There is going to be another legislation relating to spatial land use planning; it will be better to bring it to that legislation. It does not mean that all the powers of the National Land Commission are contained in the National Land Commission Bill. If you go to the other two Bills, you will find other additional functions. So, I will plead with you – and I know that is where your forte is, spatial planning and land use; that Bill is going to come and we can then put in the functions of the Commission in the right context. So, I will plead with you that the entire amendment be withdrawn.

Dr. Otichilo: Madam Temporary Deputy Chairlady, after I have heard from the Minister, I want to agree with him that if we are going to have another Bill coming, then I am willing to withdraw the entire clause.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you, hon. Member; you have been convinced by the Minister.

(Proposed amendment by Dr. Otichilo withdrawn)

(Clause 6 agreed to)

(Clauses 7, 8, 9, 10, 11, 12 and 13 agreed to)

Clause 14

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 14 of the Bill be amended-

(a) in subclause (5), by deleting paragraph (a) and (b) and inserting the words “to the Registrar, the revocation of the title” after the words “recommend” appearing on the third line of the sub-clause;

(b) in subclause (7) by inserting the words “and where such title is revoked, the national government or the county government, where applicable, shall compensate the *bona fide* purchaser”

Madam Temporary Deputy Chairlady, this is for clarity to make sure that the compensation due is only paid to *bona fide* purchasers.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): There are several amendments to this clause. Hon. Kioni, your amendment is similar to the Committee's.

Mr. Kioni: Madam Temporary Deputy Chairlady, my amendment to Clause 14 is similar to the Committee's only to the extent of 14(a). Part (b) was not contemplated by me and I may have difficulties with it.

The Temporary Deputy Chairlady (Dr. Laboso): Are you opposing part (b)?

Mr. Kioni: Madam Temporary Deputy Chairlady, I have no opposition to the proposal by the Chair of the Committee, that Clause 14 (a) be amended as per the Order Paper. You will notice that 14(b) is not what is covered under my proposal.

Ms. Karua: Madam Temporary Deputy Chairlady, I am not clear why we should remove the word "recommend" and then substitute it with "direct." "Direct" is mandatory. Since the Constitution has provision on how compensation should be paid, why do we want to direct? Why do we not want the aggrieved parties to be able to agitate, if the county government is not willing to pay compensation for reasons, perhaps, that the land has been acquired unlawfully? I would oppose this amendment and suggest that we retain the word "recommend" because we have due process for any other issue arising.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Karua, do you wish to oppose the Committee's recommendation?

Hon. Ogindo, you have an amendment to Clause 14(5)(b). Do you want to prosecute or support what they are saying?

Mr. Ogindo: Madam Temporary Deputy Chairlady, I want to agree with hon. Karua that we leave the word "direct" for another authority. This is because beyond the Commission we still have the courts to go to. Let us leave the directive to the courts and not the Commission. So, we can live with the word "recommend."

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Chair of the Committee!

Mr. Musyimi: Madam Temporary Deputy Chairlady, the consensus of my Committee is that we withdraw.

The Temporary Deputy Chairlady (Dr. Laboso): So, does that mean that we have withdrawn Clause 5(a) or Clause 5(a) and (b)?

*(The Temporary Deputy Chairlady (Dr. Laboso)
consulted with the Clerk-at-the-Table)*

Committee, we are now dealing with Clause 14(5) (a), which was recommending that we change the word "recommend" to "direct," and that has been withdrawn. Is Clause 14(5)(b) still standing?

Mr. Kioni: Madam Temporary Deputy Chairlady, before we go to part (b) my amendment was not dealing with the words "recommend" and "direct". It is entirely different. I do not know whether you have the Order Paper that we are reading. What I have is just for clarity and a bit of re-organizing. What had not been removed and what Ms. Karua was referring to was not the subject of my amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Are you then moving your amendment, Mr. Kioni?

Mr. Kioni: The Order Paper I have does not have pages.

Mr. Ogindo: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, can we allow Mr. Kioni to say his bit then you will come in?

The Temporary Deputy Chairlady (Dr. Laboso): What is your point of order, Mr. Ogindo? Allow him, Mr. Kioni---

Mr. Ogindo: On a point of order, Madam Temporary Deputy Chairlady. There are two amendments in Clause 5 that are being proposed, that is, part (a) and part (b). I think it is only in order that we dispose both parts as recommended by the Committee then we move to Mr. Kioni's amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Gunda, do you also have a point of order?

Mr. Gunda: On a point of order, Madam Temporary Deputy Chairlady. I oppose the retaining of the word "recommend". In this particular case we should insist on the word "direct" because supposing that recommendation is not taken by the one you are recommending to? By directing, you are directing the body to do what the Commission has found to be illegal, for example, title deeds which have been acquired illegally. So, you direct that they revoke and not recommend.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Gunda, you have said your bit. We will start with the Committee's recommendation on sub-clause 5(a) which you have withdrawn and sub-clause 5(b). We were taking the recommendations from the Committee.

Ms. Karua: I just want to persuade colleagues, especially Mr. Gunda. If we let the Commission to direct the registrar then it will mean that the registrar will not act independently but under the Commission. The registrar should recommend and if the Commission does not accept there is a due process. Proceedings can be instituted. There is a danger in making anybody or any single body all too powerful; a serious injustice can occur. I want to plead with colleagues, let us measure the power we give to any institution.

The Minister for Lands (Mr. Orenge): I just wanted to contextualize the responsibility that is being given to the Commission, which actually this legislation has watered down. The Commission is required to review all grants and dispositions to determine whether those dispositions were effected regularly or irregularly and they are supposed to make a finding. After they have spent time reviewing and then at the end all they can do is to recommend to a body, which is the office of the registrar, and which is a subordinate body to the Commission, then from the registrar we will have another process of going to court. I would rather that we put the Commission in a position that once it has done a review, because it is undertaking a review as quasi judicial body, that the only body that one can move to thereafter is the court, the High Court for that matter. But moving from the Commission to the registrar and then again to the court, I think this will delude the provisions in Article 68. This power is not given to the registrar at all, but to Parliament and Parliament has given it to the Commission to review all grants or dispositions of public land to establish their propriety and legality. Under a constitutional mandate, that title was given or granted illegally. I think it raises the question when thereafter all you can do is to recommend. What we should do is not to close the door to anybody who wants to go to court in terms of 68 on page 46. Parliament is required to enact legislation to enable the review of all grants or disposition of public land to establish their propriety or legality. So, they have acted on a constitutional mandate and they have determined that this particular title was illegally granted or disposed. All you can do is to make a recommendation. The Commission would then be a busy body. I think it should make a finding that can be acted on. If you do not agree, then the door is open to you to go to court.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, let us prosecute Clause 5(a). Kioni's recommendation is exactly similar to the Committee's. There is Clause 5(a) and we have not yet talked about part "b".

Ms. Karua: Madam Temporary Deputy Chairlady, I want to say that I am persuaded by the Minister's exposition.

(Applause)

The Temporary Deputy Chairlady (Dr. Laboso): Thank you Martha.

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

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

(Clause 14(5 (a)) as amended agreed to)

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Kioni, did you have an amendment to 14(5)(b)?

Mr. Kioni: Madam Temporary Deputy Chairlady, my amendment was to bring parts "a" and "b" together. I think I will go with the recommendations of the Committee.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you, Mr. Kioni. There is an amendment to part 5(b) by Dr. Otichilo.

Dr. Otichilo: Madam Temporary Deputy Chairlady, my amendment is similar to Mr. Chairman's amendment. So, I concur with what has been agreed.

The Temporary Deputy Chairlady (Dr. Laboso): So, on 5(b) you are concurring with the Committee? Hon. Ogindo, what about you on 5(b)?

Mr. Ogindo: Thank you, Madam Temporary Chairlady. Personally, I do not have an amendment on 5(b) but I concur with the Committee.

On a point of order, Madam Temporary Deputy Chairlady. I have an amendment to Clause 14(6) and you are already on seven.

The Temporary Deputy Chairlady (Dr. Laboso): That is not on my list of amendments.

Mr. Ogindo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 14 be amended in sub-clause (6) by deleting the word "orders" appearing after the word "consequential" and substituting the words "recommendations".

The reason for this is that the Commission is independent.

The Commission is an independent commission and its recommendations should be taken very seriously. In any case, if somebody is aggrieved, he should have an opportunity to go to court, which should subsequently issue the orders. That is the sequence that is informed in my amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): I am waiting to hear either from the Minister or the Committee Chairman.

The Minister for Lands (Mr. Orengo): Madam Temporary Chairlady, I think that amendment actually is due to misunderstanding. What Clause 6 is saying--- For example, if the Commission finds that you acquired the title deed irregularly, that means that there are some procedures which were not undertaken, but which would not lead to revocation of title deed. For example, probably, you did not sign a document somewhere. That is an irregularity if it is required by the law. So, instead of throwing you away, they can rectify or correct the irregularity. But once you have done it, then they can also make consequential orders following that rectification. If there is anything that can be done in order to secure your title, they can also make a consequential order so that the matter is closed there. That is because normally, you will find a situation where, for example, you did not pay some portion like Stamp Duty and probably you did not pay conveyance fee. So, the Commission will say: "Okay, this is something which would not lead to annulment." So, it will rectify and then allow you to pay. They will make a consequential order that: "Yes, we can rectify, but you pay whatever money you did not pay so that it can enable us to clean up the title." So, I plead with you again that this is not the area where we are dealing with recommendations. We are dealing with a situation where the Commission should deal with it and if there is anything else to be done, then let it go to the courts. That is what informed that sub-clause (6).

Mr. Ogindo: Madam Temporary Deputy Chairlady, I will be persuaded to agree with the Minister, but I would now agree with him wondering which order would be bigger. Would it be the Commission's order or the court order? But I am ready to live with his persuasion.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you. So, there is no amendment to Clause 14(6) and so, we come to Clause 14, Sub-clause 7 by the Committee.

Mr. Musyimi: Madam Temporary Deputy Chairlady, I had actually spoken on this in respect of the *bona fide* purchaser being the one who gets compensation.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, on Sub-Clause 7, I also have a problem because it protects a *bona fide* purchaser of value without notice of a defect, but if that defect was visited upon the *bona fide* purchase, and not by the county government or by the National Government, why should the taxpayer pay for it? I think hon. Martha Karua was quite right that under Article 40, there are provisions for payment of compensation.

Who pays that compensation depends on who was the author of that defect in the title, or if it is flawed by the author of that title. If it is found that it is the Government, then the Government will pay, but we put it like this, globally, the taxpayer will be paying for the criminality of everybody who actually secures defect in the title, which is not on the part of the county government.

Therefore, I urge the Committee to withdraw the amendment.

Mr. Ruto: Madam Temporary Deputy Chairlady, I want to support the Minister and oppose the proposed amendment. This puts a very unnecessary burden on people who have nothing to do with the acquisition of such an illegal property. I see no logic that may have informed the Committee to put this burden on the citizens of Kenya.

The Temporary Deputy Chairlady (Dr. Laboso): Yes, hon. Chair of the Departmental Committee?

Mr. Musyimi: I concur, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): So, have you withdrawn your amendment?

Mr. Musyimi: With full consensus of my Committee Members, Madam Temporary Deputy Chairlady.

(Part (b) of the proposed amendment to Clause 14 withdrawn)

(Clause 14 as amended agreed to)

(Clause 15 agreed to)

Clause 16

Mr. Musyimi: Mr. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 16 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3)-

“(4) The Commission may pay persons co-opted to the committees such allowances, and other expenses as it may determine from time to time.”

The idea in this amendment is to allow the Commission to pay allowances to co-opted persons in its Committee.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

Clause 17

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 17 of the Bill be amended-

(a) in the marginal note by deleting the word “Consultation” and substituting therefor the words “Establishment of County Land Management Boards.

(b) in subclause (1) by inserting the words “and subject to Article 10 and Article 232 of the Constitution” after the words “and county governments”.

(c) by deleting subclause (2).

Part (a) of the amendment is correcting a typographical error on the marginal note.

Part (b) of the amendment is intended to ensure that in the constitution of the County Land Management Board, the national values and principles under Article 10 and the values and principles of public service outlined in Article 232 of the Constitution are observed.

With regard to part (c) of the amendment, we are recommending deletion because the provision is provided for in Clause 18.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ogindo, your proposal for sub-clause 2 now falls because it has been taken care of by the Committee's recommendation. This is because the Committee has already deleted subclause 2(c). Are we looking at the amendments not in the Bill?

Mr. Ruto: Madam Temporary Deputy Chairlady, it appears like it is an ambush, "that the Commission shall". I would have preferred an amendment that would only have removed the word "national" because the county governments must establish County Land Management Boards for purposes of the management of the public land. The only word that was faulty there was "national" when you add it into a county function. But here, you completely removed the whole clause?

Madam Temporary Deputy Chairlady (Dr. Laboso): Yes, that is what has just been passed by the Committee.

Yes, Mr. Minister!

The Minister for Lands (Mr. Orengo): Where are we?

The Temporary Deputy Chairlady (Dr. Laboso): We are on Clause 17.

Mr. Ruto: Madam Temporary Deputy Chairlady, the Minister did not even reply.

Madam Temporary Deputy Chairlady (Dr. Laboso): When the Minister does not reply it means he concurs with the Committee. This is because I always give him an opportunity.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, what I see Clause 17 to be saying is that in carrying out its functions, how is the Commission supposed to do the work? That is what is being stipulated in Clause 17. The Committee is proposing other than consultation and co-operation with the national and county governments, that function should be carried in accordance with Article 10 of the Constitution and the values therein. So, the establishment of the committees themselves will come in Article 18 which deals with the establishment of the land boards at the county level. However, Clause 17 is a directive to the Commission that when you are carrying out your work you must consult, co-operate with the national government and you must be subject to those articles that the Committee has added. So, probably you are going too quickly in your suggestions because I think those come under Article 18. Mr. Ogindo has similar amendments in the spirit in which Mr. Ruto is talking. I think that can be addressed under Article 18.

Madam Temporary Deputy Chairlady (Dr. Laboso): Is this clear to Mr. Ogindo? Do you have a comment on this?

Mr. Ogindo: Madam Temporary Deputy Chairlady, I do not know whether I am looking at the right Bill; the original Bill because the Bill I have under Clause 17 there is no part (a) and (b). I only has sub-clause 1 and 2.

The Temporary Deputy Chairlady (Dr. Laboso): It is clauses 1 and 2 and we are saying we are looking at the amendments as circulated. There are amendments (a) and (b). It is not in the original 1 and 2.

Mr. Ogindo: Yes, Madam Temporary Deputy Chairlady. I think it would have been tidier if we were to dispose of 17(a), we come to 17(b) and then we hear the merits of our amendment on 17(2) before dismissing it as proposed under the Committee amendment (c).

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Ogindo, from the information or the documents before me the Committee did not have any amendments on 1, did you?

Mr. Ogindo: They have, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Then I need some guidance.

Mr. Ogindo: Madam Temporary Deputy Chairlady, I just want to plead with you that you allow us to ventilate on this.

Hon. Members: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Order, hon. Members! I cannot have all of you standing. Let us have one person standing at a time.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, if I may help, the amendment to the marginal notes by the Committee is a bit misleading because it is talking about the establishment of County Land Management Boards. That is what is bringing the confusion.

So this should remain “consultation” or we should not have any marginal notes at all. But if you look at the marginal notes on 18, it is “Composition of and appointment of the County Land Management Boards”. So you have a repetition of these marginal notes and, what I suggest is that the marginal notes as amended by the Committee should not find favour with the House, but the amendments to Clause 17(1) and deletion of Clause 17 (2), I agree entirely with the Committee.

Mr. Ruto: Madam Temporary Deputy Chairlady, there is confusion on the amendment proposed by the Committee; it is Clause 17 of the Bill that is to be amended, but where is this amendment being done? It should have referred to Clause 17 (1); since it does not refer to Clause 17 (1) it is just---

Hon. Members: It is the marginal notes!

Mr. Ruto: Okay, that is by the way of numbering? Is that Clause 17 (1) in the marginal note for consultation? What do you mean? You should have referred to Clause 17 (1) and then told us what you are doing with it, so that we can then go to (c).

The Temporary Deputy Chairlady (Dr. Laboso): Marginal notes are these ones on the side.

(Dr. Laboso displayed the Bill)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chair, the marginal notes are what you see here as the Chair is saying; they are the entire Clause 17.

(Mr. Orengo displayed the Bill)

So, you cannot say Clause 17(1) or (2)! What the Committee was trying to do was to amend the marginal notes and the---

The Temporary Deputy Chairlady (Dr. Laboso): And as the Minister you agree that they should amend that?

The Minister for Lands (Mr. Orengo): No, Madam Temporary Deputy Chair; I disagree because the amendment to the marginal notes does not refer to the subject matter of the provisions.

Hon. Members: Yes!

The Minister for Lands (Mr. Orengo): The subject matter of the provisions has to do with consultations.

Mr. Musyimi: I concur, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): So are we properly guided now?

(Mr. Ogindo stood up in his place)

Please allow the Chairman of the Committee first! Mr. Chairman, I am giving you an opportunity to say---

Mr. Musyimi: I concur with the Minister, Madam Temporary Deputy Chair.

The Temporary Deputy Chairlady (Dr. Laboso): So you are withdrawing your amendment?

Mr. Musyimi: Yes with regard to (a).

The Temporary Deputy Chairlady (Dr. Laboso): With regard to (a); so the Committee is withdrawing the amendment under (a) and going by the Minister's recommendations.

*(Part (a) of the proposed amendment to Clause 17
by the Committee was withdrawn)*

Allow Mr. Ogindo to say a word!

Mr. Ogindo: Madam Temporary Deputy Chairlady, I want to thank the Chairman of the Committee for that withdrawal; I think that now leaves my amendment to be substantive amendment in that Clause; it seeks to remove the word "national" appearing before the word "county" because what is being said here is that the Commission shall, in consultation with the county government--- But here it is said national and county governments. Our proposal is that it remains county governments; to establish County Land Management Board for the purposes of management. The whole essence of this is that we want to leave the Commission to work together with the county government in establishing the County Land Management Boards. I think it is tidier that way instead of bringing in the national Government.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Ogindo, I think there is some confusion which--- Mr. Musyimi, can you please guide us and let us go step by step because it looks like there is a whole lot of confusion. You summarized everything and now we do not know where we stand.

(Ms. Karua stood up in her place)

Before you come in, let us hear Ms. Karua!

Ms. Karua: Madam Temporary Deputy Chairlady, I am just thinking aloud. We read Article 62 of the Constitution. There is some land even at the county level which belongs to the national government – they hold it in trust; so, I am seeing a situation where the Land Management Board has to consult both even at the county level. This consultation and co-operation mean that we have to realign our minds to the reality of the next dispensation that nobody can, on their own make a decision to the exclusion of others. I am seeing that it is necessary to retain those words as they are.

The Temporary Deputy Chairlady (Dr. Laboso): So, you are supporting the retention of the committee's amendment in the marginal notes or the first sub-clause?

Ms. Karua: Madam Temporary Deputy Chairlady, I am supporting the Committee substantively.

The Temporary Deputy Chairlady (Dr. Laboso): We have reversed what we had earlier said. We have not deleted part (c) yet. We are still on part (b) with the Committee.

Ms. Karua: Madam Temporary Deputy Chairlady, let the Chairman of the Committee clarify but those words appear to me to be necessary.

Mr. Mureithi: Madam Temporary Deputy Chair, what we deleted was the marginal notes and we substituted it and returned “Consultation”. But on Clause 17(b) we still believe what hon. Karua has said, that there is land which is held by the nation in trust and also by the counties. So, that is the amendment that we came up with. So, we deleted the marginal amendment, but we retained the conclusion. But the body of the amendment remains as we did in the Committee.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are taking too long on this.

Mr. Ogindo: Madam Temporary Deputy Chair, allow me to say that once the Committee has withdrawn its amendment, then it leaves the Bill as it was.

The Temporary Deputy Chairlady (Dr. Laboso): Not as it was. They did not withdraw everything.

Mr. Ogindo: Madam Temporary Deputy Chair, but on what hon. Karua has said, I wish to respond by saying that once we create an organ at the county and in the spirit of the interdependence of the two levels of Government, it becomes an organ for the two governments. So, it is still proper for the Commission which serves both governments to create a County Land Management Board in consultation with the county government.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ogindo, I think the Minister guided us on that one.

Mr. Ruto: Madam Temporary Deputy Chair, much as he guided us, it is clear, for example, that roads in Nairobi are on the national Government land. But if in 17(2) you are stating that the Commission shall in consultation with the national and county governments establish County Land Management Boards, why should the national Government be consulted on a county land? The whole of (2) has been deleted. Is that what you are confirming? If the whole of (2) is deleted, I am in agreement.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, please, we need to make progress. Hon. Ogindo, are you also satisfied? We are now on (2) and according to the recommendations of the Committee, that part is deleted, which the Minister also agrees.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chair, I agree, but I want to re-enforce the point which hon. Karua made and I think I better re-enforce it that the whole concept is that even if there is national land which vests on the national Government in Bomet, the national Government through this structure that we have has also to consult the county government. We do not want the national Government to say that this is their land and, therefore, make decisions without consultations with the county governments and vice versa. Just like oil has been discovered in Turkana, in the definition of public land, the minerals belong to the national Government and they are part of the land. We are trying to say that the national Government cannot now go to Turkana and say “this under the Constitution is our resource and you have nothing to do with it”. So, this is actually promoting devolution and hon. Ogindo should support it very vehemently.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I, therefore, put the Question, which is that Clause 17 be amended as recommended by the Committee and as further amended by the Minister.

I am still on Clause 17, I just want to--- You are in concurrence also, hon. Martin Ogindo. So, I put the Question that Clause 17 as amended by the Committee and further amended by the Minister and concurred to by hon. Ogindo.

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

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

(Clause 17 as amended agreed to)

Clause 18

The Temporary Deputy Chairlady (Dr. Laboso): But again, please let us go to the marginal note part and then sub-clause 1.

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 18 of the Bill be amended-

(a) in the marginal note by deleting the phrase “Composition of and appointment of County Land Management Boards” and substituting therefor the words “Establishment and composition of County Land Management Boards;”

by deleting sub-clause (1) and inserting the following new sub-clauses-

“(1) The Commission shall, in consultation and co-operation with the national and county governments, establish County Land Management Boards for purposes of the management of public land”.

“(2) A county Land Management Board shall comprise-

- (a) not less than three and not more than seven members appointed by the Commission;
- (b) a physical planner or a surveyor who shall be nominated by the county executive member and appointed by the governor and who shall be an *ex-officio* member.
- (c) in sub-clause (5) by inserting the words “and Article 232” immediately after the words “Article 10”;
- (d) in sub-clause (7) by deleting the words “guided by” appearing immediately after the words “boards shall be” and substituting therefor the words “comply with”.

With regard to part “a and “b” the amendment is to provide specifically the establishment of the County Land Management Board by the Commission for purpose of managing public land. The same is to be done in consultation with the County National Government. I can come to the rest later. Thank you.

(Question of the amendment proposed)

Mr. Ruto: Madam Temporary Deputy Chairlady, there is need for clarification because, for example, in the proposed amendment by the Committee, a County Land Management Board shall comprise not less than three and not more than seven members. Then here, it says---

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Member, you have moved to “b”. We are starting with the marginal notes. Was there any issue on the marginal note?

Minister do you have anything? Are you in concurrence with the amendment on the marginal note?

The Minister for Lands (Mr. Orengo): On the marginal notes, I am in concurrence.

The Temporary Deputy Chairlady (Dr. Laboso): The hon. Chair of the Committee, could you move to the next one?

Mr. Musyimi: On “b”?

The Temporary Deputy Chairlady (Dr. Laboso) Yes.

Mr. Musyimi: While retaining the substance and meaning of sub- clause 1 as drafted in the Bill, this sub-clause is redrafted for clarity. It is proposed to have a physical planner or surveyor in the composition and not both. I thank you.

The Temporary Deputy Chairlady (Dr. Laboso): We are now on amendment “b”. Any comment on that. Hon. Isaack Ruto, do you have something to add?

Mr. Ruto: I can see in sub-clause “b” there is one and then there is two, I was only on 2(b). So, I do not know whether I am in order to go to 2(b). I have issues with 2(b) which says: “A physical planner or a surveyor who shall be nominated by the county executive member and appointed by the Governor and who shall be an *ex-officio* member”. My understanding of *ex-officio* members is that they are members by occupation of an office. Then how do you appoint and then again they are *ex-officio* members? I thought it should be neater to simply say that the surveyor and the physical planner would be members. But when you start saying “*ex-officio* again and they have been appointed by the Governor, what is the need for these appointments?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I just wanted to give an example of the Speaker of this House. He is elected by the House but he is an *ex-officio* Member of the House. I do not know whether that clears the air. They are not substantive members; they are not voting members. That is the idea behind it.

Mr. Ruto: Then why have them appointed so that they become non-voting members? I thought we were appointing--- An appointment would then be necessary for substantive members to these Committees. It would be easier for them. They attend by virtue of office. Take, for example, the Attorney-General. By virtue of being an Attorney-General, automatically he is an *ex-officio* Member of this House. If that Attorney-General vacates office of the Attorney-General, he ceases to be a Member of Parliament.

Madam Temporary Deputy Chairlady, I think we need to put a little more thought into this. I am just wondering. This is not quite right.

Mr. Ogindo: Madam Temporary Deputy Chairlady, if you look at my amendment to the same clause, it is also fighting the same thing that is carried forward in part (b), and I want to borrow from where hon. Ruto has left. We are either talking about appointing somebody who is of the planning and surveying profession to be part of the board, in which case the *ex-officio* bit does not apply; or, we are taking county staff who is a planner or a surveyor to be an *ex-officio* on the board. So, we must go either way. But we cannot have a planner who is just nominated from outside or a surveyor who is just nominated from outside becoming an *ex-officio* in the board. So, I mean, with that, I find my amendment tidier than this, but we want to dispose of this first. I wish to oppose because it denies us the clarity when it comes to the counting of the membership of the board.

The Temporary Deputy Chairlady (Dr. Laboso): The Minister or the Chair of the Committee, do you have any comment on that?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, you know that the problem is – Dr. Ottichilo will help me in this – that in a lot of areas in this country, if you look at our towns and urban areas, they are in a terrible situation as far as planning is concerned. Now, we do not want people in county land management boards, who are not going

to be guided to make sure that our space is planned appropriately. That is why we thought, you know, instead of us just having a management board without some people who have not only knowledge, but are also engaged locally. Where I would agree with him is that it does not say where the physical planner or the surveyor is coming from. But if we had something to the effect that – I am just thinking aloud – we have a planner or a surveyor, who is in the employment of the county government, as an ex-officio member, or something to that effect. But the thing that we are trying to address--- I agree with hon. Ruto and hon. Ogindo that we should make the county government play a more effective role in getting this surveyor or planner. The objective here really is to make sure that when the land board sits, there must be somebody there to tell them “you cannot give this land to so-and-so.

Mr. Ruto: On a point of information, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): What is your point of information?

Mr. Ruto: Madam Temporary Deputy Chairlady, may I inform the Minister that, actually, we are moving in the right direction. For example, in the event that this physical planner or surveyor is from outside the county, that is from the professions, obviously, the others could be there in the secretariat. But these two who may have been appointed from the professionals within and they are very competent people, then they need not be ex-officio. They should just be members of that board, so that they can participate in decision making and then ensure that the mess that has occurred – as alluded to by the Minister – is actually avoided. If you make them ex-officio members, they will just be whispering and then going out. They will be told to shut up; ex-officio members cannot vote. I think it is better to make them substantive members.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Kioni.

Mr. Kioni: Madam Temporary Deputy Chairlady, I think it is like a further amendment to this amendment. All that we will need to bring out is to have a physical planner and surveyor from outside--- With your permission, let me read it out the way I would want to amend this amendment.

“A physical planner or surveyor who shall be nominated by the county executive member and appointed by the Governor.”

This will ensure that we do not call people appointed from outside “ex-officio,” because they are not working within the county governments. It is desirable that they are appointed from the private sector. In so doing, you inject professionalism. If you allow the same persons who are working within the county, then I think we will again, miss it because this is what has been happening, perhaps, in a lesser manner.

(Mr. Orenge consulted with Ms. Karua)

The Temporary Deputy Chairlady (Dr. Laboso): The Minister is consulting and I am not sure whether he heard the amendment by hon. Kioni.

Mr. Kioni: Madam Temporary Deputy Chairlady, it is good that the Minister remains attentive.

Madam Temporary Deputy Chairlady, I was just saying that we carry this amendment to the point where--- Let me just read it out.

“A physical planner or surveyor who shall be nominated by the county executive member and appointed by the Governor.”

Madam Temporary Deputy Chairlady, I think that cures the debate that we had.

The Minister for Lands (Mr. Orengo): *Sawa!*

The Temporary Deputy Chairlady (Dr. Laboso): The Minister is in agreement with that amendment.

Hon. Ogindo, does that also cure your concern?

Mr. Ogindo: Madam Temporary Deputy Chairlady, yes, it concurs with my amendment, but we still need more people in the board.

The Temporary Deputy Chairlady (Dr. Laboso): Now, is your amendment of those small people with us? Has it been circulated, hon. Ogindo?

Mr. Ogindo: Madam Temporary Deputy Chairlady, if I may proceed, having agreed with the amendment by hon. Kioni, to the original amendment by the Committee, now we have two members in the board, one who is either a Surveyor or Planner. I want to bring an insertion:-

“THAT, the Governor shall with the approval of the county assembly, appoint the rest of the members of the board from among the persons in the county who are knowledgeable on land matters in the county, taking into account gender, equity and ethnic diversity within the county.”

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we need to approve or disapprove these amendments.

Mr. Musyimi: Just a little concern, Madam Temporary Deputy Chairlady. I am not sure that we have restricted the county governors and county assemblies to employing people from within their counties. It might be a county land board, but I am not sure that we have restricted recruitment only to citizens of the county. I think that would go against the grain of what it is to be one nation. If you come from Embu County, as I do, and you get a good person who comes from Migori, Baringo or some other place, there is no reason they should not be employed. So, I have issues with that amendment.

Mr. Ruto: Madam Temporary Deputy Chairlady, it says in (2):-

“A county land management board shall comprise-

(a) not less than three and not more than seven members appointed by the Commission; and”

Madam Temporary Deputy Chairlady, a Commission which may be based in Nairobi will appoint a land board to manage land issues down there. I think what hon. Ogindo is trying to cure is that it should be done at the local level. Basically, the normal thing that land boards do is arbitrate in the sale of land and those kinds of things. It has a lot to do with local situations and history. If you are going to appoint a land board from Nairobi to go and manage land in Narok, I think you will create war. I think you must respect communities living around there and it is only the local county government that can then possibly be more reasonable. The Constitution talks about the devolvement of that issue.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Kioni, I think we need to put this matter to the vote and we move on.

Mr. Kioni: Madam Temporary Deputy Chairlady, can I get a few comments? First, if you are talking about a physical planner and a surveyor, you are dealing with professional people. These are people who have been trained professionally and I believe that once you have that professional training, you can play a major role in your line of duty.

Secondly, this is being subjected to the county assembly. Again, restricting the county assembly to just within the county, is limiting it too much. We should give it leeway. If they think that they can only pick professionals within the county, they will be informed by the reasons for it. We should leave it wide, so that they can also fish from outside if they will think that they will need professionals who can input and help the management of the county within their areas.

Mr. Farah: Madam Temporary Deputy Chairlady, I think that defeats the very basis and the philosophy of our own constitution, which is essentially devolving authority and management. When you want to have a land board at the local level appointed by the national commission, already the national interest is taken care of.

Mr. Ogindo: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Are you on a point of order, hon. Member?

Mr. Farah: I am not on a point of order, I am contributing. I know what he is talking about but, please, just allow me to continue.

You cannot defeat the very principal philosophy of our Constitution to devolve power, authority and management. You already have a National Land Commission which has the authority to appoint the county land board, and then you provide again that they be given the right, the power and authority to appoint from outside the county? What is the purpose of devolution in this case?

The Minister for Lands (Mr. Orengo): First of all I want to say that in most counties 90 per cent of land is either private land or community land or both. If you look at public land, as matters stand now, a lot of land that we are talking about is either community or private land. Private land includes even a lease for one year from the Government. That is private land. The starting point is that we cannot imagine that there will be so much public land that is going to be managed by these county land boards. There will be a very tiny fraction of the land in any county. That is the starting point.

Secondly, the provision that all these appointment will be subject to approval by the county assembly, is the redress. If the National Land Commission appoints anybody, including somebody from that county that the assembly does not want, then the county assembly may say no. It is in Clause 18, and even in the amendments. The appointment of the members shall be approved by the county assembly and shall take into account national values and so on. That is there. I think the devolution card must be played but it cannot be played to absurdity. Very soon we will begin to build walls even within the counties and within regions. We must have some flexibility. Right now we have Kenyans who are mayors in the United Kingdom (UK), Canada and so on.

The redress is there by the county assembly. If the representatives of the people say yes, the Deputy Speaker is fit to be in the committee, then they should not be stopped from doing that. But it is for purposes of managing a very small piece of land, but not in Bomet where there are tea estates and so on. That is my take on this.

I agree with Mr. Kioni that the management of public land, as Dr. Otichillo will tell you, is not simple business. You do not want to create jobs for people in the management board. We are thinking of a Kenya of tomorrow, so that if an investor wants to come from the United States of America (USA) or China and he is going to have a conversation with the board, the board will be able to address all the issues that an investor will raise at that particular county on planning, resources and so on. We need people who have what it takes and they do not necessarily have to come from the county, so long as they are approved by the county assembly.

Mr. Farah: Madam Temporary Deputy Chairlady, to begin with, the very stringent qualifications that have become conditional for the appointment of these people will definitely make most land boards national. This is particularly in areas which are essentially marginal and in areas like Coast Province. So, the national texture will always be there and for the benefit of

hon. Orengo, as much as I want to appreciate what he is saying, and this is what we have all along prayed for in this country, this will never function that well.

We have seen managers of major parastatals who are working in areas outside their own areas and given a whole national parastatal body to run but what have they done? They just ethnicized themselves. The fact that you have an opportunity to be a nationalist has not been such an incentive for most Kenyans for them to practice nationalism. Every time they got an opportunity to be nationalists, they use the national cake to take to their own ethnic community. That is how it has been throughout. I agree with you in the way you see it and that you want to look at the Kenya of tomorrow. However, we also have the Kenya of today and the Kenya of yesterday, and we do not want the mistakes that were done in the past to be repeated. So, this is basically what is happening. We have seen that. We have seen how blue chip parastatals which are national have been managed.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairlady, even in dealing with things as they are today and as amended by the Committee, sub clause 5 of 18 reads as follows:-

“The appointment of members shall be approved by the county assembly and shall take into account the national values referred to in Article 10 and Article 232 of the Constitution and shall reflect gender equity and ethnic diversity within that county.”

What is better than that? If you are in Nyanza or Migori, the Kurias must be there. If you are in hon. Ogindo’s county, you must not leave the Suba out. It is here. I do not know what you are talking about.

(Proposed amendment by Mr. Ogindo withdrawn)

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Otichilo, do you have a further amendment before we make it part of the Bill?

Dr. Otichilo: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 18 be amended,

(a) in subclause (2) by inserting the word “competitively” immediately after the words “shall be” and the words “and

(b) in subclause (4) by inserting the word “competitively” immediately after the words “shall be appointed”.

The import of this is that we would like to see the Board Members and the secretary to the Board competitively recruited.

The Temporary Deputy Chairlady (Dr. Laboso): What sub clause are you amending?

Dr. Otichilo: We are amending sub clause 18 on page 3430.

The Temporary Deputy Chairlady (Dr. Laboso): So, we have gone back to Subclause

2.

Yes, Mr. Minister!

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, the amendment by the Committee has brought in Article 232 of the Constitution on how you recruit people and it talks about competitiveness, men and women, ethnicity and all that. So, what you want to bring in there has been covered by the Committee by bringing Article 232. So, it will be surplus but it is already there.

Dr. Otichilo: Okay. Then I wish to withdraw and concur with the Committee.

(Proposed amendment by Dr. Otichilo withdrawn)

The Temporary Deputy Chairlady (Dr. Laboso): Thank you. So, that one has already passed.

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

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

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 20 of the Bill be amended:-

- (a) in sub-clause (1) by inserting the words “and transparent” immediately after the words “through a competitive”
- (b) In sub-clause (2) by inserting the following new subparagraph immediately after subparagraph (vi) of paragraph (d)-
“(vii) any other relevant field”;

We are adding the word “transparent” so that the appointments are not merely competitive but are also transparent. We are also widening the horizons by including the basket clause “any other field” so that we allow the participation of professionals from other relevant fields.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo) Madam Temporary Deputy Chairlady, I agree because Article 232 has not been brought in here like in the previous ones. So, I will accept that.

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

(Clause 20 as amended agreed to)

(Clauses 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 agreed to)

Clause 31

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 31 of the Bill be amended-

- (a) in sub-clause (1)-
 - (i) deleting the word “functions” appearing immediately after the words “departments whose” and substituting therefor the word “services”; and
- (b) in subclause (2)-
 - (i) by inserting the words “subject to Article 252(1)(c) of the Constitution and” at the beginning of the subclause”; and
- (c) in subclause (4) by deleting the words “and the services of such applicant with the Commission shall be terminated in accordance with the terms of the contract of employment”.

Madam Temporary Deputy Chairlady, the intention of this proposed amendment in (a) and (b) is to clarify that Clause 31 is subject to Article 252(c) of the Constitution which empowers the Commission to recruit its own staff. With regard to (c), the amendment is intended to clarify the provision with regard to employment of staff of the Commission.

(Question of the amendment proposed)

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

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

(Clause 31 as amended agreed to)

Clause 32

Dr. Otichilo: Madam Temporary Deputy Chairlady, I wish to withdraw the amendment I proposed to Clause 32.

(Proposed amendment by Dr. Otichilo withdrawn)

(Clause 32 agreed to)

Clause 33

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 33 of the Bill be amended by inserting the following new paragraphs immediately after paragraph (b)-

“(ba) information relating to the progress made in the registration of title in land”;

“(b) recommendations made by the Commission to the county or national governments or to any state agency or organ and the action taken on such recommendations”; and,
“(bc) any impediments to the work of the Commission.

Madam Temporary Deputy Chairlady, this amendment seeks to provide for certain specific issues in addition to those already specified that the report of the Commission should address.

(Question of the amendment proposed)

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

(Clause 33 as amended agreed to)

Clause 34

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 34 of the Bill be amended by inserting the words “within six months” immediately after the words “Commission shall”.

This amendment seeks to provide a timeline – that is six months – within which the Code of Conduct should be developed.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Dr. Laboso): Are you okay with that, Minister?

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, within six months of what? We should qualify it. Is it within six months after the commencement of the Act or after the appointment of the members of the Commission?

Mr. Musyimi: Yes, after the appointment of the members of the Commission, Madam Temporary Deputy Chairlady.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I agree with the amendment subject to that amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, therefore, I put the Question, which is that Clause 34 be amended as proposed by the Committee and further amended by the Minister.

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

(Clause 34 as amended agreed to)

Clause 35

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we will have Dr. Otichilo, first.

Dr. Otichilo: Madam Temporary Deputy Chairlady, I wish to withdraw this amendment. I will introduce it in the Land Bill.

(Proposed amendment by Dr. Otichilo withdrawn)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, Dr. Ottichilo's amendment was on Sub-Clause 1. The Departmental Committee has an amendment on Sub-Clause 2.

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 35 of the Bill be amended by inserting the words "or any other provision of this Act where no specific penalty is provided," after the words "contravenes sub-section (1)".

This amendment is intended to provide for general offences, in addition to the specific offences.

Thank you.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I have a problem with the amendment to the extent that the Constitution requires that if you want to punish anybody for an offence, then that offence must be defined and specified. You cannot say "any violation of any provision is punishable". Clause 35 creates specific offences, but in Sub-Clause 2, you are saying "any violation of the provisions of this Act is an offence." That would be unconstitutional because "violation" would mean anything that is provided here. I cannot think of an example off-head but "any violation" of an Act of Parliament cannot be an offence. The law requires that when you want to punish somebody, the offence must be specified, so that every citizen is on notice.

Mr. Musyimi: Madam Temporary Deputy Chairlady, I have consulted with the Committee Members and we have agreed with the position of the Minister.

(Amendment withdrawn)

(Clause 35 agreed to)

Clause 36

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 36 of the Bill be amended by inserting the words "and such regulations shall be tabled before Parliament for approval".

The proposed amendment is to emphasize the importance of tabling these regulations before the National Assembly for scrutiny and approval.

Thank you.

The Temporary Deputy Chairlady (Dr. Laboso): The Minister is fine with the amendment?

Mr. Kioni, I was told yours is similar to the Committee's?

Mr. Kioni: Madam Temporary Deputy Chairlady, I just wanted to confirm that my amendments are exactly the same as those of the Committee.

(Question of the amendment proposed)

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

(Clause 36 as amended agreed to)

New Clause 4A

Mr. Kioni: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the following new clause be inserted immediately before Clause 5-
Powers of the Commission as a body corporate.

4A. In addition to the powers of the Commission under Article 253 of the Constitution, the Commission shall have powers to-

- (a) acquire, hold charge or dispose of movable and immovable property; and,
- (b) do or perform all such other things or acts for the proper discharge of its functions under the Constitution and as may lawfully be done or performed by a body corporate.

This deals with the powers of the Commission as a body corporate.

The Minister for Lands (Mr. Orengo): There is a provision of incorporations of commissions and independent offices on Article 253. This is the basis upon which Dr. Otichilo withdrew his amendment. It says each commission shall be a body corporate with perpetual succession and a seal and is capable of suing and being sued in its corporate name. So, I think we should be consistent. In all these constitutional commissions instead of repeating in a different format the provisions of Article 253, we better remain with the provisions in Article 253. I do not know what Mr. Kioni will think about that but it is already there. I am suggesting that we leave it out.

Mr. Kioni: Madam Temporary Chairlady, I can withdraw the amendment if the Minister is comfortable that Article 253 covers what it is that we contemplate to cover under the New Clause 4A.

(Proposed New Clause 4A by Mr. Kioni withdrawn)

First Schedule

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the First Schedule of the Bill be amended-

- (a) in paragraph 1 by inserting the words “and whenever a vacancy arises” immediately after the words “commencement of this Act”;
- (b) in sub-paragraph (a) of paragraph 1 by deleting the words “Public Service Commission” and substituting therefor the words “Office of the President”; and
- (c) in sub-paragraph (e) of paragraph 1-
 - (i) by deleting the words “two persons, of opposite gender, who are citizens of Kenya ” and substituting therefor the words “one person who is a citizen of Kenya”; and

- (ii) by deleting the word “have” appearing immediately after the words “ organizations who” and substituting therefor the word “has”
- (d) in sub-paragraph (f) of paragraph 1 by deleting the words “a nominee of the Kenya National Human Rights Commission” and substituting therefor the words “a nominee of the Association of Professional Societies in East Africa”,
- (e) in sub-paragraph (g) by deleting the words “a nominee of the National Gender and Equality Commission” and substituting therefor the words “a nominee of the Kenya Livestock Marketing Council”

I know that there are some suggestions that we have considered. What we are really trying to do is to provide for the application of the Schedule for filling of vacancies whenever that arises from the membership of the Commission. We want to rationalize that membership in respect of the people who will sit in it. But there has been quite a bit of consultation over the last one or two hours and I would like Mrs. Odhiambo-Mabona to kindly come and make her submission.

Mrs. Odhiambo-Mabona: Thank you, Madam Temporary Deputy Chairlady. I also thank the Chair of the Committee. We were requesting the Minister if he could consider together with hon. Members that the amendments instead have sub-clause (c). Where you have a representative of a Cabinet Secretary we have the representative of the livestock council. Where you have the Kenya National Human Rights Commission, we put the Law Society of Kenya and the National Gender Equality Commission remains intact for purposes of mainstreaming gender. This is also because if you remove the Kenya National Commission on Human Rights, they are sister commissions with the gender commissions. So, their purposes would be the same.

Mr. Ruto: Madam Temporary Deputy Chair, I am wondering--- First of all, I am not too sure who the nominees of the Kenya Livestock Marketing Council (KLMC) are; if these are the ones in Dagoreti Corner who normally sell cows there, the butchers, I think this was the first time they were being represented. I would rather they stay; even the butchers ought to be represented. They can nominate somebody who is not exactly a butcher. He could also be a butcher but he does not have to carry the knives; why do you want to replace them when the Committee considered the matter?

The Temporary Deputy Chair (Dr. Laboso): The Committee, can you tell us the import of including them?

Mr. Musyimi: Madam Temporary Deputy Chair, I have issues. I think what we agreed to earlier on is being slightly amended. On the basis of that, I am uncomfortable with the substituting of the Law Society of Kenya (LSK) for the Association of Professional Societies of East Africa (APSEA). To that extent, I stick with what APSEA. I am prepared to negotiate the rest.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chair, first of all, I think the LSK, and quite a number of us are members of the LSK--- Almost in every Commission, the LSK is represented. So if they miss one out, I do not think they will really--- This private sector alliance, the Gender and Equality Commission and the Kenya National Human Rights Commission, you will get some LSK members in these statutory commissions. But I agree entirely with Mrs. Odhiambo-Mabona except that representation of the Cabinet Secretary is important because this is the implementing Ministry. All the other commissions where there is an implementing Ministry, they always have a representative. So I think the best way to go about it is to have one additional member who shall be from the Kenya Livestock Marketing Council (KLMC), although I do not know who they are and why they are there. I

agree with what Mrs. Odhiambo-Mabona has said, that we leave the Gender Equality Commission (GEC), the KNHRC and then two persons of the opposite gender, one nominated by the Kenya Private Alliance and so on.

The Temporary Deputy Chair (Dr. Laboso): Hon. Members, we are in a bit of a crisis because of time and we need to deal with these two Bills until Third Reading. So, I would wish to move.

(Mr. Kiptanui stood up in his place)

Mr. Kiptanui, I will give you a chance in just a few minutes.

Mr. Kiptanui: Thank you, Madam Temporary Deputy Chair. While I do not have a problem with the proposal by the Committee, how are we addressing the issue of regional balance? You realize that as much as we will have persons nominated by different bodies, at the end of the day they might come from the same region. How do we handle such an issue? This is the issue of diversity.

The Temporary Deputy Chair (Dr. Laboso): Mrs. Odhiambo-Mabona, please take one minute and then the Chair will follow.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chair, I was consulting with the Committee Chair. We have been consulting and the Committee had proposed amendments and requested further amendments to the Committee's amendment. Further to that, hon. Karua had consulted with the Minister and the Minister had suggested you put the LSK instead of APSEA. I would want to say that personally I do not mind whether it is APSEA or the LSK. If the Committee is very passionate about APSEA, I am okay with it. All that I would want to urge the Minister is that he should move, since I cannot move, or the Committee Chair does a further amendment to his own amendment to retain the National Gender and Equality Commission, and instead of the KNHRC have APSEA and then this livestock council. I am really not passionate about it either way, but since the Committee was passionate about it, then it can be an additional member of the Committee.

So, it is my suggestion that we have a person nominated by the Livestock Council, APSEA and the National Gender and Equality Commission. If the Minister is okay with that, I would request that he moves.

The Temporary Deputy Chairlady (Dr. Laboso): Okay, hon. Members, I therefore, put the question that the first schedule be amended as proposed by the Committee---

Mrs. Odhiambo-Mabona: On a point of order, Madam Temporary Deputy Chairlady. I want to stand guided because we had requested for an amendment. So, I do not know how we are moving.

The Temporary Deputy Chairlady (Dr. Laboso): But that is what I am saying; and further amended by". That will cover it.

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Chairlady, as long that is done, I am okay.

The Temporary Deputy Chairlady (Dr. Laboso): That is what I mean.

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

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

The Temporary Deputy Chairlady (Dr. Laboso): There is a further amendment by hon. Otichilo.

Dr. Otichilo: Madam Temporary Deputy Chair, I beg to move:-

THAT, the First Schedule of the Bill be amended-

(a) by deleting sub-paragraph (d) and substituting therefor the following new paragraph-

(d) two persons of opposite gender nominated by the Institute of Surveyors of Kenya and the Kenya Institute of Planners;

(b) by deleting subparagraph (e) and substituting therefor the following new paragraph-

(e) one person nominated by the Kenya Private Sector Alliance who has demonstrated competence and capacity in matters relating to the land sector;

(c) by inserting the following subparagraph immediately after subparagraph (g)-

“(h) a nominee of the Law Society of Kenya”.

The Temporary Deputy Chairlady (Dr. Laboso): It is still the same. It is on the same appointments and the number of persons.

Dr. Otichilo: Madam Temporary Deputy Chairlady, the import of my amendment is that in this Commission, we should have at least, some professionals. I am worried that the way we are going, we may not have professionals. That is why in my amendment, I have proposed that we have at least a representation from the Institute of Surveyors of Kenya and the Kenya Institute of Planners in the Commission.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, the people who will be members of the Commission are in the body of the Bill. This is just a panel. What is in the Schedule is a panel, but for the Commission, you have to look at the composition and administration under the membership of the Commission. That is Clause 7 in the Bill. It shall consist of the Chairperson and eight members, how they are appointed and the qualifications are all there. These include land survey and special planning. They are all there.

The Temporary Deputy Chairlady (Dr. Laboso): I hope the Member is satisfied that this is just a panel. There is a new sub-clause. Do you want to introduce the new sub-clause, hon. Kioni?

Mr. Kioni: Madam Temporary Deputy Chairlady, there is a nominee of the Law Society of Kenya which we have dealt with. The amendment proposes a further inclusion of a nominee of the National Environmental Council. That is even more relevant than most of the other bodies that we have put on board.

The Temporary Deputy Chairlady (Dr. Laboso): Are you happy with that hon. Minister?

Mr. Kioni: Madam Temporary Deputy Chairlady, it is an additional nominee.

The Minister for Lands (Mr. Orengo): To the panel or to the Commission?

Mr. Kioni: To the Commission. That is the First Schedule after (g).

The Temporary Deputy Chairlady (Dr. Laboso): That has already passed, hon. Kioni. We are now talking of the panel in the First Schedule.

Mr. Kioni: Madam Temporary Deputy Chairlady, I know we are constrained of time, but it is on the Order Paper and I expected you to call it out.

(Proposed amendments by Mr. Kioni and Dr. Otichilo withdrawn)

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

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

((First Schedule as amended agreed to)

(Second Schedule agreed to)

(Third Schedule agreed to)

Fourth Schedule

Mr. Musyimi: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Fourth Schedule of the Bill be amended-

- (a) in sub-paragraph (1) of paragraph 3 by deleting the word “appointed” appearing immediately after the words “half of the”; and
- (b) in sub-paragraph (2) of paragraph 3 by deleting the word “appointed” appearing immediately after the words “less than three”.
- (c) in paragraph 4 by deleting the words “with a supporting vote of at least two thirds of members present” and inserting the words “by a majority of the Members

We wish to propose to delete reference to appointed members as all members of the Commission are appointed. I thank you.

(Question of the amendment proposed)

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

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

(Fourth Schedule as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Lands (Mr. Orengo): Madam Temporary Chairlady, I beg to move that the Committee doth report to the House its consideration of the National Land Registration Bill, Bill No.4 of 2012, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Minister for Lands (Mr. Orengo): Madam Temporary Chairlady, I beg to move that the Committee doth report to the House its consideration of the National Land Commission Bill, Bill No.5 of 2012, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE NATIONAL LAND REGISTRATION BILL

Dr. Laboso: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered the National Land Registration Bill and approved the same with amendments.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with Committee in the said Report.

Mr. Ruto seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I beg to move that the Land Registration Bill, Bill No. 4 of 2012, be now read a Third Time.

Mr. Ruto seconded

(Question proposed)

(Question put and agreed to)

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

THE NATIONAL LAND COMMISSION BILL

Dr. Laboso: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered the National Land Commission Bill, Bill No. 5 of 2012, and approved the same with amendments.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

Mr. Ruto seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I beg to move that the National Land Commission Bill, Bill No. 5 of 2012, be now read a Third Time.

Mr. Ruto seconded.

(Question proposed)

(Question put and agreed to)

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

ADJOURNMENT

Mr. Deputy Speaker: Hon. Members, it is now time to adjourn the House. The House stands adjourned until tomorrow, 26th April, 2012, at 2.30 p.m.

The House rose at 8.05 p.m.