

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 26th April, 2012

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATIONS FROM THE CHAIR

DELEGATION FROM UGANDAN PARLIAMENT SEATED IN SPEAKER'S ROW

Mr. Speaker: Order, hon. Members! Hon. Members, I have three communications to make this afternoon. First, I wish to introduce to you and welcome this afternoon a delegation from the Parliament of Uganda seated at the Speaker's Row. They are Members of the Standing Committee on appointments and are here to meet with Members of our Departmental Committee on Administration and National Security. They are:-

1. Hon. Nandala Mafabi Nathan, MP - Leader of the Delegation.
2. Hon. Amombi Betty, MP.
3. Hon. Nakabale Patrick, MP.
4. Hon. Ochwa David, MP.
5. Hon. Gen. Elly Tumwine, MP.
6. Hon. Sebuliba Mutumba Richard, MP.
7. Hon. Ssetongo Theopista Nabulya, MP.
8. Hon. Col. Fred Mwesigye, MP.

They are accompanied by two members of staff, namely; Merab K. Tugezye and Judith Taaka.

On behalf of the House and on my own behalf, I wish the delegation a fruitful and happy stay in Kenya.

VISIT BY PSC DELEGATION TO KAMITI PRISON

Secondly, this morning I led a delegation of the Parliamentary Service Commission to the Kamiti Prison which has the contract to manufacture seats for our refurbished chamber. They are making very commendable progress and endeavouring to produce the highest quality.

Hon. Members, they asked me, and I undertook that I would do so, to convey their greetings to you this afternoon and further to urge you specifically that you uphold the bigger picture that is Kenya, and that you avoid tribalism. I undertook to convey that message and I have done so.

(Several hon. Members stood at the Bar)

I will allow the Members at the entrance to come in.

(The hon. Members at the Bar entered the Chamber)

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

Mr. Speaker: What is it hon. Khalwale, the Member for Ikolomani?

Dr. Khalwale: Mr. Speaker, Sir, I want to thank you for the communiqué in respect of the people who are currently holding the contract of doing our chairs. However, is it in your view, right for people who have got a contract from us to send you to come and remind us that we are tribalists when we are nationalists and those people in prison know this? We have been pushing for the agenda of the nation.

Mr. Speaker: Order, the Member for Ikolomani! As a matter of fact, those persons serving sentence in different prisons in Kenya, which are now better referred to as correctional centres are Kenyans. If they express an opinion particularly, with respect to how they expect their leadership to behave, there is nothing wrong with it.

(Applause)

As a matter of fact, they went further and let us know that they participated in the referendum that brought about the new Constitution and that they voted “Yes”. They said that they expect that we will push for their rights to also vote at the next election. So, even as you make any comments and express sentiments, be aware that they may very well be your voters come the next election.

(Laughter)

Hon. Members, I will now make the final Communication.

EXTORTION/CORRUPTION ALLEGATIONS
AGAINST HON. MEMBERS

Hon. Members it is with grave concern that I have to make the following Communication relating to serious allegations made against Members of this House from the Floor and elsewhere with regard to alleged bribery, extortion and other forms of corruption and criminal conduct.

Hon. Members will recall that on Thursday 19th April, 2012, allegations were made on the Floor of the House that money had been demanded by, or on behalf of a Member of this House from a private sector corporation in relation to a Question that was then pending before the House. These allegations have been followed swiftly by other similar allegations made in the Press and elsewhere in the public domain.

Without commenting on the veracity or otherwise of these yet to be proven claims, I wish to state categorically that in my capacity as the Speaker of the National Assembly, I do not and shall not condone the use of this House or the membership in it for purposes of, or as avenues for corruption or other criminal conduct. No privileges of Parliament shield any person from criminal prosecution for corruption or extortion. As you are all aware, the respect accorded to this House and to its Members is predicated on our conducting ourselves with the highest

standards of integrity, honor and decorum. If these are absent, we lose the moral ground to continue to be Members of this House and to represent the people.

That said, may I also draw the attention of all hon. Members to the provisions of Standing Order No. 79(4) which provides as follows:-

“No Member shall impute improper motive to any other Member except upon a specific substantive Motion of which at least three days’ notice has been given, calling in question the conduct of that Member.”

This rule of debate is important if we are to conduct our proceedings in an orderly manner. The freedom of speech and debate in the House comes with a heavy responsibility both with respect to members of the public and among ourselves. If a Member becomes aware of wrongdoing by another Member, it is incumbent upon him to give notice of a substantive Motion under this Standing Order so that the alleged conduct of the Member is discussed and a resolution by the House is made. The House should not degenerate into an arena for name-calling and accusations and counter-accusations.

Hon. Members, for the foregoing reasons, it is necessary to revisit and clarify the directions issued from the Chair last Thursday. In particular, I wish to draw the attention of Members to the roles and functions of the Committee of Privileges established under Section 10 of the National Assembly Powers and Privileges Act. Section 10(4) of that Act provides that the Committee which is chaired by the Speaker “shall either on its own motion or as a result of a complaint made by any person inquire into any alleged breach by any Member of the Assembly of the code of conduct issued under Section 9, or into any conduct of any Member of the Assembly within the precincts of the Assembly other than the Chamber - emphasis: Other than the Chamber - which is alleged to have been intended or likely to reflect adversely on the dignity or integrity of the Assembly or the Member thereof or to be contrary to the best interest of the Assembly or the Members thereof.”

The Committee of Privileges, after such inquiry, reports its findings to the Assembly together with such recommendations as it deems appropriate and the House then considers the report and the recommendations thereon and may take such disciplinary action against the Member concerned as may be recommended by the House.

The jurisdiction of the Committee of Privileges is, therefore, limited and does not extend to matters which arise on the Floor. The Committee cannot be used as a substitute for what essentially can only be disposed of by the House through a substantive Motion.

Similarly, in matters that arise on the Floor of the House, determinations properly belong to the Speaker or the presiding officer. The Committee of Privileges will not be seized of such a matter. It should be clear from what I have stated that what transpired on the Floor last Thursday both in the manner in which accusations were made and rebutted was not in keeping with our rules. The Committee of Privileges may become seized of the matter, but this will need to happen in accordance with Section 10 of the National Assembly Powers and Privileges Act. Any evidence that is in the possession of any person, whether a Member of this House or otherwise will need to be presented to the Committee.

I call upon any person or persons, any witnesses who may have information or evidence of alleged improper conduct by any Member of this House which will be useful to the Committee of Privileges to not just write or speak about it, but to present the evidence or information without delay to my office for appropriate action. Where the alleged conduct borders on extortion or corruption, all persons are encouraged to additionally report to the relevant law enforcement agencies.

For my part, I beg that where conduct falls properly within the ambit of the various mechanisms of the House, this will be invoked to deal with it. I wish to pledge further the readiness and availability of the institution of Parliament to co-operate where appropriate with law enforcement agencies, so as to ensure that criminal conduct alleged to have been committed by any person in Parliament or within the context of the work of Parliament is investigated and, if necessary, to be prosecuted in accordance with the law. Parliament and its entire Membership is committed to be law abiding.

I thank you.

Mr. K. Kilonzo: Thank you, Mr. Speaker, Sir, for your ruling. I happen to be the Member of Parliament who has been injured by those allegations. I am a family man, a Christian and a Member of Parliament. Aspersion cannot be cast on the integrity of this House through me. On the material day, I was doing nothing, but my national duty as a senior Member of this House who has served for two terms. Anywhere I walk, people look at me with a lot of suspicions as that Member who is an extortionist, who went to Mastermind Kenya Limited and took money. The first salvo was thrown to me by my good friend, hon. Mbadi who alleged that on that material day that the Question came to the Floor of the House, I was outside and I walked in here. As we all know, the proceedings of this House are televised live.

Further to that, I had to go to great lengths to request you, as I had reported to the Clerk of the National Assembly, that the Question be deferred because I would be in Mombasa. I wish to table tickets---

Mr. Speaker: Order, Member for Mutito! Please, resume your seat for a moment. Member for Mutito, I have listened to you and I know that you have every right to protect your image. You have every right to say your piece as may be necessary, but Member for Mutito, we have procedure which we must follow in this House. On every day that the House sits, it has an order of business. What you are saying now is legitimate and, indeed, as you rightly say, you have been injured and you are entitled to mitigate the damage that may have been done to you, if not control the damage that has been done. But you will have to do so procedurally. Within the rules, I will be prepared to give you time to proceed under the Standing Order No.76 or any other Order, that is enabling. But for the moment, I am afraid, I cannot let you go beyond where you have reached. Of course, you have been heard. Kenyans have heard you. I had to give you that indulgence.

Mr. K. Kilonzo: Mr. Speaker, Sir, I stand guided. While I stand guided, I can still tell you this and I also want Kenyans to know.

Mr. Speaker: Order! Order, Member for Mutito! Please, do not tell me, tell the House.

Mr. K. Kilonzo: Mr. Speaker, Sir, I want to tell the House that if, indeed, it is proved that I was involved in any matter of extortion as an hon. Member of this House, I am even willing to tender my resignation as a Member of the House. That is how grave this matter is to me. It is also incumbent upon my colleagues who also made those statements against me – because I am injured – to substantiate or withdraw and apologize. If that does not happen and we end the matter the way we have ended it, Kenyans will still ask themselves how the matter was resolved.

Mr. Speaker: Order, Member for Mutito! You have done well and I really appreciate. I understand your pain. But I will be prepared to accommodate you if you invoke the provision of the Standing Order No.76. You may even go further and invoke the provisions of the Standing Order No.79, if you desire. You have all those avenues open to you.

Ms. Karua: On a point of order, Mr. Speaker, Sir. From the records, you will notice that on that day, the Assistant Minister for Finance, Dr. Oburu Odinga, offered severally to substantiate. In order that Parliament does not appear to the public like we are brushing away or covering the matter, even though there may be no order on the HANSARD ordering him to substantiate today or the nearest day, since he was ready, able and willing and people may mistake us for applying the rules mechanically, is it possible for him to be allowed to substantiate? This matter is serious and affects, not just one Member, but the reputation of the entire House. Would it be in order for the Member to be allowed to substantiate?

The Assistant Minister for Finance (Dr. Oburu): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Dr. Oburu! It will not be in order for the Member to be allowed to substantiate in the light of the Communication that I have made because the Member is imputing improper motive on the part of the Member for Mutito. For Dr. Oburu to supply any further information to the House in the context in which he made those allegations, he must bring a substantive Motion and give three days notice to the Member for Mutito and to me as the Speaker of his intention to bring that notice of Motion. He will then avail whatever evidence he has to the House.

Hon. Members, in the meantime, though belatedly, I direct that all those allegations as were made by the hon. Oburu, Member for Bondo, be expunged from the record of the House because they are unlawful if you read our Standing Orders. Similarly, if the Member for Mutito made any allegations against any other Member, imputing improper conduct, I urge that they be also expunged. The rule must apply fairly and equally with the same force to all Members.

Thirdly, I direct the Member for Bondo, who is also an Assistant Minister for Finance, if you are bold and truthful in the allegations that you made, please, make that report to me away from the Chamber. I also direct that you make that report to the Commissioner of Police, so that those matters can be investigated. If not, Member for Mutito or whoever is talking from their seat, the Communication that I made applies and it is clear.

The Minister for Finance (Mr. Githae): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: What is it, hon. Githae? On this matter, I want us to refrain.

The Minister for Finance (Mr. Githae): Mr. Speaker, Sir, thank you for that ruling and guidance. But I want to seek your guidance on another issue. That is because we seem to be our own worst enemies.

Mr. Speaker, Sir, you recall that every time there is a hot issue in Parliament, Members of Parliament go to the media and state that money “passed” hands. When you ask them: “Can you give evidence?” They say: “I was told. I heard.” What do we do to those Members of Parliament who are actually maligning this Parliament? They are bringing this Parliament into disrepute and yet, when you ask them for evidence, they say: “I was told. I heard.” What do you do to those Members of Parliament because they are the ones who are destroying the good name of this Parliament?

Mr. Speaker, Sir, I was not aware of what happened between my Assistant Minister and hon. Kiema Kilonzo. But now that I am seized of the matter, I will handle it. But I want your guidance. What we do to those Members of Parliament who go to the media and say money has “passed” hands. When we ask for evidence, we do not see it.

(Several hon. Members stood up in their places)

Mr. Speaker: With respect to the guidance that hon. Robinson Githae, who is also the Minister for Finance is seeking, I would like to say the following:-

That, first, as communicated by the Deputy Speaker when he was presiding, we will be convening a meeting of the Privileges Committee. We will want their resolutions as to what should be done to those Members that have made allegations away from Parliament. I do not want to pre-empt whatever resolution those Members will make in the Committee. Among those Members, there are many who are professionally competent to make proper decisions.

Secondly, as I have said in that Communication and, indeed, I was careful--- I was only guided with respect to the choice of words. But I did say - and I believe on behalf of all of us - that Parliament is committed to be law abiding. That statement is very loaded. I do not want to say much more beyond what I have said in that Statement. You are very likely to witness very drastic change soon.

(Several hon. Members stood up in their places)

Hon. Millie Odhiambo, I will do no repeat!

Mrs. Odhiambo-Mabona: Mr. Speaker, Sir, I would also want to get your direction. There are some of us who speak from the Floor. I have spoken on certain issues on the Floor and Members are welcome to see what I said on the Floor.

Mr. Speaker, Sir, nonetheless, I speak of facts. If Members want me to state facts, I will state facts. But I chose my words, because I respect Members. I do not want to wash our dirty linen in public. But if Members want me to state, I will state because I have facts.

Hon. Members: State! State!

Mr. Speaker: Order! Order, hon. Members! Member for Juja.

Mr. Kabogo: Mr. Speaker, Sir, I am pleasantly surprised by your very last words because you have ordered that names or matters that were mentioned be expunged from the records of Parliament – that is on the HANSARD. Yet, you know very well the hon. George Saitoti came here and mentioned my name amongst other Members. Finally, for them to come here and say: “We have investigated. There is nothing to do with drugs with these people.” Yet, we requested that our names be expunged and they were not expunged.

Mr. Speaker, Sir, how do you want us to deal with this matter?

(Applause)

Mr. Speaker: Order, Member for Juja! On that, I will revisit that matter and I will provide communication on it.

Dr. Khalwale: Mr. Speaker, Sir, just in pursuance to what the hon. Njeru Githae has said, I want to thank you for that directive. But I also want to appeal to you to also direct and give us guidance in this House.

As the Chairman of the Public Accounts Committee - and I believe I am speaking on behalf of Chairs of other Committees of Parliament - we are greatly offended and our reputation has been adversely affected, when none other than the Prime Minister on two occasions in a public forum at the Inter-Continental Hotel - where I attended - and at a public forum at the Windsor Hotel, where the Speaker of the National Assembly attended together with the Deputy Speaker---. The Prime Minister also participated in casting aspersions against us, as Chairs of Committees and as members of Committees. If, indeed, the highest standards that you are talking

about will be applied, I would like to request that you find it necessary to apply those very high standards to the Prime Minister of Kenya, so that he understands that parliamentary democracy cannot function unless there is an able, willing and active opposition to a Government that can - continuously for 24 hours a day - preside over the Executive?

Mr. Speaker, Sir, it is not enough for you just to protect us the way you did at those forums. It is also important that when you are seated in that great seat of power, that you find the Prime Minister to have fallen short of the provisions of the law.

Mr. Speaker: Order, Member for Ikolomani. I have heard you. I will incorporate that in the direction that I will make with respect to the request by the Member for Juja.

Mrs. Shebesh: Mr. Speaker, Sir, I want to thank you for that ruling because I have been a victim of imputing improper motive on a Member and you referred that issue to the Committee.

Mr. Speaker, Sir, however, I still feel that there needs to be some further clarity so that we are not at risk of questioning a ruling made by another Chair on that Chair, who then precipitates a debate to go the way it did when I raised my issue, and the way it did the last time when Mheshimiwa K. Kilonzo and hon. Oburu had the exchange.

Mr. Speaker, Sir, with all due respect to the Deputy Speaker and the Panel that sits on that Chair, I believe that there are directions that have been given twice on an issue that has led this House to continue to debate and to take issues to where we have taken them today---

Mr. Speaker: Order, hon. Shebesh! I will not encourage you to discuss the Deputy Speaker or any Member of the Panel under this Order. I rule that out of order, I am afraid. You can do it differently. Certainly, if you are not sure, please come to my Chamber when I rise and I will assist you.

(Mrs. Shebesh stood up in her place)

Order, hon. Shebesh! You cannot continue. The line you have taken is extremely treacherous and I will not permit you to go beyond there. Please, just note. I am not saying that what you are saying is frivolous or spurious. I am just saying the point at which you are doing it and the content of what you are saying is not right. Not as at where we are. But I am prepared to give you further directions away from the Chamber.

Mrs. Shebesh: Mr. Speaker, Sir, I will respect your ruling.

Mr. Speaker: Kindly. Thank you. What is it, Member for Gichugu!

Ms. Karua: On a point of order, Mr. Speaker, Sir. I am just concerned that it has been said that action will be taken against anyone who has talked about corruption in the House. I cannot disclose names because I will be going outside--- I will be imputing improper motive on an hon. Member. But relating to events of last week and the interest rates, I am aware that - I have been told by at least two hon. Members - the PNU wing of Government was being paid at Pan Afric Hotel while the ODM wing was being paid at the Gazebo; and these are facts. So, please let us not be gagged.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Order, hon. Members! Order! Order! Order, hon. Member! Hon. Members, I have heard the hon. Member for Gichugu just as you have all heard her. But

coming from the Communication I have made not very long ago, I am afraid that is not very good use of the privileges of the House.

(Applause)

Hon. Member for Gichugu, being a seasoned lawyer like me, please, file that report with the Commissioner of Police, and please---

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): On a point of order, Mr. Speaker, Sir.

(Several hon. Members stood up in their places)

Mr. Speaker: Order! Order! Order, hon. Members! Order! Member for Gichugu, let me have a report on it as well, so that I can take it to the Powers and Privileges Committee, on which you also serve, as far as I am aware; let me have that report.

Hon. Munya, and that will be the last one, I am afraid.

(Mr. Mbadi stood up in his place)

Mr. Speaker: Order, hon. Member for Gwassi! Order!

The Assistant Minister for East African Community (Mr. Munya): Mr. Speaker, Sir, whereas I agree with your ruling and directives on what hon. Martha Karua needs to do, it is extremely unfair when you have made such a ruling for her to stand up again and make generalized accusations that are intended to injure the reputations of hon. Members of this House.

(Applause)

Mr. Speaker, Sir, I was at the Pan Afric myself, but I was not paid a cent. Anybody who saw me in the cameras that the Press had there and has heard what Ms. Karua has said, the impression they will have is that I was there to be paid money. I do not take this kindly at all, especially from somebody who is trying to be the President of this Republic. This is not how to win votes and become the President of Kenya.

(Applause)

It is utterly ridiculous! She needs to withdraw it before she goes to file whatever she is supposed to file.

Mr. Speaker: Order! Order! I have issued directions that will apply to the hon. Member for Gichugu. The hon. Member for Gichugu has undertaken to actually file a report with the Commissioner of Police. She has further indicated that she will supply information to me. So, let it rest there. Please, do not allow---

(Mrs. Kilimo stood up in her place)

Order! Order! Hon. Kilimo, do not insist! This matter must rest where it is, I am afraid!

(Mrs. Kilimo uttered some words from her place)

Order! Order! Hon. Kilimo! You are not going to speak to me from where you are seated! I will not allow that! This House has some integrity and respect that we must all defer to!

Next Order.

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

Mr. Speaker: Next Order!

PETITION

(Mr. Mureithi stood up in his place)

Mr. Speaker: The hon. Member for Ol Kalou, do you have a Petition?

Mr. Mureithi: Thank you very much, Mr. Speaker, Sir. Just before we went on recess, you ruled that the Minister for Public Service would respond to the Petition I had submitted. I have discussed with him; I also cleared yesterday with the Deputy Speaker that I can raise it today if the Minister is ready to respond to it; it is on the people with disability.

Mr. Speaker: As at where we are, I am afraid, maybe you should raise it on Thursday next week, if it is a petition.

Mr. Mureithi: I am well advised, Mr. Speaker, Sir.

Mr. Speaker: Very well; be guided accordingly.

Next Order. Chair of the Committee on Justice!

PAPERS LAID

The following Papers were laid on the Table:-

The Judicial Service Commission Estimates of Recurrent Expenditure, Vote R126

The Judiciary Estimates of Recurrent and Development Expenditure, Votes R26 and D26, for the Year Ending 30th June, 2013

(By Mr. Baiya)

The Summary and Report of the Auditor-General on the Appropriation Accounts, Other Public Accounts and the Accounts of Funds of the Republic of Kenya for the Year 2010/2011

The 2012/2013 Estimates of Recurrent Expenditure for the Year Ending 30th June, 2013

The 2012/2013 Estimates of Development Expenditure for the Year Ending 30th June, 2013

The Financial Statement and Budget Framework for the Fiscal Year 2012/2013

The Annex of Estimates of Revenue and Expenditure of State Corporations of the Kenya Government for the Financial Year ending 30th June, 2013

(By the Minister for Finance)

The Annual Anti-Corruption Report by the Director of Public Prosecutions, 2011

(By the Attorney-General)

(Loud consultations)

Mr. Speaker: Order, hon. Members! Please, lower the level of your consultations so that we hear the Attorney-General.

Next Order.

QUESTIONS BY PRIVATE NOTICE

Mr. Speaker: The hon. Member for Rarieda?

DETAILS OF FOREIGNERS WORKING AT SHELTER AFRIQUE

Eng. Gumbo: Mr. Speaker, Sir. I rise to ask the Minister for Foreign Affairs the following Question by Private Notice; because of the matters involved, I request your indulgence to read out the Questions in full.

Mr. Speaker: You may proceed

Eng. Gumbo: Mr. Speaker, Sir. I beg to ask the Minister for Foreign Affairs the following Question by Private Notice.

(a) Could the Minister provide the names, qualifications and positions currently occupied by all foreign nationals working at Shelter Afrique offices as well as names and number of foreign nationals (if any) currently occupying General Service positions?

(b) Have all foreign nationals working at Shelter Afrique complied with Immigration Laws for the entire duration of their stay/work in Kenya?

(c) Is the Minister aware of the on-going recruitment of Team Leaders for Human Resource, Internal Audit and Treasury and, if so, could the Minister table the list of all applications for these positions, the shortlisted candidates and the criteria for their short listing?

The Assistant Minister for Foreign Affairs (Mr. Onyonka): Mr. Speaker, Sir, I beg to reply.

(a) The analysis of the staffing position at Shelter Afrique indicates that out of the total number of 42 members of staff who work for Shelter Afrique, 17 are foreigners and 12 of them come from African countries; 25 are Kenyans. Out of the 20 internationally recruited staff, the list is as follows:-

Twenty five Kenyans and 17 foreigners. The total number of workers at Shelter Afrique is 42. Internationally recruited members are seven Kenyans and 13 foreigners. The total number of internationally recruited staff is 20.

Locally recruited staff consists of 18 Kenyans and 4 foreigners, three of whom are brothers from Burundi and one Ugandan. Persons in management position consist of one Kenyan and four foreigners. The total number is five.

People in professional service positions include six Kenyans and nine foreigners. The total number is 15.

When you look at the persons in the General Service Section, there are 18 Kenyans, four Burundians and one Ugandan. The total number is 22.

I wish to table this list.

(Mr. Onyonka laid the document on the Table)

(b) Mr. Speaker, Sir, the relevant Ministry communicated this matter to the Ministry of Foreign Affairs and, therefore, the report is as follows:-

(i) there is no requirement to declare upon entry into Kenya, whether a person holds dual citizenship;

(ii) companies that require expatriate employees apply for work permits on the strength of the documents produced and the justification of the recruiting agency, company or institution;

(iii) the work permits are issued in accordance with the immigration laws of our country; and,

(iv) all foreign nationals working for Shelter Afrique were issued with work permits as per the agreements between Shelter Afrique and the Government of Kenya.

(c) Mr. Speaker, Sir, the Ministry has been informed that Shelter Afrique is doing a recruitment of team leaders for internal audit and Treasury. These recruitments have actually taken place and were completed before the end of last year. As a result of this exercise, nationals of Guinea, Ghana and Zimbabwe were respectfully recruited. The recruitment for team leader/human resource manager is currently going on. The Ministry wishes to inform the House that it has not requested for the list of all the applications for the positions that Shelter Afrique would like to advertise.

Eng. Gumbo: Mr. Speaker, Sir, I thank the Assistant Minister for his answer, but I am sure he is aware that Shelter Afrique is an international organization which enjoys diplomatic status in Kenya. The United Nations rules are very clear. For organizations like Shelter Afrique all general service positions are reserved for residents of the host country. Could he explain why three Burundians and one Ugandan are doing general service work in Kenya in a regime where we know that there are so many jobless Kenyans?

Mr. Onyonka: Mr. Speaker, Sir, the Ministry of Foreign Affairs actually takes with weight the concerns raised by the hon. Member as to why these neighbours of ours were given the jobs. But there is only one issue that came up which he may not be aware of; that Kenya is actually a signatory of what we call the Protocol on the Establishment of the East African Community Common Market and Annex for the Free Movement of Persons. Therefore, since we are signatories to this provision, this creates an abolition of any discrimination which is based on nationality; regarding the right of East African citizens or any other individuals who belong to a country where Kenya has actually signed bilateral agreements with those countries.

(Dr. Khalwale stood up in his place)

Mr. Speaker: Order, Member for Ikolomani! Let the Assistant Minister finish.

Mr. Onyonka: Mr. Speaker, Sir, secondly, the Protocol on the annex on the right of residents states that East African citizens will be guaranteed the right to reside in any partner state and at the same time along with their spouses and children for the purpose of employment within our region.

Dr. Khalwale: Mr. Speaker, Sir, before I ask my supplementary question, allow me to point out a small point of order, which I think is important.

Mr. Speaker: Why do you not incorporate it in your supplementary question? You are a brilliant man and can cover both.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. I am concerned with part “b” of the Question. This is because as you will notice, this is a matter that touches on the security of this nation. If the Assistant Minister is telling us that there are no provisions when somebody lands at our airports; whether he is coming as a dual citizen and so on and so forth, could he confirm whether they do not have an instrument that allows the Ministry of Immigration and Registration of Persons to consult with the Ministry of Foreign Affairs, so that the following lapses in security did not take place:-

(i) Mr. Mar Zar of Senegal worked with Shelter Afrique for three years as a legal assistant without a work permit;

(ii) some nationals like Mr. Zokpo Doe of Togo have worked here without a work permit; and,

(iii) a national of Mali called Nene Ogmar has the “husband “in the country without a work permit?

Mr. Speaker, Sir, obviously, this has got national security implications.

Mr. Speaker, Sir, finally, is he really in order to say that free movement of persons within the Community is tantamount to permission to do any job that you want in the region?

Mr. Onyonka: Mr. Speaker, Sir, I will try and clarify to Dr. Khalwale. I said that free movement of persons within the East African region is simply for the individuals who belong to the East African Community. Given the protocols that we have signed, they are actually free to look for jobs, work and live in Kenya without any interference from any quarter whatsoever. So, that is not an issue.

Mr. Speaker, Sir, on the issue of the other individuals whom he has stated, this issue came out from a note which was sent over to the Ministry of Foreign Affairs at the Department of Immigration, which was anonymous. It contained communication from employees of Shelter Afrique who have been feeling that to a large extent, most of the jobs in Shelter Afrique should actually be occupied by Kenyans and not necessarily any other African individuals who may have been qualified or had been recruited by Shelter Afrique. Shelter Afrique is an international organization and they are free to allow any person, particularly from the African continent who may seek employment within Shelter Afrique in Kenya. These individuals are entitled to receive this employment. If any law was broken, then these individuals should have been arrested and so far, none has been arrested.

Mr. Mbadi: Mr. Speaker, Sir, for this company, Kenya is the host country and actually the major shareholder, or has the highest shareholding at 10 per cent. Looking at the management of this company, you realize that most of the senior staff are from West African Countries. The Managing Director is from Mauritania, which has only one per cent shareholding. My question is: Is the Assistant Minister aware that a company called People Development that is charged with the responsibility of recruiting staff is based in Senegal, and that is why the majority of the senior staff recruited are from West African Countries? If the Assistant Minister is aware, what is he going to do to ensure that Kenyans are not disadvantaged by this company, which has no interest in our region and resides elsewhere?

Mr. Onyonka: Mr. Speaker, Sir, to be honest with you, the Ministry of Foreign Affairs is not aware of the recruiting agency that has been recruiting individuals to work for this international organization for the simple reason that if we were to go out and start finding out how individuals are recruited, that would be micro-managing these organizations. Soon or later, we would start micro-managing UNEP and other organizations. What I would say is that we believe that the recruitment was done on merit and the best qualified individuals got the jobs; if

anything has gone wrong we will follow up just to make sure that there is fairness and equity, so that Kenyans do not lose out.

Eng. Gumbo: Mr. Speaker, Sir, as it has been said by hon. Members before me, Kenya is one of the largest shareholders at Shelter Afrique, yet the senior managers come mainly from countries with very low shareholding, like the current Managing Director whose country has less than 1 per cent shareholding. What is the Government doing to ensure that senior management positions at Shelter Afrique correspond with Kenya's shareholding in the organization?

Mr. Onyonka: Mr. Speaker, Sir, the Ministry of Foreign Affairs has a department which deals with international jobs; the latest information we have got is that--- We have sought a clarification from Shelter Afrique not to try to micro-manage them, but to make sure that we can discuss and agree with them that they must recognise the fact that Kenya is one of the largest shareholders in Shelter Afrique. We hope that they will try and correct any semblance of injustice which may have been done to the Kenyan community. Otherwise, we appreciate that Shelter Afrique has its headquarters in Nairobi, and we hope that it will continue to have a fruitful working relationship with our Government.

Mr. Speaker: Hon. Member for Kimilili.

EVICITION OF DOCTORS FROM HOUSES IN MACHAKOS DISTRICT HOSPITAL

(Dr. Eseli) to ask the Minister for Housing the following Question by Private Notice.

(a) Why have doctors based in Machakos District Hospital been asked to vacate the Government houses by 30th April, 2012 in favour of magistrates and judges?

(b) What alternative accommodation has been arranged for them?

(c) What is the Government policy on housing for public servants?

The Minister for Housing (Mr. Shitanda): On a point of order, Mr. Speaker, Sir. The hon. Member for Kimilili is currently out of the country, I believe, on Parliamentary business.

Mr. Speaker: Thank you, hon. Member for Malava, who is also the Minister for Housing. We will give the hon. Member for Kimilili the benefit of doubt now that you say he is away supposedly on Parliamentary business. Therefore, I defer this Question to Thursday next week.

(Question deferred)

Hon. Member for Kirinyaga Central!

WRANGLES AT BINGWA SACCO KERUGOYA BRANCH

Mr. Gitari: Mr. Speaker, Sir, I beg to ask the Minister for Co-operative Development and Marketing the following Question by Private Notice.

(a) Is the Minister aware of the leadership wrangles amongst the management of Bingwa Sacco Society, Kerugoya Branch, and that the supervisory elections, which were scheduled to take place on 19th April, 2012, did not take place due to the wrangles?

(b) What measures will the Minister take to ensure that the Annual General Meeting (AGM) scheduled for the 27th April, 2012 goes on uninterrupted?

The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware.

(b) All the stakeholders, who include the complainants, directors of Bingwa SACCO Society, the district security team and my Ministry, have agreed that the AGM will proceed as scheduled on 27th April, 2012 uninterrupted, and the cancelled elections will be held on 11th May, 2012.

Mr. Speaker, Sir, 27th April, 2012 is tomorrow and all arrangements are underway to ensure that security shall be provided tomorrow.

Mr. Gitari: Mr. Speaker, Sir, while acknowledging that it is a good answer, in part (a) of the Question, the Assistant Minister has said that she is aware that there are wrangles within Bingwa SACCO, which is within our county. What steps is she taking so that we can bring these wrangles to an end?

Mrs. Kilimo: Mr. Speaker, Sir, the wrangles are due to management and they will be solved on 11th May, 2012 when those concerned will hold their elections.

Ms. Karua: Mr. Speaker, Sir, I just want the Assistant Minister to confirm to the House that Bingwa SACCO Society is one of the best managed SACCOs in the country, and the fact that there are members who have been suspended by the SACCO does not mean that it is crumbling, and that the Ministry will ensure that the SACCO and its members are protected so long as they operate within the law.

Mrs. Kilimo: Mr. Speaker, Sir, indeed Bingwa SACCO is one of the best managed SACCOs in Kirinyaga County. However, because of one director--- This complaint is from one director who had served for 12 years, and members feel that they should replace this representative from Mukure zone. He is the one who brought this complaint. All this will be resolved when they hold their election on 11th May, 2012.

Dr. Khalwale: Mr. Speaker, Sir, one of the commonest causes of wrangles in SACCOs like Bingwa is issues of integrity. At Bingwa, members of the SACCO are very uncomfortable with one of the directors; he was even unable to get a certificate of good conduct from the police. Could she tell us what she is doing to ensure that only men and women of integrity are allowed to be in charge of SACCO funds?

Mrs. Kilimo: This will be ensured by training the membership of the SACCO because it is the members of SACCOs who elect their officials.

Mr. Gitari: Mr. Speaker, Sir, tomorrow at the AGM, Bingwa SACCO Society will pay a dividend of 13 per cent. There are some members who have said that they want to go and disrupt the AGM. I just hope that the Assistant Minister has put security in place, so that they do not disrupt it, because 72 members are waiting to be paid their dividend. Has she liaised with security officers to make sure that the AGM takes place tomorrow without any disruption?

Mrs. Kilimo: Mr. Speaker, Sir, I am glad that even the Assistant Minister for Internal Security is here. In the answer that I have given, I have said that after consultations with all the stakeholders, that is the complainant, the directors of Bingwa SACCO Society, the district security team and my Ministry, it has been agreed that the AGM will take place tomorrow and elections will be conducted on 11th May, 2012. I want to confirm to the hon. Member that as soon as I finish answering this Question, I will liaise with my colleague, Mr. Ojode, to ensure

that what we agreed upon during the stakeholders' meeting on security provision is implemented tomorrow.

ASSAULT/EVICTION OF STUDENTS FROM
YUSUF HAJI SECONDARY SCHOOL

Mrs. Shebesh: Mr. Speaker, Sir, I would like to ask the Ministry of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Is the Minister aware that 28 students of Yusuf Haji Secondary School who hail from outside Ijara (but mostly from Galole Constituency), were assaulted and forcefully evicted from the school on 24th March, 2012 and, if so, how many students were injured in the incident?

(b) What measures will the Minister take to ensure that the affected students continue with their studies in the school?

(c) Could the Minister consider compensating all the students whose personal belongings were taken away by fellow students?

I want to indicate that I have not received a written answer.

Mr. Speaker: Fair enough, it is a Question by Private Notice. Its nature is urgent. Assistant Minister, proceed.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, this Question was brought to my Ministry. If you look at the content of the Question, it should have been directed to the Ministry of Education. What I have done is to redirect this Question to the Ministry of Education for it to appear on the Order Paper next week. Further, I have spoken to the Questioner and she also feels that what I have done is the right thing.

Mr. Speaker: Mrs. Shebesh, have you agreed?

Mrs. Shebesh: Yes, Mr. Speaker, Sir.

Mr. Speaker: Order, hon. Members! Of course, the Assistant Minister does not have powers to redirect Questions. Perhaps that is what the Member for Gwassii wants to raise. So, Mr. Assistant Minister you have taken it upon yourself to discharge a duty that you are not empowered to do. What you should have done is to write to me to say that this Question does not belong to you and we would have redirected it from my office.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir that is true. However, on several occasions, you have said that we should stick to what we are asked for. If you asked me whether I am aware I will say that no, I am not aware. Again, if you asked me whether this Question belongs to us, I will say no, it does not.

Mr. Speaker: Order, Mr. Assistant Minister! That is not what you have done in this case. You have instead answered by saying that you redirected it. You do not enjoy that prerogative. So, please, Mr. Assistant Minister, restrain from usurping powers that are not within your province.

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

Mr. Speaker: Very well! This Question will then appear on the Order Paper on Thursday, next week because it is a Question by Private Notice and it is urgent.

(Question deferred)

Yes, Hon. Sheikh Dor!

ORAL ANSWERS TO QUESTIONS

Question No.1063

NUMBER OF POLICE RECRUITS IN EACH COUNTY

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

(a) how many police officers were to be recruited in each county in the recently concluded recruitment exercise; and,

(b) whether he could provide a list of names and respective districts of origin of all the persons who went through the exercise in Lamu and Mombasa counties.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I seek the indulgence of the Chair to answer this Question later on because I was held up in a meeting of our SACCO this afternoon and it consumed some of my time. I have spoken to the hon. Member that we defer it to two weeks from today so that I can prepare.

Mr. Speaker: Sheikh Dor, do I have your concurrence?

Mr. Yakub: Yes, Mr. Speaker, Sir, you do have.

Mr. Speaker: Very well! Mr. Assistant Minister. We understand where you were. Did you follow the example of Bingwa?

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

Mr. Speaker: Bingwa did 10 per cent, will you do 10 per cent?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, we made good profits. We made about 7.7 per cent. We were almost at Bingwa. Next time we will even surpass Bingwa's profit.

(Laughter)

(Question deferred)

Question No.1507

CIRCUMSTANCES SURROUNDING KILLINGS IN GARISSA

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

(a) under what circumstances Messrs. Moulid Ali Digalle, Abdinoor Huurshe and Sheikh Mohamud Umar Feen were killed along Kismayu Road in Garissa Town on 4th January, 2011;

(b) what the motive of the killings was; and,

(c) what steps the Government has taken to apprehend the killers.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, again, I will seek the indulgence of the Chair to answer this Question later on. I have already spoken to the Questioner and we agreed that after two weeks from now, I will be able to answer this Question.

Mr. Speaker: Hon. Duale, is it agreed?

Mr. Duale: Mr. Speaker, Sir, we have not agreed on the duration and I want to set the record straight.

Mr. Speaker: But you have agreed on deferment?

Mr. Duale: Yes, we have agreed on deferment, Mr. Speaker, Sir.

Mr. Speaker: Which is a good day for you?

Mr. Duale: On Thursday, next week, Mr. Speaker, Sir.

Mr. Speaker: Mr. Assistant Minister, will Thursday be okay with you?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you are aware that you have deferred many Questions belonging to my Ministry and maybe I will not have time to---

Mr. Speaker: What about the week after Tuesday?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, after the other Tuesday, it will be fine.

Mr. Speaker: Tuesday after next week?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, yes, Tuesday after next week.

Mr. Speaker: It is so directed!

(Question deferred)

Question No.1079

ILLEGAL SALE OF LAND UNDER
PLAN TKA/4/03/2 IN THIKA

Mr. Kabogo asked the Minister for Lands:-

(a) whether he is aware that the Ministry issued letters of allotment to residents of Thika Kiangombe under Plan No.TKA/4/03/2 in the year 2003 but titles have not been issued to-date;

(b) whether he is also aware that land dealers are purportedly selling some parcels of the allotted land to unsuspecting members of the public, thus causing tension within the area; and,

(c) when he will issue title deeds to those allocated the land to save members of the public from losing money to fraudsters.

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

(a) I am aware that the Ministry issued letters of allotment to residents of Thika Kiangombe in the year 2003. Titles for the residents were to be issued subject to payment of allocation fee and subsequent to survey. Some of the allottees have paid but no titles have been issued due to lack of Registry Index Map.

(b) I am not aware that land dealers are selling some parcels to unsuspecting members of the public and causing tension in the area. However, if the purported selling of land to unsuspecting members of the public is happening, then it is criminal offence that should be reported to the police immediately. Any officer in my Ministry found to be colluding with the unscrupulous land dealers will face the full force of the law notwithstanding other disciplinary measures.

(c) The Ministry will issue title deeds to the allottees once the Registry Index Map is available as the private surveyor has not finalized the survey.

Mr. Kabogo: Mr. Speaker, Sir, some of these Ministers are never serious with the business of this House. I say so because the last time this Question came to Parliament, the Minister requested for more time and he said:

“I have talked to the hon. Member and I have told him that the answer I have is not sufficient or good enough. I am looking for more information so that when I come here, I can answer the Question efficiently.”

The same answer he gave then, that he was not satisfied then is the same answer he has brought today. Is that fair for the House?

Mr. Speaker: Order, the Member for Juja! It is actually in order. It is possible that the Assistant Minister is now prepared better than last time to deal with your supplementary questions. So, if you are not satisfied with this answer, interrogate it further.

Mr. Kabogo: Mr. Speaker, Sir, the Assistant Minister has said that his Ministry will issue title deeds once people pay. I said to him, when he spoke to me last that people have paid but they are not being issued with title deeds. How many years is it from the time Kimunya was in that Ministry until today?

Mr. Speaker: Order, the Member for Juja! Decorum! From when hon. Kimunya was in that office?

Mr. Kabogo: Mr. Speaker, Sir, when the then Minister, hon. Amos Kimunya issued letters of allotment. That was in 2005.

Mr. Speaker: Thank you.

Mr. Kabogo: I have the documents here.

Mr. Speaker: Order, the Member for Juja! Now, we go back to the Question. That is all you needed to deal with.

Yes, Mr. Assistant Minister!

Mr. Rai: Mr. Speaker, Sir, what has delayed the issuance of title deeds for this particular land is that there was a dispute. The survey was to be done by a private surveyor who has not finalized the work. That is why up to now we are still awaiting the Registry Index Map. That is the truth of the matter. It is after they resolve the issues on the ground, the survey is finalized and the Registry Index Map is provided that we can proceed to issue title deeds.

Mr. Kabogo: Mr. Speaker, Sir, if you were listening to what the Assistant Minister has said he never raised the issue of survey. He has said that those who pay will be issued with title deeds. Now, he is bringing in a new matter. Which is which?

Mr. Rai: Mr. Speaker, Sir, I told him that titles for the residents were to be issued subject to payment of allocation fees and subsequent survey which survey has not been finalized. How do I proceed to issue title deeds in this case?

Mr. Mbadi: Mr. Speaker, Sir, I believe it is the duty of the Government to facilitate registration of title deeds. It is the responsibility of the Government to ensure that the survey is

completed. Could the Assistant Minister categorically tell us when the title deeds will be issued to these people rather than giving us stories about what is supposed to be done?

Mr. Rai: Mr. Speaker, Sir, this was a statement that was agreed upon by a self-help-group. It was agreed that they meet the survey expenses. That was the understanding. So, nowhere can I say that I will proceed to issue title deeds until the survey has been finalized.

Mr. Mbuvi: Mr. Speaker, Sir, could the Assistant Minister explain why this Ministry is using title deeds as campaign tools because of late, we have seen leaders issuing title deeds in public rallies?

Mr. Rai: Mr. Speaker, Sir, my Ministry is charged with issues of title deeds. So, the issue of politics does not arise in this matter unless I am told where I went to campaign with title deeds saying that I need to be voted in because I was issuing title deeds.

Mr. Kabogo: Mr. Speaker, Sir, it is not news that very recently, the Minister was somewhere issuing title deeds. That is not private land. That is land that was given to Kenyans by the Government. Could the Assistant Minister undertake to visit Kiangombe with me, so that he can understand what is going on? Then he can, subsequently, issue titles? Could he undertake to come with me?

Mr. Rai: Mr. Speaker, Sir, I would not mind to give an undertaking to go to Kiangombe, but that will not mean that I am going to issue title deeds on that particular day. I will just go there to acquaint myself with the situation on the ground. But the position is that unless they resolve the wrangles on the ground and complete the survey, it is not possible to issue title deeds. But I can give an undertaking to visit that particular area, maybe, within the next two weeks or so. That way, I will acquaint myself with what is on the ground.

Mr. Speaker: Fair enough! Mr. Assistant Minister, arrange with hon. Kabogo to visit the area with a view to having the matter resolved.

Mr. Rai: Mr. Speaker, Sir, I will do that.

Mr. Speaker: Very well. Next Question by Mr. Warugongo!

Question No.1177

ILLEGAL SUBDIVISION OF L.R.1246/1/3/R

Mr. Warugongo asked the Minister for Lands:-

(a) whether he is aware that Plot No. L.R. 1246/1/3/R measuring 285 acres in Narumoru/Thegu Location owned by the Agricultural Mechanization Service in the Ministry of Agriculture has been sub-divided and transferred to two private developers and, if so, who the beneficiaries are; and,

(b) whether the sub-division was regular and who authorized it.

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

(a) I am aware that Plot No.L.R.1246/1/3/R measuring 285 acres in Narumou/Thegu Location belongs to the Agricultural Mechanization Service in the Ministry of Agriculture and has been subdivided and transferred to two private developers. The beneficiaries are Phelis Nduta Mugenyu, Simeon Muchiri Wanjau and a public purpose construction of a dam and a school.

(b) The subdivision of land into three parcels was actually recommended by the Provincial Commissioner (PC) of Central Province as the Chairman of the Provincial Plot

Allocation Committee. The title cannot be reverted unless by way of compulsory acquisition as provided for under Cap.295 of the Laws of Kenya since the allocation was done procedurally.

Thank you.

Mr. Warugongo: Mr. Speaker, Sir, I would like the Assistant Minister to clarify two things. One, why is there no access through the two pieces of land for the communities living around to take their cattle to the river? Two, how many acres did the two beneficiaries get?

Mr. Rai: Mr. Speaker, Sir, Phelis Nduta Mugenyu got 110 acres. Muchiri Wanjau got 80 acres and the land that was reserved for the school and the dam measures 95 acres.

Mr. Mbadi: Mr. Speaker, Sir, I have just heard the Assistant Minister say that the land was allocated from the Agricultural Mechanization Service in the Ministry of Agriculture as a result of advice given by the Provincial Administration. Could the Assistant Minister clarify to this House and the people of Kenya which powers the Provincial Administration has in recommending transfer of Government or public land to private hands?

Mr. Rai: Mr. Speaker, Sir, the PC then in 1982 was the Chairman of the Plot Allocation Committee. It was through his recommendations to the Commissioner of Lands that the subdivision was done.

Mr. Warugongo: Mr. Speaker, Sir, we are putting up some irrigation dams in my constituency and for that matter, we may not need that dam because we are going to take care of that. Could the Assistant Minister allow us to construct a huge market where farm produce will be sold instead of that dam?

Mr. Rai: Mr. Speaker, Sir, once an application is put to my Ministry, I will look into it and I will advise whether it is appropriate to put up that particular market.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Is it in order for the Assistant Minister not to answer my question fully? I asked---

Mr. Speaker: Order! The point at which you are raising that point of order is actually out of order. That is because the Assistant Minister has already answered, and even answered the subsequent question. So, you cannot revisit it that way.

(Mr. Imanyara stood up in his place)

Mr. Speaker: Mr. Imanyara, is that a point of order?

Mr. Imanyara: No, Mr. Speaker, Sir. It is a supplementary question.

Mr. Speaker: The Question is spent. Mr. Warugongo asked the last question. Next Question by Ms. Karua!

Question No.1204

ILLEGAL ALLOCATION OF LAND AT MUKURUKWA REUBEN

Ms. Karua asked the Minister for Lands:-

(a) whether he is aware that Government land, numbers LR 209/10219 and LR 209/10220, situated in Mukurukwa Reuben and meant for a community school, police post and dispensary, were illegally consolidated and issued to an individual as LR 209/11887;

(b) whether he is also aware that the said land has been used to secure a loan; and,

(c) what measures he will take to ensure the said parcel of land reverts to the community.

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

(a) I am aware that the Government land, LR209/10219 and LR209/10220 then vacant situated at Mukurukwa Reuben were consolidated and issued to an individual as LR No.209/11887.

(b) I am also aware that the said land has been used to secure a loan.

(c) There is concrete evidence that there is full and well developed school and police post on the land, including a dispensary. In the circumstances, I have directed that the title deed be revoked and new titles granted for the public utilities. The existence of public utilities on the land makes public interest and purposes paramount. The Government respects private property and private interests on land. I have directed the Commissioner of Lands subject to the conditions on LR209/11887 and relevant provisions of the Constitution to determine how the individual concerned can be accommodated. That is if the allocation to the private individual was lawful and the land was, indeed, available for alienation and the terms and conditions of the grant or lease have been complied with and, therefore, not amenable to forfeiture.

Ms. Karua: Mr. Speaker, Sir, whereas I am now satisfied with the answer up to and including the revocation, I am very concerned with the tone of the Assistant Minister wanting to reward public land grabbing. Is he aware that the copy of title attached to the answer in which I had supplied him, on the face of it, it shows that this title was issued on 1st December, 1990? But at the back of this title where the conditions are, it reads: “10th day of March 1993. It is clearly showing that, that is a fraudulent deal? On what basis would you be compensating if, even on the face of it, it looks like a fraudulent deal?

Mr. Rai: Mr. Speaker, Sir, I have actually made myself very clear. I have directed the Commissioner of Lands to investigate this particular title and find out whether the allocation was proper or not. Once I get that information, I will actually look into it. So, whatever is being raised is part of the evidence that will assist me in trying to unravel this particular matter.

The Assistant Minister for Water and Irrigation (Mr. Waititu): On a point of information, Mr. Speaker, Sir.

Mr. Speaker: Mr. Assistant Minister, do you want to be informed by your counterpart?

Mr. Rai: No, Mr. Speaker, Sir.

Mr. Speaker; Order, Mr. Waititu! The Assistant Minister does not wish to be informed. The way this matter has been transacted, I am afraid; I will take the last question. Ms. Karua!

Ms. Karua: Mr. Speaker, Sir, I express satisfaction in the manner he has answered, except on the issue of possible compensation, which he has promised to look into. I just want to thank the Assistant Minister once again and urge him to ensure that he protects public utilities.

Mr. Speaker; Indeed, the matter is actually settled. The Assistant Minister, you are thanked. Follow up to ensure that the public interest is protected.

Next Question by Mr. Chachu!

Question No.1438

FACTORS TO DETERMINE “SPARSELY POPULATED”

Mr. Chachu asked the Minister for Justice, National Cohesion and Constitutional Affairs:-

(a) what operational factors are used in determining a “sparsely populated” area within the meaning of Article 89(6) of the Constitution; and,

(b) what areas are currently designated as sparsely populated.

The Assistant Minister for Justice, National Cohesion and Constitutional Affairs
(Mr. Cheptumo): Mr. Speaker, Sir, I beg to reply.

(a) Sparsely populated areas are those areas that have a population density that is equal to or less than the national average as determined under the Kenya National Housing and Population Census of 2009. The average population density of Kenya is 66 persons per square kilometre.

(b) The areas that are designated as sparsely populated are as indicated in the list attached to the written answer.

Thank you, Mr. Speaker, Sir.

Mr. Chachu: Mr. Speaker, Sir, this Question is really about effective representation of Kenyans under the Constitution. North Horr which is 38,950 square kilometres with two persons per square kilometre is categorised with other constituencies, including the ones with 63 or 64 persons per square kilometre. If the Government really wants to ensure that Kenyans are effectively represented, what will it do to constituencies such as North Horr and Laisamis, which are sparsely populated to a level that they have population densities of even less than two persons per square kilometre?

Mr. Cheptumo: Mr. Speaker, Sir, what the hon. Member has raised is, indeed, a big concern, but the operational factor that was applied is that of population. It is true that in terms of land mass, North Horr is bigger than other constituencies, but the operational factor that was applied is the population in relation to the total area for the country. So, I really do not have a problem now. As it is now, we are applying the provisions of the Constitution – that is the population quota as opposed to the size of the land.

Mr. Duale: Mr. Speaker, Sir, the Assistant Minister is supposed to uphold justice in this country. Article 89 of the Constitution, to which the Member for North Horr has referred, talks of a number of parameters as far as delimitation is concerned. These include population, community interest, landscape and communication. If in the delimitation of constituencies only one parameter was used, could he confirm to the House that the process was illegal?

Mr. Cheptumo: Mr. Speaker, Sir, the Question was very specific and I confined my answer to the issues raised by the Member for North Hor. Indeed, apart from population density, other factors that were taken into account are geographical. The process is very clear under the Constitution. Article 89 is very clear that factors to be considered include geographical features, urban centres, community of interest and means of communication. So, I confirm that it is not only population that was taken into account, but also other factors, as outlined in the Constitution.

Mr. Chachu: Mr. Deputy Speaker, Sir, the same Constitution provides a framework to enable the people of North Horr and others to be effectively represented. Under Article 100 of the Constitution, the Ministry concerned could actually enable and enhance the representation of such Kenyans. Could he consider, under Article 100 of the Constitution, the people of North Horr to be more effectively represented? As it is now, they are hardly represented.

Mr. Cheptumo: Mr. Speaker, Sir, the Constitution also provides that after every eight or 12 years, a further review should be done. In the interim, Article 100, which my brother has referred to, is an issue that I may not want to undertake to this particular House that we will look into. You realise that this process has been concluded. The creation of new constituencies and

new wards is ongoing. Therefore, in my view, that is an issue which will be considered in the next review. It will not be proper for me to make an undertaking to this House at this point in time.

Mr. Mbadi: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to give the Member for North Horr false hope when he knows very well that even though Article 89(5) recognises geographical features, community of interest and means of communication, Article 89(6) ties that to a formula? So, even though the place is expansive, you can only vary upwards or downwards of 40 per cent, and not beyond that percentage? Why is he giving the hon. Member false hope?

Mr. Speaker: Order! Order, Member for Gwassi! You have made your point, but I do not agree that the Assistant Minister is giving false hope. He has given genuine hope. The people of North Horr can make representations, which the next organ that is going to be reviewing delimitation of constituencies or review thereof can consider for the next review. That is actual hope.

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

Mr. Speaker: Order, hon. Millie Odhiambo! As at where we are, I am afraid, we must come to the end of Question Time. Therefore, Question No.1109 going on to Question No.1451 are deferred to appear on the Order Paper beginning Wednesday morning and to be distributed fairly over the week to take priority over Questions due then.

Question No.1109

LIST OF ACCOUNTING/ENGINEERING
STAFF IN GOVERNMENT DEPARTMENTS

(Question deferred)

Question No.1219

STALLING OF COMMUNITY MARKET
CENTRE PROJECT IN GATIMU

(Question deferred)

Question No.1021

PROVISION OF CORRECT ROAD DESIGNS

(Question deferred)
Question No.1159

PAYMENT OF DUES TO MOHAMED ABDIKARIM

(Question deferred)

Question No.1451

EXECUTION OF AGREEMENT BETWEEN
MINISTRY AND KNUT

(Question deferred)

Mr. Speaker: Next Order!

STATEMENTS

Mr. Speaker: Hon. Members, again, in view of the nature of the business before the House, I am afraid that we will not be able to take Statements which are due today, except for the Statement that is issued by the Leader of Government Business and then we will take requests prompting for Statements which have not come.

ORDER OF BUSINESS FOR THE WEEK COMMENCING 2ND MAY 2012

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I thank you. I will, indeed, be very brief.

Mr. Speaker, Sir, further to the provisions of Standing Order No.36(4), I wish to take this opportunity to make the following Statement with regard to the Business for next week.

I am sure that hon. Members will have noticed that Tuesday, 30th April will be Labour Day, a public holiday. I hope hon. Members will remember to stand with the workers of this country on that day. Therefore, the House will resume its sitting the next Wednesday morning to continue with debate on His Excellency the President's State of the Nation Address.

The House will also consider a Motion to extend the period of passing the Memorandum from His Excellency the President on the County Governments Bill, Bill No.1 of 2012 as well as the Financial Management Bill. I want to give notice that we will require a two-thirds majority. This is a matter that the House Business Committee was able to deliberate on because we have overshot the time that is given to us by the Constitution. Therefore, we will require a two-thirds majority of the membership of this House to extend that period. We proposed to deal with this matter next Wednesday in the afternoon. The House will also consider the Supplementary Appropriations Bill during the same week.

Mr. Speaker, Sir, finally, the House Business Committee will meet on Wednesday after the morning session to consider business for the following week.

Thank you.

Mr. Mbadi: Mr. Speaker, Sir, many times we come to this House from recess very ready to transact business and especially to try to implement the Constitution that we gave ourselves. I just want to get from the Leader of Government Business, since the elections are not too far off when will we have the legislation on leadership and integrity in this House so that hon. Members and Kenyans can start internalizing and knowing the kind and calibre of leaders that they need? When will we debate the Public Finance Management Bill which requires that this House extends time and will require two-thirds majority? Can the Vice-President and Minister for Home Affairs give us an indication?

Finally, matters of security are important and paramount. There is a requirement that we legislate on national security organs including the National Security Intelligence Service (NSIS)

by August, this year. It would be appropriate if this Government gave us an indication as to when these Bills will be brought to this House so that we are not rushed in order to avoid passing legislations which will turn out not to have met the expectations of the people of Kenya?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I thank the Member for Gwassi and wish to assure him that the two pieces of legislation which he has referred to, namely the matter on national security as well as the legislation dealing with integrity pursuant to Cap.6 of the Constitution are being worked on and both of them have a deadline of 28th August. I think he can prepare to be able to deal with this matter at that time. But I know that the Ministry of Justice, National Cohesion and Constitutional Affairs as well as the Attorney-General's office are working hard in this regard.

Secondly, I think the hon. Member did not hear me when I talked about the need to extend by two-thirds majority the Financial Management Bill which we propose to do next Wednesday afternoon. I think we will have to send out a four-line whip so that all of us are here because there is little we can do about this other than extending it by two-thirds majority. Otherwise, I agree with him that this House is up to the speed that is required of us to be able to deal with the full implementation of the Constitution.

Thank you, Mr. Speaker, Sir.

POINTS OF ORDER

DEPORTATION OF BILAL PHILIPS

Mr. Duale: Mr. Speaker, Sir, two months ago I sought a Ministerial Statement from the Minister for Immigration and Registration of Persons on the deportation of an international Muslim scholar by the name of Bilal Philips. It is now two months and this Statement has not come to this House. Could the Chair direct the Leader of Government Business to ask the Minister of State for Immigration and Registration of Persons to deliver that Statement next week on the deportation of the Muslim scholar two months ago?

Mr. Speaker: Leader of Government Business, that request for a Statement has been pending for a long time indeed.

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I propose that we deal with these pending Ministerial Statements next week and the week after so that none of the hon. Members will really have to stand to request for Ministerial Statements. I think we need to look at the HANSARD again, and perhaps the Clerks-at-the-Table could help us with all these requests so that we have them dealt with once and for all. But in the case of the Member for Dujis, I will have the Minister of State for Immigration and Registration of Persons make this Statement next week.

Mr. Speaker: Fair enough! Yes, the Member for Kamukunji.

DEMOLITION OF BUILDINGS IN NAIROBI

Mr. Hassan: Mr. Speaker, Sir, I have two outstanding replies on two Ministerial Statements that I requested. The first one, six months ago I sought for a Ministerial Statement on the demolitions that took place in Nairobi and specifically in my constituency. This Statement was to be made by the Attorney-General.

GRENADE ATTACK AT MACHAKOS COUNTRY BUS STATION

The second one is the Ministerial Statement I requested on the insecurity in the wake of the grenade attacks at the Machakos Country Bus Station. I have not had any response to those two Ministerial Statements requests that I made.

Mr. Speaker: Order, the Member for Kamukunji! To whom was the one with respect to the terror attacks at Machakos Country Bus Station directed to?

Mr. Hassan: The Minister of State for Provincial Administration and Internal Security, Mr. Speaker, Sir.

Mr. Speaker: Fair enough! Let us start with the Attorney-General. Six months is excessive!

The Attorney-General (Prof. Muigai): Mr. Speaker, Sir, I want to inform the hon. Member the good news that this Statement has come to the House from my Chambers. I want to apologise that it took a bit of time because I was co-ordinating six Ministries to input into the Statement. It is now available in the Clerk's Office and I will be happy to deliver it next Thursday.

Mr. Speaker: Mr. Attorney-General, if it is ready we have a little more time on Wednesday morning.

The Attorney-General (Prof. Muigai): As you direct, Mr. Speaker, Sir.

Mr. Speaker: That will be more convenient. The Member for Kamukunji please note that it will come on Wednesday at 9.00 a.m.

The Attorney-General (Prof. Muigai): And my apologies to the hon. Member, Mr. Speaker, Sir.

Mr. Speaker: The Minister in charge of Internal Security, could you inform us about the Statement on the terror attack?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you remember yesterday I did mention to the Chair that I had some Ministerial Statements which I had promised to deliver. The Chair directed me to deliver the same today. You have also ruled that we are short of time so, it might not be possible to deliver the hon. Member's Statement and that of Ekwee Ethuro, which I was supposed to deliver yesterday. So, it is for the Chair to re-direct the Assistant Minister.

Mr. Speaker: That is understandable, Mr. Assistant Minister. Can you do that on Wednesday morning because we will have adequate time on Wednesday morning, next week?

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

Mr. Speaker: Come with both Statements and we will take them.

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

Mr. Speaker: Very well.

Yes, the Member for Gwassi!

INACCURACIES/INCONSISTENCIES IN REVENUE ACCOUNTS

Mr. Mbadi: Mr. Speaker, Sir, remember you directed the Minister for Finance to bring a Statement which I had requested for with regard to revenue accounts and the inaccuracies and inconsistencies in the same accounts. This Statement was supposed to come on Tuesday, last

week. The Minister promised to do it on Thursday but he did not. I was expecting it on Tuesday but it did not come. Now the week is ending and I cannot see the Minister and he is not communicating. Could you kindly crack the whip so that this Minister can bring this Statement to this House especially now that we are just about to begin the processing of the estimates of revenue and expenditure?

Mr. Speaker: Leader of Government Business, this particular Statement has been pending for the past five months or so. I gave directions which should have enabled the Minister to deal with the matter expeditiously. Can he bring it on Thursday, next week?

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, that is why I pleaded with the Chair to have the Clerks-at-the-Table work with my office to scrutinize all these requests for Ministerial Statements particularly those that have been pending for as long as this one. The Minister for Finance arrived early this morning from a World Bank meeting. I had a meeting with him, and I know that if I tell him to come and issue this Statement to my accountant colleague, he will only be glad to do so next week.

Mr. Imanyara: Mr. Speaker, Sir, you will have noticed that it has now become a practice on the part of this Government that when Ministerial Statements are requested, they invariably stand up and say the Statement will be given next week then they immediately go to sleep and it takes three or four requests sometimes five, and with respect to the last one, six months before they can come forward to give the Statement. Could you make this the subject of a communication giving clear deadlines and instructions that it is actually disorderly conduct for them to give assurances to the House that they will deliver these Statements on a particular day and then proceed to go to sleep?

(Applause)

The Vice-President and Minister for Home Affairs (Mr. Musyoka): Mr. Speaker, Sir, I disagree vehemently with my learned friend that the Government ever goes to sleep. That indictment is clearly uncalled for. However, I want to assure him that we are going to work very hard. I know he has been working very hard in Imenti Central and elsewhere, sometimes at odd hours, but we will do the best we can to make sure that we live up to the expectations of this House. Even before the Speaker makes that Communication, I want to give assurance that I am going to write, as soon as the requests are clearly elaborated, particularly those that have been pending, to all the Ministers, so that before we go for the next recess, this House will have been satisfied that Ministers have come to the Floor and given those Ministerial Statements.

Mr. Speaker: Fair enough! I just want to confirm that information as to which Statements are pending is available. Leader of Government Business, you will be furnished with a list which will indicate when the request was made and when the undertaking to issue the Statement was due and has not been honoured. I want to agree with you and to confirm that the Government has not gone to sleep at least from the perspective of the Legislature because we are part of the Government.

(Laughter)

Mr. Imanyara: Mr. Speaker, Sir, I was referring to the Executive arm of the Government which is led in this House by the Leader of Government Business.

Mr. Speaker: That I may not vouch for, but for the Legislature, I can authoritatively say what I have said.

That brings us to the end of Order No.7 and we will want to take the next one.

WITHDRAWAL OF BILLS

The Attorney-General (Mr. Muigai): Mr. Speaker, Sir, I wish to seek your indulgence that I will not be able to deal with two items that come after Item (i), The Land Bill. I wish to withdraw those two Bills if you permit me.

Mr. Speaker: You have my indulgence because the Standing Order No.123 empowers me to grant you that permission.

Proceed then.

The Attorney-General (Mr. Muigai): Thank you very much, Mr. Speaker, Sir. With your permission and that of the House, I wish to withdraw The Companies Bill, Bill No. 23 of 2010 and The Insolvency Bill, Bill No. 22 of 2010 under the Standing Order No.123. The reason being that the Cabinet, a week ago, approved newer versions of these Bills being The Companies Bill 2012 and The Insolvency Bill 2012, which I wish to introduce to the House next week.

Mr. Speaker: Order, hon. Members! In the absence of any objection to the Attorney-General's request to withdraw the two Bills at Order No.8, namely The Companies Bill, Bill No. 23 of 2010 and The Insolvency Bill, Bill No. 22 of 2010, I order that the two Bills be withdrawn.

*(The Companies Bill and The Insolvency
Bill withdrawn)*

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[Mr. Speaker left the Chair]

IN THE COMMITTEE

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

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, we are on Order No.8. The Minister for Lands, this is your time now. We are on the Committee of the whole House on the Land Bill, Bill No.6 of 2012.

THE LAND BILL

Clause 2

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

THAT, Clause 2 be amended by deleting the interpretation of “riparian reserve” and substituting therefor the following new interpretation-
“riparian reserve” means land adjacent to the ocean, lake, sea, rivers, dams and water courses as provided under the Survey Act or any other written law.

The justification is that that definition as appears in the Survey Act of Kenya---

The Temporary Deputy Chairman (Mr. Manyara): Minister, since it has been published and circulated, just indicate as contained in the Order Paper so that we can move fast.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, yesterday, Members were requiring justification. So, if there is no requirement for justification, then I move the 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)

Mr. Gunda: Mr. Temporary Deputy Chairman, on the Chairman’s behalf, I beg to move:-

THAT, Clause 2 of the Bill be amended-

(a) by inserting the following new definition in proper alphabetical sequence-
“county executive committee member” means the county executive committee member responsible for matters of land”

(b) by deleting the definition of freehold and substituting therefor the following new definition-

“freehold” means the unlimited right to use and dispose of land in perpetuity subject to the rights of others and the regulatory powers of the national government, county government and other relevant state organs.

(c) in the definition of “dwelling house” by deleting the word “cartilage” and substituting therefor the word “curtilage”;

(d) by deleting the definition of “joint tenancy” and substituting therefor the following definition-

(e) “joint tenancy” means a form of concurrent ownership of land where two or more persons each possess the land simultaneously and have undivided interest in the land under which upon the death of one owner it is transferred to the surviving owner or owners”.

(f) by deleting the definition of the word “land administration”;

(g) by deleting the definition of the word “land management”;

(h) by deleting the definition of “lease” and substituting therefor the following new definition-

“lease” means the grant, with or without consideration, by the proprietor of land of the right to the exclusive possession of his or her land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease”.

(i) by deleting the definition of the word “leasehold”;

(j) by deleting the definition of “licence” and substituting therefor the following new definition-

“licence” means a permission given by the Commissioner in respect of public land or proprietor in respect of private or community land or a lease which allows the licensee to do some act in relation to the land or the land comprised in the lease which would otherwise be a trespass, but does not include an easement or a profit”.

(k) by deleting the definition of the word “licensee”;

(l) by deleting the definition of “register” and substituting therefore the following new definition- “register” has the meaning assigned to it under the law relating to land registration”.

(m) by deleting the definition of “tenancy in common” and substituting therefore the following new definition-

“tenancy in common” means a form of concurrent ownership of land in which two or more persons possess the land simultaneously where each person holds an individual, undivided interest in the property and each party has the right to alienate, or transfer their interest”.

(n) by deleting the definition of the word “Peri-urban area”

(o) by deleting the definition of the word “temporary purpose”.

(p) by deleting the definition of the word “Rules committee”

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Imanyara): There is also a further amendment from Dr. Wilbur Otichilo. Is he here? The amendment is dropped.

(Proposed amendment by Dr. Otichilo dropped)

There is also a further amendment by hon. Jeremiah Kioni, but it is identical to that of the Committee of Lands and Natural Resources. Being identical, I will mark it as withdrawn. It has already been carried.

(Proposed amendment by Mr. Kioni dropped)

(Clause 2 as amended agreed to)

(Clause 3 agreed to)

Clause 4

Mr. Musyimi: Mr. Temporary Deputy Chairman, I am sorry for coming late. I beg to move:-

THAT, Clause 4 be amended in sub-clause (2) -

(a) by deleting the word “and” appearing at the end of paragraph (j)

(b) by inserting the following new paragraphs immediately after paragraph (j)-

“(ja)affording equal opportunities to members of all ethnic groups”;
“(jb) non-discrimination and protection of the marginalized”; and
“(jc) democracy, inclusiveness and participation of the people.
The reasons are basically editorial.

(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 4 as amended agreed to)

Clause 5

Mr. Musyimi: Mr. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 5 be amended in sub-clause (1) by deleting paragraph (c).
The reason for this amendment is that co-tenancy is not a form of land tenure.

(Question of the amendment proposed)

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

(Clause 5 as amended agreed to)

Clause 6

Mr. Ogindo: Mr. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 6 be amended-
(a) by deleting paragraph (b);
(b) in paragraph (e), by deleting the word “set” and substituting therefor the words “coordinate the formulation of”;
(c) by deleting paragraph (h).

This would require a number of stakeholders to come into the interplay. The Cabinet Secretary can better play the role of co-ordinating the formulation instead of setting on its own.

(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 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairman (Mr. Imanyara): I notice hon. Mutava Musyimi, you have a proposed amendment.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 7 be amended in paragraph (h) by inserting the words “exceeding 21 years” immediately after the words “leases”
We basically wish to set a time limit for which a title deed may be issued.

(Question of the amendment proposed)

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

(Clause 7 as amended agreed to)

Clause 8

The Temporary Deputy Chairman (Mr. Imanyara): Again, hon. Mutava Musyimi you have a proposal for amendment.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 8 be amended-
(a) by inserting the following new paragraph after paragraph (a)-
“(aa) shall evaluate all parcels of public land based on land capability classification, land resources mapping consideration, overall potential for use, and resource evaluation data for land use planning”;
(b) in paragraph (b) by deleting the words “stakeholders” and substituting therefor the words “the public and relevant institutions
This clause has been redrafted for clarity. It is basically picked and pasted from Clause 9, which we are proposing to be deleted.

(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 8 as amended agreed to)

Clause 9

The Temporary Deputy Chairman (Mr. Imanyara): Again, hon. Musyimi, you have an amendment!

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

THAT, Clause 9 be deleted.

The amendment is intended to move the provisions of Clause 9 and provide them under Clause 8. There seems to be preliminary requirement for the Commission to be able to carry out its mandate under sub-clauses “a” to “c” of Clause 8.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Imanyara): Yes, Minister, you have a point of order!

The Minister for Lands (Mr. Orengo): Was it an amendment or deletion so that the record is clear?

The Temporary Deputy Chairman (Mr. Imanyara): Sorry, I did not get that Minister! We are on Clause 9.

The Minister for Lands (Mr. Orengo): Yes, Clause 9 is a deletion. It is not an amendment.

The Temporary Deputy Chairman (Mr. Imanyara): It is an amendment by deletion.

The Minister for Lands (Mr. Orengo): In fact, I was saying so because he was justifying as if it was a new clause with some provision. But he was saying it was taken care of in another clause.

The Temporary Deputy Chairman (Mr. Imanyara): You are absolutely right. I actually cannot put the Question because it has been deleted. You are absolutely right.

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

(Clause 9 was, accordingly, deleted)

Clause 10

The Temporary Deputy Chairman (Mr. Imanyara): There are two proposed amendments by hon. Martin Ogingo----

It is important, Mr. Musyimi, that you note that because if this is carried through, yours will have to come out.

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

THAT, Clause 10 be amended in sub-clause (3) by deleting the expression “Article 10(3)” and substituting therefor the expression “Article 10”.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): I just thought that it would be neater for hon. Ogingo to withdraw his amendments and then allow the Chair to propose his amendments. I

think the formulation in the amendment by the Committee is good, instead of deleting and then coming back again and saying you want to re-insert sub-article (2).

The Temporary Deputy Chairman (Mr. Imanyara): If hon. Ogindo's proposal goes through, then Mutava's must come out.

The Minister for Lands (Mr. Orengo): It would be distrust.

The Temporary Deputy Chairman (Mr. Imanyara): The two of you can agree who moves. If the language of hon. Mutava is the one you prefer then, you can take the Minister's cue.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, we may not have enough time to consult. But if it is the wisdom of the House that---

The Temporary Deputy Chairman (Mr. Imanyara): Minister, since you have actually gone through it, could you assist them?

(Mr. Ruto stood up in his place)

Let the Minister respond. I will give you an opportunity.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, ours was just to be neat because there is no Article 10(3) in the Constitution. We are just making it neater. So, if you are introducing 10(2), that is a new clause. It does not affect. So, 10(3) does not exist.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, Article 10 as applied generally would not really help us because it is talking about patriotism, human dignity and there are things like participation and non-discrimination. But I think the point that the Committee wanted to bring out was more specifically the provisions contained in Article 10 sub-article 2 which is applicable. But if you look at Article 10(1), it is more of a general provision that anybody, when applying any law or enacting any policy or interpreting the Constitution, must take on board the principles which are laid down in Article 10(2). So, if you read sub-article 3, it says:-

“The Commission shall, in the development of the guidelines under this subsection 1, comply with Article 10(3) of the Constitution.” It should comply with values and principles in Article 10(2). But 10(1) is generally how to go about applying the Constitution. It is just a guideline. Of course, you are right. Article 10(3) does not exist. So, I humbly request that the amendment by the Committee Chair should be sustained.

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Martin Ogindo, what do you say to that?

Mr. Ogindo: Thank you, Chair, in view of what the Minister has just said, I beg to withdraw my amendment.

The Temporary Deputy Chairman (Mr. Imanyara): Withdraw yours so that we allow the---- I request hon. Musyimi then to propose the amendment that he is making.

(Proposed amendment by hon. Ogindo withdrawn)

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

THAT, Clause 10 be amended in sub-clause (3) by deleting the expression “10(3)” and substituting therefor the expression “10(2)”.

The Temporary Deputy Chairman (Mr. Imanyara): Very well, I have noted that hon. Martin Ogindo has withdrawn his proposal for 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 10 as amended agreed to)

Clause 11

The Temporary Deputy Chairman (Mr. Imanyara): There are two proposals for amendment, one from hon. Dr. Wilbur Otichilo.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, Dr. Otichilo has requested me to stand in for him. So, I will move the amendment on his behalf.

I beg to move:-

THAT, Clause 11 be amended in sub-clause (2) by deleting the words “of them” appearing at the end of the paragraph and substituting therefor the words “and climate change”.

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

THAT, clause 11 be amended in sub-clause (3) by inserting the word “with” immediately after the word “dealing”

Basically, Mr. Temporary Deputy Chairman, Sir, the reason is editorial.

(Question of the amendment proposed)

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

(Clause 11 as amended agreed to)

Clause 12

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

THAT, Clause 12 be amended –

(a) in sub-clause (1)-

(i) by inserting the word “public” at the beginning of paragraph (a);

(ii) by inserting the words “in order to ameliorate their disadvantaged position” immediately after the word “groups” appearing in paragraph (b);

(b) in sub-clause (2) by deleting paragraph “(e)” and substituting therefor the following new paragraph”

“(e) Natural, cultural, and historical features of exceptional national value falling within public lands;”

(c) in sub-clause (3) by inserting the words “subject to Article 65 of the Constitution” at the beginning of the sub-clause.

(d) in sub-clause (4) by deleting the expression “subsection (4)” and substituting therefor the expression” subsection (3)”.

(e) by deleting sub-clause (6);

(f) in sub-clause (8) by deleting the word “allocate” appearing immediately after the words “not be” and substituting therefor the word “allocated”

(g) by deleting sub-clause (10) and substituting therefor the following new sub clause-

“(10) where the land allocated under subsection (9) is not developed in accordance with the terms and conditions stipulated in the lease, that land shall automatically revert back to the national or county government, as the case may be.”

(h) in sub-clause (11) by deleting the word “disposition” and substituting therefor the word “ allocation”

(i) by deleting sub-clause (12) and substituting therefor the following new sub-clause-

“(12) The Commission shall make regulations prescribing the criteria for allocation of public land and without prejudice to the generality of the foregoing, such regulations may prescribe-

(a) forms of ownership and access to land under all tenure systems;

(b) the procedure and manner of setting aside land for investments;

(c) procedures to be followed with respect to auction and disposition of land;

(d) appropriate mechanisms for repossession of land given to citizens at the expiry of a lease; and

(e) mechanisms of benefit sharing with local communities whose land has been set aside for investment.

Mr. Temporary Deputy Chairman, Sir, I do not know whether you want to know the reasons, I am happy to say that, one, we feel that allocation by public auction should be a public process. There are also editorial reasons. We also wish to, under “b”, add the words “cultural” and “historical” to give it more clarity and to make it comprehensive. There are one or two other typographical errors.

Thank you, Mr. Temporary Deputy Chairman, Sir.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Imanyara): There is also another proposal by hon. Martin Ogindo but I need to dispose of hon. Musyimi’s amendment first.

*(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)*

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

There are further amendments by hon. Martin Ogindo.

Mr. Ogindo: Thank you, Mr. Temporary Deputy Chairman, Sir. I beg to move:-
THAT, Clause 12 be further amended-

(a) by renumbering subclause (1) as subclause (1A);

(b) by inserting the following new subclause immediately before the renumbered subclause (1A)-

“(1) A person intending to be allocated public land under this Act shall make an application to the Commission or to the county land management board established under the National Land Commission Act and, in the case of an application to the board, the board shall review the application and make recommendations to the Commission as necessary.”;

Mr. Temporary Deputy Chairman, Sir, the import of this is that there is an allocation responsibility on the Land Commission but this needs to be triggered by some way rather than the Commission just doing allocation on its own initiative. So, this is to trigger the motion for the allocation.

Further, there is an amendment to part “c” as follows:-

(c) in the renumbered subclause (1A) by deleting the words “on behalf” and substituting therefor the words “on the recommendation”;

(d) in subclause (2), by-

(i) inserting the words “except where an allocation will lead to an improvement in the state of the public land concerned” immediately after the word “logging” appearing in paragraph (a);

(ii) inserting the words “or county Gazette” immediately after the word “Gazette” appearing in paragraph (g).

Mr. Temporary Deputy Chairman, Sir, the way it stands is that those parcels which are being protected under this clause shall remain in that state forever. But what we are trying to do here is to try to mitigate those challenges by saying that except where an allocation of such land will lead to an improvement of the state of that public land concerned.

Mr. Temporary Deputy Chairman, Sir, there is part (ii) which requires that the notice shall be put in the Gazette. I want to insert the words “or County Gazette” immediately after the word “Gazette” appearing in paragraph (g), so that there is notice everywhere in the country.

(Question of the amendment proposed)

(Mr. Ruto stood up in his place)

The Temporary Deputy Chairman (Mr. Imanyara): Yes, what is it, hon. Member for---
?

Mr. Ruto: Although I can see you are in a hurry, Mr. Temporary Deputy Chairman, Sir--

The Temporary Deputy Chairman (Mr. Imanyara): I am not in a hurry.

Mr. Ruto: Okay, fine. I just wanted to add that it is important to understand that improvement in technology may lead to improvement in the management of some of these lands, including those that are heavily eroded. Improvements cannot be stopped on the basis of law alone. So, if there is a way the land can be improved to avoid this erosion, I think it is important.

I support the amendment.

The Temporary Deputy Chairman (Mr. Imanyara): Yes, Minister.

The Minister for Lands (Mr. Orengo): First of all, by renumbering these sub-clauses, there is going to be a lot of confusion arising out of the amendments moved by the Committee. So, I would plead that in the preparation of these Bills for Presidential Assent or subsequently, the Attorney-General under his general powers can renumber. For example, if there is a new clause, the question of numbering and renumbering, I think we should leave it to somebody who will finally be dealing with the final document.

As to how to trigger applications under Clause 12, it sets out ways of allocating land and it is for that particular reason that under Sub-clause 12 – if you have the Bill – on page 367, it says:-

“The Commission shall make regulations prescribing---”

This means that it will be part of the law. There are also the following words:-

“---the criteria for allocation and for connected matters.” For example, if it is the Commission which will trigger an allocation by, let us say, advertising that there shall be a public auction, it is only after that has been done that you can apply. Or, if it is to be done by lots, you cannot apply until you are told that on a particular day, land will be allocated on the basis of lots. And for your own comfort, just as you have done in the other Bills and as generally is the position with any rules made under any statute, all these regulations must come to the House for approval. We did that yesterday quite meticulously.

So, I would suggest that in the amendment with regard to how to trigger acquisition through an application, we should leave that to the rules and regulations, which will be brought before this House. If you put it the way it is, there will be no way then the Commission will do anything until you apply. If it is by public auction, that application may not be consistent with either the advertisements and/or the question of lots. Or, where it is targeted groups, we can say this is for this project of slum upgrading, and only those who qualify fall under a certain category.

So, unless you now sit down and say, “For each category, this is the way to apply; for this category, this is the way to apply;” that way, I think I would agree. But the way you have put it does not seem to amount to any crystallized position in relation to how the Commission can actually allocate land, and I beg you that we leave it to the rules.

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, you know it is difficult to---

The Temporary Deputy Chairman (Mr. Imanyara): Just before that, the Chair just wants to be certain. The Minister is opposing the amendment.

The Minister for Lands (Mr. Orengo): Yes!

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, it is difficult to know, of course, what was in the Minister’s mind. But here is a situation where we are even talking about this

auctioning of land. I am even unable to understand under what circumstances you would need to auction the land. Would you auction the land to bridge a gap in your finances as a national or county government? Why do you want to auction land? Land is a bank. If you cannot use it now, it can be used 100 years from today. Public land needs to be protected. The Bill, left as it is, appeared as if it was at the discretion of the Commission that they can dispose of land. Now, they may just decide that there is now need. We have to understand that land is a resource. Some counties or governments may want to go out and lure some investors to Kajiado, for example. They may wish that they be given land to come and develop a certain factory or institution. How do they go about that? Do they wait until there is an advertisement? There needs to be some clarity. Although you are mentioning about the rules, we are not sure about that and do not even know when it will come. Really, that is conjecture. You may have good ideas and intentions, but it is not clear in law.

Mr. Ogingo: Mr. Temporary Deputy Chairman, Sir, I hear the Minister very well, but I coming from where hon. Ruto was. I do not know what is in the mind of the Minister, but in my mind, we were appreciating that the National Land Commission has no use for land. It is the person who has need for land that would want to make a request for land and then, the methods set out would be invoked. So, it was our opinion that the person who needs land must trigger the process to the Commission, to find a way of getting him land out of public land. For example, if a county wants to put up a school or institution or there is need to resettle some people in a county, I think it is the user of the land that should trigger the process rather than the Commission. This is the whole philosophy of this amendment.

The Temporary Deputy Chairman (Mr. Imanyara): Chair of the Committee on Land and Natural Resources, what is the Committee's position on this?

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I am inclined to go with the Minister.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, with respect, I think they are not also reading the entire legislation. You are reading it selectively. For example, if you look at Clause 13(1), it reads:-

“The Commission shall, before allocating any public land under this Act, issue, publish or send a notice of action, to the interested parties, at least thirty days before, offering for allocation, a tract or tracts of public land.”

I know that hon. Ogingo wants to be a governor. Clause 13(4) says:-

“At least thirty days prior to the allocation of public land, the Commission shall send a notice to the governor in whose county the public land proposed for allocation is located and to the head of the governing--- ”

Whether it is land belonging to the national, they still have to send that notice to the governor. It is not only the governor, but there are lots of people under that provision that must be notified. So, if you read it all together, you will find that the only way now to fill the gaps is through prescription of the rules. There are other subsequent provisions on, for example, reserved public land on Clause 14. Let us read them all together and then you can see the sense.

The Temporary Deputy Chairman (Mr. Imanyara): Martin, are you persuaded? Your Chairman appears to be persuaded by the Minister's clarification.

Mr. Ogingo: Mr. Temporary Deputy Chairman, Sir, I am almost persuaded and would want to get out of this as soon as possible. What I am not clear about is what gets the National Land Commission into action. That is what I was trying to cure there.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, that is why I am asking him to read everything. For example, for investment, under sub-clause 3 on page 305, the Commission shall set aside land for investment purposes. Then, if you want it for investment, there is a criteria also. So, they are all categories of what land is required for. If it is for investment, it will be reserved and then you can apply according to the rules. For example, there are instances, like in a lot of county councils, where you will find land being given out and not a single person has used it. The Commission has taken it back, but it was for a specific purpose, say, a residential development and there are 200 units. So, as the amendment which has been carried out by the Committee, instead of just talking about an auction, such a cocktail of land under a particular scheme can be sold to the public through a public auction. This means that the Commission and taxpayer get value for it.

The Temporary Deputy Chairman (Mr. Imanyara): We need to come to a conclusion on this.

Yes, Isaac!

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, what we would like to see is an end to holding of land for speculative purposes. If the Commission auctions land, what do the beneficiaries do? Suppose they choose again not to develop or just hold it for speculative purposes. The Minister can assure us that there is no more holding of land for speculative purposes, and that no one will use land specifically for revenue generation. This is because land is a resource which is very important and meets with capital so that they can produce.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, together with that, so that the Minister can have a single go at both; supposing the National Land Commission makes an allocation without anybody asking for it, then that land shall lie there for whatever reason the Commission allocated it. That would be land hoarded indefinitely. So, how do we cure that?

The Temporary Deputy Chairman (Mr. Imanyara): Minister, final one on this because we must move forward now!

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I think there is a provision that I am just trying to put my fingers on. But you will find that in this legislation we have tightened the fact that it is not going to be possible for you to be given land and then you decide to use it for another purpose, and you cannot sell it. We discussed it in Mombasa quite extensively and Mr. Ogindo who is a Member of the Committee should have been there. This is one of the areas where people were kind of feeling that this---

The Temporary Deputy Chairman (Mr. Imanyara): I think he says that he is persuaded. You have given the assurances.

Member for Lari, what is it that you are bringing up?

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, I am also trying to bring more light on this issue in Clause 12. The clarification is already contained in point 12.

The Temporary Deputy Chairman (Mr. Imanyara): So, you are persuaded by the Minister?

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, I concur with the position taken by the Minister.

The Temporary Deputy Chairman (Mr. Imanyara): Very well!

The Minister for Lands (Mr. Orengo): Mr. Chairman, Sir, I have found it at sub-clause 9 on page 306. It reads:

“Public land allocated under this section shall not be sold, disposed of, subleased or subdivided, unless it is developed for the purpose for which it was allocated.”

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Ogindo, I think you have gotten the assurances. Are you in a position to withdraw this proposal?

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I wish to withdraw the amendment.

(Proposed amendment by hon. Ogindo withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): Very well! I will now put the question.

Mr. Gunda: Mr. Temporary Deputy Chairman, Sir, just to reinforce what the Minister has said--

The Temporary Deputy Chairman (Mr. Imanyara): Order! Order! I think if you are just reinforcing and we are going the same way, it is quite in order. I think the two hon. Members who were not persuaded have now been persuaded. So, I will put the question.

(Clause 12 as amended agreed to)

Clause 13

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

THAT, Clause 13 be amended –

(a) in sub-clause (1) by inserting the words “public and” immediately before the words “interested parties;”

(b) in sub-clause (4) by deleting the word “be” appearing immediately after the words “the Commission shall;”

(c) in sub-clause (5) by deleting the words “current land users and community based organizations” and substituting therefor the words “persons in actual occupation of the land;”

The reasons being that the public needs to know what is happening. The other reason is that we have a typo issue. We also feel that actual land owners need to be informed and not just people who are camping on land.

The Temporary Deputy Chairman (Mr. Imanyara): Mr. M. Musyimi, you should also point out that if it is carried, it will actually take care of part of Mr. Ogindo’s proposal so that when he stands up he can deal with it.

(Question of the amendment proposed)

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

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

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

I now propose that Clause 13 be amended as proposed by Mr. Ogindo with respect to that part that has not been taken care of by Mr. Musyimi’s amendment.

Mr. Ogindo: Thank you, Mr. Temporary Deputy Chairman, Sir, I concur with Mr. Mutava's amendment.

I beg to move:-

THAT Clause 13, sub-clause 6 be amended by inserting the words "and County Gazette" immediately after the word "Gazette".

This is because we need to have the said notice circulating in the county over and above the national Government Gazette notice.

The Temporary Deputy Chairman (Mr. Imanyara): Subject to the amendment by Mr. Musyimi that has just been carried.

Mr. Ogindo: Thank you, Mr. Temporary Deputy Chairman, Sir.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, first, I was thinking that there would be reference to the Interpretation and General Provisions Act, Cap.2, as to what a gazette means. Probably, that is where to put it. There may be some counties which may not afford to have this gazette. So, to the extent that it says "and"; I am not really saying I am supporting or opposing, but in case a county does not have a gazette, what do we do?

The Temporary Deputy Chairman (Mr. Imanyara): Also the need for gazette is all over for these amendments. Therefore, we are going to be putting county gazette in every single amendment we bring to the House--- Mr. Ogindo, do you really want to proceed with this? What do you have to say to that?

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, this is for information. It does not hurt a thing from where the Minister was standing when he says he is neither supporting nor opposing. If you go through the route, he was saying then in that definition "gazette" means a national gazette and county gazette. So, it does not hurt a thing to have it now rather than wait for the rules that the Minister is suggesting.

The Minister for Lands (Mr. Orengo): I am just contemplating. The Government does not publish the Kenya Gazette all the time, but I am saying if, for example, we have a county which cannot actually have a county gazette, does the whole process die? Probably if we had an amendment like "and/or," so that it is not mandatory. If Mr. Ogindo accepts, then we can have an amendment to his amendment. Instead of saying "and", it should read "and/or County Gazette".

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I support the Minister's amendment to my amendment.

The Temporary Deputy Chairman (Mr. Imanyara): Then read it the way it should read.

Mr. Ogindo: Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, clause 13 be amended by inserting the words "and/or County Gazette" immediately after the word "Gazette".

The Minister of State for Special Programmes (Ms. Murugi Mathenge): Mr. Temporary Deputy Chairman, Sir, I think if you read Clause 6, it says,

"thereafter shall be published in a newspaper of general circulation in the general vicinity of the public land."

I think this covers it, whether it is in a county or wherever. So, I do not think you need to say "county" because it is already covered.

The Temporary Deputy Chairman (Mr. Imanyara): Chairman of the Committee on Lands and Natural Resources, what is your view?

Mr. Musyimi: I am at the risk of sounding that I am inclining towards Mr. Orengo. We actually spent almost four days in a retreat with the Minister and my Committee, the Committee on Implementation of the Constitution, Law Society of Kenya (LSK) and also the Law Reform Commission headed by Mr. Kathurima. We went through everything. I think these matters have been taken care of. I am not sure that I know what value Mr. Ogindo's amendment is adding.

The Temporary Deputy Chairman (Mr. Imanyara): What Ms. Murugi Mathenge says seems to take care of the concerns of Mr. Ogindo. Is that not so?

The Minister for Lands (Mr. Orengo): I am addressing the Chair now. You and I know where the law requires gazette, sometimes it can cause a lot of problems; if you do not gazette, then the whole process dies. I do not know whether that is what you want. We have a situation where somebody has valid petition, request or action to undertake and he actually proceeds to do it, but because it was not placed in the Kenya Gazette, not out of his fault, because normally to place a notice in the Kenya Gazette, you have to submit it before Tuesday preceding the Friday. So, we may have rules and regulations about the publication of the Gazette. That makes it so difficult. That is why we liked the formulation that the Minister has just given, that other than the national gazette then any newspaper in circulation, which will include even the gazette, in the vicinity of the land---

Mr. Ruto: Mr. Temporary Deputy Chairman, Sir, those are private issues. Newspapers are not quite the official route. I think what we were fearing has been cured by the Minister's insertion of the word "and/or" and this is quite satisfactory. We really should not deliberately keep off possible publications in the counties. There are certain things that they will feel they must inform their people. In any case "and/or" does not become mandatory such that it can invalidate any action that "and/or" did not provide. Since it is not going to cause any new mischief or any new encumbrances in the implementation on various issues, I say that we agree with that first amendment.

The Temporary Deputy Chairman (Mr. Imanyara): True. The purpose of amendments is to clarify. I thought Ms. Murugi Mathenge addressed the concerns raised by the hon. Member who proposed the amendment. Unless the hon. Member himself tells me that those concerns are not addressed, I am not sure that I get the point you are making.

Mr. Ruto: Mr. Ogindo, can clarify that.

Mr. Ogindo: Mr. Temporary Deputy Chairman, Sir, I was privy to the reading that has just been done by Ms. Murugi Mathenge but the improvement that has been brought by the Minister is better; if there are counties that are able to afford having the gazette, let them have a tidy record of these transactions. Because we are putting it "and/or", it does not hurt a thing but for those who are able, let us not keep newspapers but county or national gazettes.

The Temporary Deputy Chairman (Mr. Imanyara): I think I will just put the question with the suggestion by the Minister, that is the addition of "and/or;". Did you have something?

Hon. Members we are going to vote. He has moved the amendment that Clause 13, sub-clause 6 be amended so as to have the words "and/or County Gazette" immediately after the word "gazette." That is the proposal and I am putting the question that Clause 13, sub-clause 6 be amended as follows, "by inserting the words "and/or County Gazette" immediately after the word "Gazette".

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I know I suggested it but I do not think that you will find any legal statute where the words "and/or" appears. So, I think your formulation is either "in" or---

The Temporary Deputy Chairman (Mr. Imanyara): If you proceed with that, I will put the question as it is in the Order Paper and let there be a vote. This is because as I understand the Minister, he is withdrawing the suggestion of “and/or”.

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

(Clause 13 as amended agreed to)

Clause 14

The Temporary Deputy Chairman (Mr. Imanyara): We now move on to clause 14 where there are two proposed amendments. One is by hon. Mutava Musyimi and the other one is by hon. Dr. Otichilo being represented by hon. Alfred Odhiambo.

I will begin with the one by hon. Mutava Musyimi.

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

THAT, Clause 14 be amended in sub-clause (1) by deleting the expression “Subject to Article 66(2)” appearing at the beginning of the sub-clause and substituting therefore the expression “Subject to Article 66(1).”

This is basically a typographical error but I have a further amendment. That is on the last phrase: “Subject to Article 66(1) of the Constitution.” We need to add the three words; “of the Constitution” for clarity.

Thank you.

The Temporary Deputy Chairman (Mr. Imanyara): Can it mean anything else since Articles refer only to provisions of the Constitution?

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I stand guided.

The Temporary Deputy Chairman (Mr. Imanyara): I just want to hear this from the lawyers like hon. Orengo, whether Article 66(1) could be referring to anything else other than the Constitution.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, Article 66(2) is irrelevant. The relevant one is Article 66(1).

The Temporary Deputy Chairman (Mr. Imanyara): Does the word Article refer to the Constitution? He is suggesting that the words “of the Constitution be added and I am suggesting that it will not be necessary because Article can only refer in the context of the Constitution because the Bills and Acts have sections. That is all but I wanted to be guided.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, if you look at the Constitution, you will see that it uses the word “Article” while in the schedules it uses the word “Sections”. I think we better say “Constitution” for fullness of it.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Imanyara): We have a further amendment by Dr. Otichilo. Mr. Odhiambo, you have his authority to move the amendment on his behalf.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, I wish to withdraw this amendment because it has been dealt with by the Committee.

The Temporary Deputy Chairman (Mr. Imanyara): Thank you. That one is withdrawn!

(Proposed amendment by 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 in place thereof
be inserted, put and agreed to)*

(Clause 14 as amended agreed to)

Clause 15

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 15 be amended-

(a) in paragraph (a) of sub-clause (1) by deleting the expression “section 15” and substituting therefor the expression “section 14”;

(b) by deleting sub-clause (4) (a) and (b).

With regard to sub-clause (1), we are dealing with a typographical error. With regard to sub-clause 4(a) and (b), we are deleting sub-clause 4 in its entirety and renumbering the existing sub-clause 4 as sub-clause 5.

(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 15 as amended agreed to)

Clause 16

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Odhiambo, on behalf of Dr. Otichilo, do you have a proposed amendment?

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 16 be amended-

(a) in sub-clause (2)

(a) by inserting the words “climate change and” immediately after the words “consider any conservation” appearing in paragraph (a).

(b) by deleting paragraph(c) and substituting therefor the following new paragraph -

“submit an environmental impact assessment plan including climate change vulnerability pursuant to existing law on environment; and

This is because climatic change impacts directly on land use and land management.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I have a problem with most of the proposals which are being brought by hon. Otichilo because they are taken care of in a very substantial legislation which is the Environmental Legislation like when you talk about the Environmental Impact Assessment. There is a danger that if we import the language of that statute and provisions which belong to another statute to the Land Bill, there will be possible conflict. I will ask hon. Otichilo that the time when we will need him thoroughly is when we will harmonize the Environmental Law with the Land Law and the Land Use Planning Law which is his forte. I beg you again that all this is not coming at the right forum.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, I think the Minister is saying that all these proposals being made by hon. Ottichilo, whom I represent will be included---

The Temporary Deputy Chairman (Mr. Imanyara): No, they are dealt with substantively in another piece of legislation.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, could he name it?

The Temporary Deputy Chairman (Mr. Imanyara): The National Environmental Management Agency (NEMA) Legislation.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, that is okay. The other one was--

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The Temporary Deputy Chairman (Mr. Imanyara): I need to know whether in the light of what the Minister has said, you are withdrawing the amendment or pressing on.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, in the light of what the Minister has said, if they are dealt with adequately through NEMA, then I withdraw. However, I also wish to propose that clause---

The Temporary Deputy Chairman (Mr. Imanyara): You cannot have it two ways. You either press on with the proposed amendment or you withdraw it. You cannot withdraw and proceed.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, could the Minister tell us whether this is also dealt with in part "b" because we had an amendment in part "b" which was also dealing with Environmental Impact Assessment?

The Temporary Deputy Chairman (Mr. Imanyara): Yes, he has a point there, Mr. Minister. Are they both dealt with substantively?

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, there was "a" and now there is "b"

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I want to point to the hon. Member that if he looks at the Schedule, he will see that the statutes we want to legislate on are community land, which we must do in five years and Regulation of Land Use, which must also be done in five years. That is what I told hon. Otichilo is coming; Legislation of Land -18 months; agreements relating to natural resources - five years and legislation regarding environment which is required within five years. Already, the law on Environment is there but to harmonize it with the Constitution, we need a substantive legislation which the Constitution provides for. We are directed by the Constitution to bring legislation on the environment. So, we cannot do it in piecemeal.

If you look at Part 2 of Chapter 5, from Section 69 on Environment and Natural Resources, you will see that this is a very complicated legislation that you cannot cut and paste from one legislation to another. The spirit of the Constitution is that we should have one environmental law. I do not know whether the hon. Member is persuaded.

The Temporary Deputy Chairman (Mr. Imanyara): Millie, let us hear what Alfred has to say with regard to what the Minister is saying, which is that all the amendments by hon. Otichilo are actually either in the substantive legislation or are part of the mandatory requirements of the law of the registration that has been substantively introduced rather than be made part of other amendments of other legislation which is also part of the laws that have to be enacted. You can direct me on that one.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, from the amendments that have been passed to me by my colleague, he looked like he is stressing so much on environmental assessment. Since the Minister is saying that this is something that is dealt with at a different level through a different legislation, I think I will go back by what the Minister is saying and take his words seriously. I hope that it will be done or it is being done as he puts it. So, I withdraw.

(Proposed amendment by Dr. Otichilo withdrawn)

(Mrs. Odhiambo-Mabona stood up in her place)

The Temporary Deputy Chairman (Mr. Imanyara): Millie, is it on the same point?

Mrs. Odhiambo-Mabona: Yes, Mr. Temporary Deputy Chairman, Sir. I just want the Minister, maybe, to consider that when you talk about issues of climate change and environment, they are more or less treated like the issues of gender; that as much as you may have a parent loan on issues of gender, but in every law, you mainstream issues of climate change and issues of environmental protection. What I see hon. Otichilo trying to do really is not to bring substantive issues on environment which are already there in Clause 16. If you look at it, it says: "Consider any conservation, environmental---

The Temporary Deputy Chairman (Mr. Imanyara): What about the provisions that the Minister has read that requires that the law to be enacted specifically on those issues within given time lines?

Mrs. Odhiambo-Mabona: Yes, and that is what I am saying, Chair; that even when we are talking about issues of gender mainstreaming, there will be substantive laws. But when you are dealing with specific laws, whether it is on land use, development or whatever, you mainstream the issues of climate change by looking at how it affects the specific work it does. So, what really hon. Otichilo is trying to do is by including climate change just before the word "environmental" or "heritage". It is to bring our focus that even when we are looking at our development plans, we must take into account the issues of climate change which then, if we had the time, we would have made reference to that substantive law. But, maybe, because we do not have--- Really, I do not see any harm in putting climate change because it is just an issue of mainstreaming.

The Temporary Deputy Chairman (Mr. Imanyara): Very well. Before I come to the Minister, the Member for Lari--- What do you have to say?

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, the current fear that is being raised by hon. Odhiambo, in my view, is being responded to well by sub-clause 2(a) on Clause 16 and, therefore, I support the position taken by the Minister.

The Temporary Deputy Chairman (Mr. Imanyara): Yes, I hear that, and the hon. Member did, in fact, say that he has withdrawn the amendment but I just wanted to get the clarity. Minister, if you look at Clause 16(c), you see there is a word missing before "an". I think you probably need to get it. Clause 16 (2) says; "Before submitting a plan for the Commission

under subsection 1, a management body shall---“ Then, if you go to (c), you see it does not say undertake, submit--- but there is a word missing there. Perhaps, you may want to clarify that. Is it part of hon. Otichilo’s amendment? Because if it is, then, obviously, we cannot mark them withdrawn. Otherwise, we will leave this completely meaningless. Let us proceed methodically, so that we can see what we have withdrawn and what we are leaving out, so that the Minister can respond. Mr. Odhiambo, you have heard the Minister. Are you still standing by what you have done; withdrawing all the amendments or---?

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, I think from what I have heard from my colleague, Millie and what the Minister has said, I feel that hon. Otichilo had a point – a very serious point because we might underestimate his mind. So, I wish to withdraw the amendment affecting Clause 2(a), but I would stand that we maintain the amendment on (c) by adding the word “submit”.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I do not have a problem with this. I would agree with the inclusion of the word “submit”. But I think the general import of the provisions in that part is all about environment. I think since it refers to legislation to do with environment, issues like climate change should go to the environmental law. It is a very complicated concept and if you want every management body to do--- What I am saying is that, right now, I can tell you, as a matter of fact, - and probably hon. Millie will support me on this - just the requirement that an investor provides an environmental impact assessment plan is a nightmare. Now, to bring a concept of climate change which many of us do not really understand--- Dr. Otichilo may well understand and he says: “Submit an environmental impact assessment plan, including climate change vulnerability.” I mean, for somebody who wants to do an investment or is managing public land, and you tell them that this is what they must do, even the capacity to find experts on the issue of climate change is not there.

The Temporary Deputy Chairman (Mr. Imanyara): And also Minister, it is not quite clear because you cannot submit an impact assessment plan including climate change vulnerability pursuant to existing law on environment. I think I need to get clearance from you on how we are proposing.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, even developing legislation on environment which takes into account climate change is not in place yet. So, we will be requiring people to do what we have not done.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, let me say that, as the Chairman of the Committee, Dr. Otichilo feels very strongly about climate change issues. Indeed, I think he is proposing to bring before this honourable House a Private Members’ Bill which we, as a Committee, are supporting. We have already gone for a retreat. There is a lot of work that has been done. I think that when that time comes to debate the Bill, then I hope that some of those things will be looked at comprehensively. But I think to try and bring in an idea at this stage, I think it is kind of hanging in the air.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, we are taking it for granted, but this is how people take advantage of situations. So, if we leave it open and we do not insert it there, then some people will take advantage of it. That is where we find problems. Sometimes, some developers bring in things that are not in line with good living for our neighbourhoods and so on. So, I am insisting that, at least, this Bill has the word “submit”.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, can I suggest a way forward?

The Temporary Deputy Chairman (Mr. Imanyara): Yes, suggest a way forward, Millie, bearing in mind that Alfred wants a section withdrawn, except that he wants the word “submit” added to that clause.

Mrs. Odhiambo-Mabona: Yes, I was actually going to say that. I know I am an environmental lawyer in another life. So, I am really okay with issues of climate change even the way it is put. But if he wants to withdraw and bring a substantive law, we can always make reference back to this law. So, I just wanted to suggest that we put the word “submit” and move on.

Mr. Mureithi: Mr. Temporary Deputy Chairman, Sir, I was a member of the Committee and so, definitely, we discussed it at length. But I would like to agree with the Minister that as far as (c) is concerned, that we must correct the grammar so that we say “and submit”. So, that is the request as far as National Environmental Management Authority (NEMA) is concerned.

The Temporary Deputy Chairman (Mr. Imanyara): I want us to make progress, Wilfred. The Minister said that you are withdrawing all the amendments proposed by hon. Wilbur Otichilo touching on the National Environmental Management Authority (NEMA) – specifically the amendments to Clauses 16, 18, 37, 124, 149, 173 and the Schedule. Are you withdrawing all those amendments?

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, from the information I have, Dr. Otichilo had indicated that he wanted amendment on Clause 18.

The Temporary Deputy Chairman (Mr. Imanyara): I understand that, but after the conversation that you had now, we are in agreement that these are issues that will be addressed in substantive or other legislations and that they can still be pursued by Dr. Otichilo at that stage. For now, am I correct in understanding that you are withdrawing all the proposals that have been placed on record by Dr. Otichilo, as suggested by your own Chair of the Departmental Committee?

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, from what I have, Dr. Otichilo had withdrawn the amendment to Clause 37 because it was dealt with by the Committee.

The Temporary Deputy Chairman (Mr. Imanyara): Get me. Please, let---

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, I am also responding to you in sequence.

The Temporary Deputy Chairman (Mr. Imanyara): But you have gone to Clause 37 before completing responding on the one before it. So, we will start with the amendment to Clause 16.

Mr. Odhiambo: I am satisfied, Mr. Temporary Deputy Chairman, Sir.

(Proposed amendment by Dr. Otichilo to Clause 16 withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): What about on the amendment to Clause 18?

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, Clause 18 is on climatic change mitigation, adoption, *et cetera*. So, it is okay.

(Proposed amendment by Dr. Otichilo to Clause 18 withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): What about the amendment to Clause 37?

Mr. Odhiambo: It is withdrawn because the Committee dealt with it, Mr. Temporary Deputy Chairman, Sir.

(Proposed amendment by Dr. Otichilo to Clause 37 withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): Just go slowly, so that I do not get you wrong.

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, the amendment to Clause 37 is withdrawn.

The Temporary Deputy Chairman (Mr. Imanyara): Yes, I am happy with that. Hon. Minister, are you following?

The Minister for Lands (Mr. Orengo): Yes, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Imanyara): What about the amendment to Clause 124?

Mr. Odhiambo: It is withdrawn, Mr. Temporary Deputy Chairman, Sir.

(Proposed amendment by Dr. Otichilo to Clause 124 withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): What about the amendment to Clause 149?

Mr. Odhiambo: It is withdrawn, Mr. Temporary Deputy Chairman, Sir.

(Proposed amendment by Dr. Otichilo to Clause 149 withdrawn)

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, on the other side, the amendment to Clause 173 is also withdrawn.

(Proposed amendment by Dr. Otichilo to Clause 173 withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): Finally, what about the amendment on the Schedule?

Mr. Odhiambo: Mr. Temporary Deputy Chairman, Sir, the amendment to the Schedule is also withdrawn.

The reason he has given is that all these amendments have been taken care of by the Committee.

(Proposed amendment by Dr. Otichilo to the Schedule withdrawn)

The Temporary Deputy Chairman (Mr. Imanyara): Very good! I have now understood you. Minister, note that. I now direct that those provisions in the Order Paper relating to those proposals by hon. Otichilo are withdrawn, so that we can now go to Clause 16.

Clause 16

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, on Clause 16, there is an amendment by the Minister of the addition of the word “submit” in paragraph (c).

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

(Clauses 17 and 18 agreed to)

Clause 19

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 19 be amended-

(a) in the marginal note by deleting the words “Licence for temporary purposes specified in the lease” and substituting therefore the words “Licence for temporary purposes”

(b) in sub-clause (1) by deleting the words “temporary purposes” and substituting therefor the words “a period not exceeding five years”.

(c) by deleting sub-clause (2);

(d) in sub-clause (4) by deleting the words “rent” and substituting therefor the words “fee”;

Mr. Temporary Deputy Chairman, Sir, the amendment is for purposes of clarity and editorial hygiene.

(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
therefor be inserted, put and agreed to)*

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

(Clause 19 as amended agreed to)

(Clause 20 agreed to)

Clause 21

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 21 be amended-

(a) in the marginal note by deleting the word “rent” and substituting therefor the words “fees”.

(b) in paragraph (a) by deleting the word “rent” and substituting therefor the words “fees”.

Mr. Temporary Deputy Chairman, Sir, this is, again, for purposes of 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 therefor be inserted, put and agreed to)*

(Clause 21 as amended agreed to)

Clause 22

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 22 be amended by deleting the marginal note and substituting therefor the following-

“Implied covenants and conditions by grantor or lessor”.

(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
therefor be inserted, put and agreed to)*

(Clause 22 as amended agreed to)

Clauses 23, 24 and 25 agreed to)

Clause 26

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 26 be deleted and replaced by the following new clause-

**Obligations
of children.**

26. A child shall be capable of holding title to land
through a trustee and such child shall be in the same position as an
adult with regard to the child’s liability and obligations to the land.

(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 26 as amended agreed to)

*(Clauses 27, 28, 29, 30, 31,
32, 33, 34 and 35 agreed to)*

Clause 36

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 36 be deleted.

Mr. Temporary Deputy Chairman, Sir, this is because the same provision appears in The National Land Commission Bill.

(Question of the amendment proposed)

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

(Clause 36 was, accordingly, deleted)

Clause 37

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 37 be deleted and replaced by the following new clause-

Community land. **37.** Community land shall be managed in
accordance with the law relating to community land enacted
pursuant to Article 63 of the Constitution.

Mr. Temporary Deputy Chairman, Sir, this is for the simple reason that the reference is being made to a law that is not yet in place – The Community Land Bill.

(Question of the amendment proposed)

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

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

(Clause 37 as amended agreed to)

(Clause 38 agreed to)

Clause 39

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

THAT, Clause 39 be amended-

(a) in the marginal note by deleting the words “procedure for regaining possession” and substituting therefor the words “Vendor’s right to regain possession”.

(b) by deleting the word “only” appearing immediately after the words “the contract by the purchaser”.

Mr. Temporary Deputy Chairman, Sir, again, this is for editorial hygiene.

(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 39 as amended agreed to)

Clause 40

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

THAT, clause 40 be amended in sub-clause (1) by inserting the words “and mesne profits” immediately after the words “claiming damages”

Mr. Temporary Deputy Chairman Sir, this is meant to create a wider span of claim.

(Question of the amendment proposed)

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

(Clause 40 as amended agreed to)

Clause 41

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

THAT, Clause 41 be amended by deleting paragraph (f).

Mr. Temporary Deputy Chairman, Sir, I beg to move that this be amended as proposed so that we avoid contravening Article 40 of the Constitution which protects the individual rights to land.

(Question of the amendment proposed)

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

(Clause 41 as amended agreed to)

(Clause 42 agreed to)

Clause 43

Mr. Musyimi: Mr. Temporary Deputy Speaker, Sir, I beg to move:-
THAT, Clause 43 be deleted.

Mr. Temporary Deputy Chairman, Sir, this is to avoid contravening Article 40 of the Constitution.

(Question of the amendment proposed)

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

(Clause 43 was, accordingly, deleted)

(Clauses 44 and 45 agreed to)

Clause 46

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 46 be deleted.

Mr. Temporary Deputy Chairman, Sir, I wish to delete this Clause because the provision is already in the Land Registration Bill so that we do not have duplication.

(Question of the amendment proposed)

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

(Clause 46 was, accordingly, deleted)

(Clause 47 agreed to)

Clause 48

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

THAT, Clause 48 be amended in sub-clause (1) by deleting the word “transfer and substituting therefor the word “transferee”.

Mr. Temporary Deputy Chairman, Sir, I beg to move that this be adopted for pure editorial hygiene.

(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 48 as amended agreed to)

Clause 49

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 49 be amended by inserting the words “where applicable,” immediately
after the words “pay the interest”.

Mr. Temporary Deputy Chairman, Sir, again, this is for editorial clarity.

(Question of the amendment proposed)

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

(Clause 49 as amended agreed to)

(Clauses 50, 51, 52, 53, 54 and 55 agreed to)

Clause 56

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the sub title appearing immediately after Clause 56 be deleted.

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, what is suggested
under Clause 56 is simply to--- Mr. Musyimi, you want to delete the title on part 6, is that so?

Mr. Musyimi: Just remove the title.

(Question of the amendment proposed)

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

(Clause 56 as amended agreed to)

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, you will note that
Mr. Musyimi is deleting Clauses 57, 58, 59, 60, 61, 62 and 63.

Mr. Musyimi: For the reason that the same are provided for in the Land Registration
Bill, 2012.

Thank you.

The Temporary Deputy Speaker (Mr. Imanyara): Mr. Musyimi, before we get there,
the Title, Part 6, Co-Tenancy and Partition, that remains. You want to delete that Title on Part?

Mr. Musyimi: It remains.

The Minister for Lands (Mr. Orengo): There are still other clauses but that Heading of Part VI is misleading because if you talk about co-tenancy and partition---

The Temporary Deputy Chairman (Mr. Imanyara): So, you want it to go?

The Minister for Lands (Mr. Orengo): I do not know but the part should have some title at least.

The Temporary Deputy Chairman (Mr. Imanyara): Chairman, what is the title of that part? It has meaning, certificate, co-ownership.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, my recollection was that we agreed to delete that title and delete all the other clauses as I have proposed today.

The Temporary Deputy Chairman (Mr. Imanyara): So that there will be a renumbering of parts?

Mr. Musyimi: Yes.

The Minister for Lands (Mr. Orengo): Under the Attorney-General's powers, they can give a title to the remaining part. But if you look at that part dealing with co-tenancy and partition from Clause 57 which deals with co-tenancy and then Clause 60 on partition, that is all deleted. If you go to Clause 63, you will find that it is still about partition. Then you go to the sub-part on leases and general provisions. So, it is co-tenancy and partition.

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, let us see whether I understand it the same way you do. If you look at page 287 of the Bill under Part VI, you want to clarify that Part VI; that title or heading goes so that the heading immediately below Clause 63 - General Provisions Lease remains. Is that the position?

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, we were saying, as Committee, that the amendment seeks to avoid duplication as the provisions on co-tenancy and partition under Part VI in the Land Bill are an exact duplication of the Provisions of Part IX of the Land Registration Bill.

The Minister for Roads (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, after Clause 56, it all goes up to Clause 64. Under Clause 64, you find leases, general provisions. So, that Part VI should now read "leases-general provisions".

The Temporary Deputy Chairman (Mr. Imanyara): Chairman, is that the position? Hon. Millie, is that your understanding?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, that may be my understanding, but I wanted to oppose the deletions. I wish to oppose because if you notice, a lot of the deletions have to do with the rights that protect women rights to ownership of property.

The Temporary Deputy Chairman (Mr. Imanyara): Just hang on there because we have not reached there. These are the specific provisions we are referring to. What have you got to say about that title?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, the title would apply if I am agreeable to the deletions that we do away with the titles. Then the rest can go to the other parts. That would be my understanding, but I am opposed to those deletions.

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, as I understand, if these amendments of Clauses 57 to 63 are carried, the title disappears because it will have been deleted. Therefore, hon. Musyimi, please move.

Clauses 57,58,59,60,61,62,63

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

THAT, clauses 57 to 63 be deleted.

(Question of the amendment proposed)

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I stand to support that deletion. It is not that we are doing away with the rights of women and children and others. We are basically saying that this is already provided for elsewhere. This Parliament has been on the forefront in protecting the rights of women, children and other vulnerable groups. Therefore, that is insinuation that we are deleting them because we do not want to support those rights is not correct.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I would really love to see the laws under which these specific rights are provided for. If those laws are there, I would really stand guided. But to the best of my knowledge, information and belief, the law where they should come is the matrimonial property law which is not there. It is a Bill which has been pending for more than ten years. If hon. Orengo can show me as he has made reference that these provisions are one of the lands laws, then I stand guided, but I did not, to the best of my recollection see any such provisions. Then the Minister would be misinforming the House.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I am holding in my hand the Land Registration Bill which we went through yesterday and, indeed, hon. Musyimi pointed out that similar provisions are found in the Land Bill anticipating what we were going to do today. So, the whole of Part IX in the Land Registration Bill is on co-tenancy and partitioning, then Clause 93 - meaning and incidence of co-tenancies and the certificate of ownership. These are the same provisions.

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Odhiambo-Mabona, are you now satisfied with the assurances of the Minister?

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I am not being difficult, but I really want to stand guided. If the Minister can look at the provisions of Clause 59, especially Clause 59(i), if a spouse obtains matrimonial property for the co-ownership, (ii) if the matrimonial property is held in the name of one spouse or the other and it is a long thing; the whole of Clause 59. I do not see a comparative provision in what the Minister is saying. What the Minister was saying was a very brief provision in relation to co-tenancy, but this is very specific in relation to matrimonial property.

The Temporary Deputy Chairman (Mr. Imanyara): I understand, Millie. Minister, just before that, what you can seek, and this Government Minister is giving you assurances that these provisions are to be found in another law and if they are not, he is giving you an assurance that there will be specific legislation dealing with these clauses. Is that the position, Minister?

The Minister for Lands (Mr. Orengo): There is a provision in the Land Registration Bill and I think my learned friend is very concerned about spousal rights. Clause 95 of the Bill that we passed through the Third Reading yesterday, subject to the law on matrimonial property, says that if a spouse obtains land for the co-ownership and use of both spouses or all the spouses and it continues, determining situations where spousal rights will emerge and how they would be effected. The same provisions were being repeated in the Land Bill.

The Temporary Deputy Chairman (Mr. Imanyara): You can take the assurances. I do not want us to have to face a division that leaves you unsatisfied.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, if land is held in the name of one spouse co-owned by the other spouse, it is all about spousal rights.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, to enable us move forward, I will take the Minister's assurance. I will look at what we passed yesterday. If the Minister assures me that we passed that, then I will take his assurance.

Mr. Njuguna: Mr. Temporary Deputy Chairman, Sir, while supporting the Minister, I would have liked the Chairman of the Committee maybe to convince the House whether they have shared these provisions with the CIC and the other bodies.

The Temporary Deputy Chairman (Mr. Imanyara): I think at the beginning, the Chairman indicated that they sat in Committees and seminars with the Ministers, the CIC and the CIOC and all those Committees; all of them. So, I think you have that assurance, Member for Lari. Chairman, just reassure him.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, can I also add something I did not tell you? When the draft came out first, the Minister in his wisdom called the entire Parliament to Pangoni and we went there. Then, whatever came out of Pangoni, we took as a Committee and went and spent about four days in a retreat trying to improve the draft which then came to him and then went to the Cabinet, came from the cabinet and then we went together and sat for four days with the CIC and all the other groups. So, we have looked at this twice and hon. Millie Odhiambo needs to have faith in the Committee of the House. She is on board. Is she?

The Temporary Deputy Chairman (Mr. Imanyara): She has no problem, except the Member for Lari who wanted assurance that you shared the provisions with the CIC.

Mr. Musyimi: Mr. Temporary Deputy Chairman, maybe the Minister for Finance Committee can help me reach him.

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

(Clauses 57, 58, 58, 60, 61, 62 and 63 were accordingly deleted)

The Temporary Deputy Chairman (Mr. Imanyara): Together with that, therefore, the heading.

(Clauses 64, 65 and 66 agreed to)

Clause 67

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 67 be amended in sub-clause (1), paragraph (b) by inserting the word "lease" immediately after the word "periodic".
Again, this is for purposes of clarity.

(Question of the amendment proposed)

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

(Clause 67 as amended agreed to)

Clause 68

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 68 of the Bill be amended by deleting the words “by reason of the fact” and substituting therefor the word “provided.”
Again, the amendment is for editorial hygiene.

(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 68 as amended agreed to)

(Clause 69 agreed to)

Clause 70

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 70 be amended in sub-clause (1) by deleting the word “a” appearing immediately after the words “a lease of”

(Question of the amendment proposed)

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

(Clause 70 as amended agreed to)

Clause 71

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 71 of the Bill be deleted.
The Temporary Deputy Chairman (Mr. Imanyara): Hon. Musyimi, I see you want it deleted.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, yes, I wish to have it deleted because of duplication. The same appear in the Land Registration Bill, 2012.

(Question of amendment proposed)

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

(Clause 71 was, accordingly, deleted)

(Clause 72 agreed to)

Clause 73

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

THAT, Clause 73 of the Bill be amended-

(a) in sub-clause (1) by deleting the “comma” appearing immediately after the word “Act”;

(b) in sub-clause (2) by deleting the word “sublease” appearing after the word “the” on the second line and substituting therefor the words “sub lessee”;

(c) in sub-clause (3) by deleting paragraph (c);

(d) by deleting sub-clause (4).

This is for purposes of clarity and also to avoid contravening Article 40 of the Constitution which protects individual rights to property.

(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 73 as amended agreed to)

(Clause 74 agreed to)

Clause 75

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

THAT, Clause 75 of the Bill be amended in sub-clause (1)-

(a) by deleting the word “to” appearing at the beginning of the sentence in paragraph (a) and substituting therefor the words “that”;

(b) by deleting the word “lawful” appearing immediately after the words “without any” in paragraph (a).

(c) by deleting the word “tenancy” and substituting therefor the words “lease” in paragraph (d).

(d) by deleting the word “to” appearing immediately after the words “one months notice” at the end of the sentence in paragraph (e).

This is again for editorial reasons.

(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)

Clause 76

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 76 of the Bill be amended in sub-clause (1) by deleting the words “other than a short term lease”.

(Question of the amendment proposed)

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

(Clause 76 as amended agreed to)

(Clause 77 agreed to)

Clause 78

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 78 be amended by inserting the word “the owner” immediately after the words “head lease to” appearing on the first line.

Question of the amendment proposed)

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

(Clause 78 as amended agreed to)

(Clauses 79, 80 and 81 agreed to)

Clause 82

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

THAT, Clause 82 of the Bill be amended-

(a) by deleting sub-clause (2);

(b) by renumbering sub-clause (3) as sub-clause (2);

This is because the provision as it is contrary to the Constitution in respect of protection of individual rights to property - Article 40 of our Constitution.

(Question of the amendment proposed)

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

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

(Clause 82 as amended agreed to)

Clause 83

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:
THAT, Clause 83 be deleted and replaced with the following new clauses-

Lessor's Right of forfeiture 83A. (1) Subject to the provisions of section 83D and to any provisions to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee-

- (a) commits any breach of, or omits to perform, any agreement or condition on his part expressed or implied in the lease; or
- (b) is adjudicated bankrupt; or
- (c) being a company, goes into liquidation.

(2) The right of forfeiture may be-

- (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land, by entering upon and remaining in possession of the land; or
- (b) Enforced by action in the court.

(3) The acceptance by the lessor of any rent after the service of a notice of forfeiture under section 83C does not operate as a waiver of the lessor's right of forfeiture unless the lessor has by any other positive act shown an intention to treat the lease as subsisting.

Effect of forfeiture on subleases 83B. The forfeiture of a lease determines every sublease and every other interest appearing in the register relating to that lease, but-

- (a) where the forfeiture is set aside by the court on the grounds that it was procured by the lessor in fraud of the sublessee; or

Notice before forfeiture (b) where the court grants relief against the forfeiture under section 83D, every sublease and other interest shall be deemed not to have determined.

83C. Notwithstanding anything to the contrary contained in the lease, no lessor shall be entitled to exercise the right of forfeiture for the breach of any agreement or condition in the lease, whether expressed or implied, until the lessor has served on the lessee a notice of not less than 30 days:-

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the lessee to remedy the breach within such reasonable period as is specified in the notice; and

(c) in any case other than non-payment of rent, requiring the lessee to make compensation in money for the breach, and the lessee has failed to remedy the breach within thirty days thereafter, if it is capable of remedy, and to make reasonable compensation in money.

Relief against forfeiture

83. (1) A lessee upon whom a notice has been served under section 83C, or against

whom the lessor is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit.

(2) The court, on application by any person claiming as sublessee or charge any interest in the property or part of the property comprised in the lease forfeited or sought to be forfeited, may make an order vesting the property or such part in such sublessee or chargee for the whole period of the lease or any less period, upon such conditions as the court in the circumstances of the case thinks fit:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the sublessee is a party, or from the breach of an express agreement or condition against subleasing, parting with the possession of or disposing of the property leased.

(3) This section shall have effect notwithstanding any stipulation or agreement to the contrary and whether the lease is registered or not.

What the Committee and all of us who met decided was that the provisions as they are in RLA are actually clearer than what was in the Bill. So, we have basically done a job of cut and paste and put what is in the RLA here to supplant what was in the Bill.

The Temporary Deputy Chairman (Mr. Imanyara): Very well, as I propose, hon. Members, you would notice on your Order Paper that the whole of clause 83 is deleted and then there is 83(A), (83B), (83C) and 83(D).

(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 83 as amended agreed to)

Clause 84

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, you notice that clauses 84 through to 90 are all the subject of proposal for deletion.

Let them just read them and then we deal with them together. Mr. Musyimi, you want all of them deleted?

Mr. Musyimi: Yes, again, the reason being that the same have been provided for in the Land Registration Bill. Thank you.

The Temporary Deputy Chairman (Mr. Imanyara): Yes, move that they be deleted.

Mr. Musyimi: Yes, I move that they be deleted. There may be need for further clarity from my friend.

The Minister for Lands (Mr. Orengo): Other than the fact that some of the provisions are in the Land Registration Bill, the deletion of this chapter or this part - the ones that have been proposed for deletion - was a bit controversial in the sense that the provisions were making it very difficult for landlords to recover possession of premises or to terminate leases. Therefore, the business community was very unhappy with those provisions. But looking at them again and again, I think I support the deletion.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 84 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 84 was accordingly deleted)

Clause 85

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 85 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 85 was accordingly deleted)

Clause 86

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 86 of the Bill be deleted

(Question of the amendment proposed)

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

(Clause 86 was accordingly deleted)

Clause 87

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 87 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 87 was accordingly deleted)

Clause 88

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 88 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 88 was accordingly deleted)

Clause 89

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 89 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 89 was accordingly deleted)

Clause 90

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 90 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 90, was, accordingly, deleted)

Clause 91

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

THAT, Clause 91 be amended by inserting the following proviso at the end of sub-clause (2)-

“provided that a lessee who is aggrieved as a result of unlawful eviction under this section may commence an action against the lessor for remedies”

This is for the purpose of clarity.

(Question of the amendment proposed)

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

(Clauses 91 as amended agreed to)

(Clause 92 agreed to)

Clause 93

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

THAT, Clause 93 be amended-

(a) in the marginal note by deleting the words “power to create charge” and substituting therefor the words “ informal charges”;

(b) in sub-clause (3) by deleting the word “ signed” and substituting therefor the word “ executed”;

(c) in sub-clause (5) by inserting the word “formal” immediately after the word “A” appearing at the beginning of the sub-clause.

(d) by deleting sub-clause (6) and substituting therefor the following new sub-clause-

(6) An informal charge may be created where –

(a) a chargee accepts a written and witnessed undertaking from a chargor, the clear intention of which is to charge the chargor’s land or interest in land, with the repayment of money or money’s worth, obtained from the chargee;

(b) the chargor deposits any of the following -

(i) a certificate of title to the land;

(ii) a document of lease of land;

(iii) any other document which it is agreed evidences ownership of land or a right to interest in land.

(2) A chargee holding an informal charge may only take possession of or sell the land which is the subject of an informal charge, on obtaining an order of the court to that effect.

(e) in sub-clause (8) by deleting the words “ possessor” and substituting therefor the words “ posses or”;

Again, Mr. Temporary Deputy Chairman, Sir, this whole clause has been redrafted for clarity without, of course, changing the subject matter. That is the power to create charges.

Thank you, Mr. Temporary Deputy Chairman, Sir.

(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 93 as amended agreed to)

(Clauses 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104 and 105 agreed to)

Clause 106

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:- THAT, Clause 106 be amended by deleting sub-clause (6).

Mr. Temporary Deputy Chairman, Sir, this is to take away ambiguity.

(Question of the amendment proposed)

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

(Clause 106 was, accordingly, deleted)

(Clauses 107, 108, 109, 110, 111, 112, 113, 114, 115 and 116 agreed to)

Clause 117

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

THAT, Clause 117 of the Bill be amended by deleting paragraph (d) and substituting therefor the following new paragraph-

(d) the period for remedying the breach specified in the notice served under section 104 was reasonable or had expired, and the court may grant relief without determining all or any of those matters.

Mr. Temporary Deputy Chairman, Sir, this clause has been redrafted for clarity.

Thank you, Mr. Temporary Deputy Chairman, Sir.

(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 117 as amended agreed to)

(Clause 118 agreed to)

Clause 119

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 119 be deleted and replaced with the following new clause-
Power of the Court to reopen certain charges and revise terms. **119.** The Court may reopen a charge of whatever amount secured on a matrimonial home, in the interest of doing justice between the parties.

Mr. Temporary Deputy Chairman, Sir, this amendment is proposed for clarity.
Thank you, Mr. Temporary Deputy Chairman, Sir.

(Question of the amendment proposed)

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Chairman, Sir, I support this amendment because it protects our women.

(Laughter)

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Chairman, Sir, I support this amendment because it supports our men.

(Laughter)

*(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 119 as amended agreed to)

Clause 120

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

THAT, Clause 120 be amended in sub-clause (1)-

(a) by deleting subparagraph (iii) of paragraph (a);

(b) “by inserting the words “on application” at the beginning of paragraph (c).

Mr. Temporary Deputy Chairman, Sir, this amendment is proposed for purposes of clarity.

Thank you, Mr. Temporary Deputy Chairman, Sir.

(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 120 as amended agreed to)

Clause 121

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

THAT, Clause 121 be amended-

(a) in sub-clause (5) by inserting the words “ the Registrar and” immediately after the words “ notice to” appearing in the third line of the sub-clause;

(b) by inserting the following new sub-clause immediately after sub-clause(5)-

“(5A) upon service of the notice, the registrar shall make an entry in the register of the intended acquisition”.

Mr. Temporary Deputy Chairman, Sir, this amendment is proposed for editorial reasons.

Thank you, Mr. Temporary Deputy Chairman, Sir.

(Question of the amendment proposed)

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

(Clause 121 as amended agreed to)

(Clauses 122 and 123 agreed to)

Clause 124

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

THAT, Clause 124 be amended in sub-clause (1)-

(a) by deleting paragraphs (a), (b), (c) and (d);

(b) by inserting the words “the land is required for public purposes or in the public interest as related to and necessary for fulfillment of the stated public purpose” immediately after the words “ in writing that” appearing in the second line of the sub-clause.

Mr. Temporary Deputy Chairman, Sir, this amendment is proposed for purposes of clarity.

Thank you, Mr. Temporary Deputy Chairman, Sir.

(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 124 as amended agreed to)

(Clauses 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146 and 147 agreed to)

Clause 148

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 148 be amended in sub-clause (4)-

(a) by deleting the word “governor” appearing in paragraph and substituting therefor the words “ government, approved by the County Assembly”;

(b) by deleting paragraphs (e), (f) and (g).

(c) by deleting paragraph (g) and substituting therefor the following new paragraph-
“(e) a representative of persons with special needs”

(d) by inserting the words “prescribed by the county government” immediately after the word “organization” in paragraph (h);

(e) by inserting the words “prescribed by the county government” immediately after the word “representative” in paragraph (i),

Mr. Temporary Deputy Chairman, Sir, this amendment is proposed again for purposes of clarity.

Thank you, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, hon. Martin Ogindo had given notice that he had withdrawn his proposed amendment.

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

The Temporary Deputy Chairman (Mr. Imanyara): Minister, you also have an amendment to move to the same Clause 148.

The Minister for Lands (Mr. Orengo): Yes, Mr. Temporary Deputy Chairman, Sir. Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT the following new sub-clauses be inserted immediately after subclause (8)-

(9) There is established a board of trustees to be known as the Settlement Fund Board of Trustees which shall be responsible for matters relating to settlement programmes.

(10) The Board of Trustees shall consist of-

(a) the Chairperson of the National Land Commission, and

(b) five other trustees who shall be representatives of the Ministries responsible for Lands, Finance, Agriculture, Environment and Natural Resources, and Special Programmes.

With your permission, Mr. Temporary Deputy Chairman, Sir, in the amendment at 10 (b) which says:-

“five other trustees who shall be representatives of the Ministries---

You know under the new constitutional dispensation, there are no Ministries; there are departments. So, the word “Ministries” should be deleted and the word “departments” be inserted in place thereof. Also, instead of the word “of”, that word should be deleted and replaced with the word “for”. The whole sub-clause should read:-

“five other trustees who shall be representatives of the departments responsible for Lands, Finance, Agriculture, Environment and Natural Resources and Special Programmes.”

All these Ministries are going to be collapsed.

Mr. Temporary Deputy Chairman, Sir, I want to add that the reason why we felt that there should be a board of trustees is that this function is not really part of the core functions of the Commission, and to enable it do this work effectively, you need representatives from these other Ministries. As you know, the settlement programs that go on now are under the Agriculture Act, and that was for a very good cause. I hope this amendment will find favour with the Committee.

I beg to move.

(Question of the amendment proposed)

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, with due respect, the Committee does have problems with this provision. We are of the view that it is going to create some kind of conflicts. The settlement programme is a function of the National Land Commission. There is a board to manage that fund that deals with the settlement programmes. So, if we set up another one, there will be conflict. We will be creating bureaucracy, particularly on a matter that is

supposed to deal with emergencies. That is the last thing that we want. So, we have difficulties, with greatest respect to the Minister, with the proposal that he is making. We are satisfied that this is a matter that can be adequately addressed by the National Land Commission.

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Minister, we have done very well with consensus building. What is your position?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, what we are saying is that there will be a fund established as contained in the statute. This is a function of the Commission. This board of trustees will be chaired by the Chair of the National Land Commission, although that is not very clear. But it is clear from my amendment that the Chairman of the Land Commission is a substantive member. There reason is that contrary to what the Chairman is saying, settlement programmes are not for emergencies. We are dealing with a historical situation where the need to resettle the poor and landless is a continuous process, in fact, since Independence.

I have seen from experience that if, particularly agriculture and finance are not involved in the process, then you can rest assured that even getting that funding will be very difficult. In my experience in the last four years, if the Minister for Finance or Treasury is not participating effectively, then you do not even get a single cent for this kind of programme. In fact, in the last four years, other than for Internally Displaced Persons (IDPs), we have never found money for the resettlement of the poor and landless, which is a core function of the Government, if you want to build a better and more just society. But if you are talking about emergencies, for example, election violence and all that, then I agree with you,

Mr. Gunda: Mr. Temporary Deputy Chairman, Sir, I am not quite clear on what the Minister is amending.

The Temporary Deputy Chairman (Mr. Imanyara): He is creating a fund. The Chair of the Committee says that it will bring bureaucracy and duplication.

Mr. Gunda: Mr. Temporary Deputy Chairman, Sir, I thought that the amendment which has already been made by the Chair of the Committee is also establishing a fund. Therefore, are we going to have two funds?

The Temporary Deputy Chairman (Mr. Imanyara): Is that so, Chair of the Committee?

Mr. Musyimi: It is so, Mr. Temporary Deputy Chairman, Sir. Moreover, if you go to Clause 148 of the Bill it reads:-

“The Commission shall, on behalf of the national and county governments, implement settlement programmes---”

The Temporary Deputy Chairman (Mr. Imanyara): I just want to point out that there is a proposed new clause, but we have not reached there yet.

Could you, please, explain Mr. Minister?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, before we come to the new clause that is proposed by the Committee, there is no conflict. That is coming in as a new clause, but if the two of them are going to co-exist, then we have a big problem. So, it is either my proposal or their proposal. But I think that in the vision of this Bill, we wanted this function to go to the Commission. But we thought that for the Commission to carry out its work effectively, then you need to bring the mainstream Government in the process. This is because you may have a Government which does not think that the resettlement of the poor is an important function. But once you make key Ministries part of this process, then you will find that, that mandate will be more alive than just leaving it as a function of the Commission alone. The Commission may very well think that this is not an important thing and would want to

concentrate on the management of public land, which is really the key function under the Constitution and not settlement programmes. So, if we can find a middle road---

The Temporary Deputy Chairman (Mr. Imanyara): Minister, before I come to you, let us hear the Chairman of the Committee.

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, we discussed this matter at length with hon. Orenge in the retreat together with some of his officers from the Ministry. After a long deliberation, we felt that the way to deal with this matter is the fund that is now proposed in the amendment.

The Temporary Deputy Chairman (Mr. Imanyara): Your amendment?

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, our amendment of which, I do not want to say this, but I think we had arrived at consensus. I am not trying to ambush him by saying this. So, I think the idea of creating another fund just creates--- We are worried about bureaucracy and conflict in the management of too many funds. We have put in place a Commission whose mandate we are trying to clarify. I do not know whether the Minister for Finance wants to find a middle ground. You will be an absolute genius.

The Temporary Deputy Chairman (Mr. Imanyara): Let us hear the Minister for Finance.

The Minister for Finance (Mr. Githae): Mr. Temporary Deputy Chairman, Sir, I think that it is possible to reconcile the two provisions. I was just looking at what is missing in the new clause that has been suggested by the Chairman of the Committee. What is missing is the inclusion of other relevant bodies of the Government. So, if we take the Minister's proposal and only go for parts "a" and "b", and look for a place and say--- If you look at Clause 148 (A), it says:-

"There is established a Fund to be known as the Land Settlement Fund which shall be administered by the National Land Commission."

Mr. Temporary Deputy Chairman, Sir, if you add, say, "b", that is, "five other trustees who shall be representatives of the Ministries responsible for Lands, Finance, Agriculture, Environment and Natural Resources and Special Programmes," then you actually reconcile the two. The one for the Chairman is more exhaustive. What the Minister is saying is that he wants other relevant arms of Government to be involved in the administration of this fund. So, if you include part "b" of the Minister's amendment, then in effect you reconcile the two and there will be no contradiction.

The Temporary Deputy Chairman (Mr. Imanyara): I understand what you are saying and, Minister, please, get me right. I understand your colleague to be saying that you should withdraw your proposal and incorporate it in hon. Mutava's amendment. If you can do that and give me---

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Chairman, Sir, thank you, Mr. Minister.

The Temporary Deputy Chairman (Mr. Imanyara): We have Legal Counsel right here who can assist you.

The Minister for Lands (Mr. Orenge): Mr. Temporary Deputy Chairman, Sir, I withdraw my proposal and when we come to the new clause, then we will incorporate it. All that we want to do is to create a mechanism for these relevant Ministries to be involved and not create a trust as it were. My proposal under sub-clause 9 reads:-

"There is established a board of trustees---

Mr. Temporary Deputy Chairman, Sir, so we will delete that “9” when we come to the new clause, so that we do not create another board.

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Minister, you are withdrawing your amendment?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I am withdrawing the entire amendment.

*(Proposed amendment by
Mr. Orengo withdrawn)*

*(Clause 148 as amended
agreed to)*

*(Clauses 149, 150, 151, 152, 153, 154, 155,
156, 157, 158, 159, 160, 161, 162, 163, 164,
165, 166, 167, 168, 169, 170, 171 and 172 agreed to)*

Clause 173

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 173 be amended-

(a) in sub-clause (1)-

(i) by deleting the words “and removing any difficulties occasioned by the coming into operation of this Act”

(b) In sub-clause 2-

(i) by deleting the words “Cabinet Secretary” and substituting therefor the word “Commission;

(ii) by deleting the words “persons and” and substituting therefor the words “persons and’ in paragraph (d);

(iii) by deleting the paragraph (f);

Mr. Temporary Deputy Chairman, Sir, 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 words to be inserted
in place thereof be inserted, put and agreed to)*

(Clause 173 as amended agreed to)

(Clause 174 agreed to)

Clause 175

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

THAT, Clause 175 be deleted.

The clause is repeated under Clause 176; so we are recommending deletion.

(Question of the amendment proposed)

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

(Clause 175 was, accordingly, deleted)

Clause 176

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

THAT, Clause 176 be amended by renumbering the existing Clause 176 as Clause 175.

The Temporary Deputy Chairman (Mr. Imanyara): Minister, does not that follow automatically? But let me propose the Question.

(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 176 as amended agreed to)

The Temporary Deputy Chairman (Mr. Imanyara): Hon. Members, we now go to new clauses.

New Clause 8A

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 8-

Conversion of Land

8A. (1) Any land may be converted from one category to another in accordance with the provisions of this Act or any other written law.

(2) Without prejudice to the generality of subsection (1)-

(a) public land may be converted to private land by alienation;

(b) subject to public needs or in the interest of defence, public safety, public order, public morality, public health, or land use planning, public land may be converted to community land;

(c) private land may be converted to public land by-

(i) compulsory acquisition;

(ii) reversion of leasehold interest to government after the expiry of a lease; and

(iii) transfers; or

(iv) surrender.

(d) Community land may be converted to either private or public land in accordance with the law relating to community land enacted pursuant to Article 63(5) of the Constitution.

(3) Any substantial transaction involving the conversion of public land to private land shall require approval by the National Assembly or County Assembly as the case may be.

(4) The Commission shall cause a register to be kept containing the following particulars:-

(a) public land converted to private land by alienation;

(b) names and addresses of all persons whose land has been converted to public land through compulsory acquisition or reversion of leasehold;

(c) community land converted to either private or public land; and

(d) such other details as the Commission may direct.

(5) The Commission may make rules for the better carrying out of the provisions of this section, and, without prejudice to the generality of the foregoing, the rules may provide for the following:-

(a) prescribing substantial transactions requiring approval of the National Assembly or the County Assembly as the case may be;

(b) prescribing anything required to be prescribed under this section;

(c) regulating and controlling the conversion of land from one category to another;

(d) prescribing the factors to be applied or taken into account in determining land that is to be converted;

(6) Rules made under this section may contain-

(a) different provisions for different parts of Kenya;

(b) different provisions for different categories of conversion or kinds of transactions; or

(c) exemptions or conditional exemptions from the operation of any rule made under this section.

(7) Any Rules made by the Commission under subsection (5) shall be tabled before Parliament for approval.

(Question of the new clause 8A proposed)

(New clause 8A read the First Time)

(Question, that the new clause 8A be read a Second Time, proposed)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I just wanted to say that this new clause is very important because the Constitution requires us to have legislation spelling out how one category of land can be converted to a different category. In the original draft there was no such provision. In fact, I brought up this matter with the Committee

right at the tail end of the workshop in Mombasa; I am glad that the Committee has come up with acceptable provisions for conversion of one category of land to another.

*(Question, that the new clause 8A be read
a Second Time, put and agreed to)*

(The new clause 8A was read a Second Time)

*(Question, that the new clause 8A be added
to the Bill, put and agreed to)*

New Clause 12A

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the following new clause be inserted immediately after Clause 12-

Lessee pre-emptive rights to allocation.

12A (1) Where any land reverts back to the national or county government after expiry of the leasehold tenure the Commission shall offer to the immediate past holder of the leasehold interest pre-emptive rights to allocation of the land provided that such lessee is a Kenyan citizen and that the land is not required by the national or the county government for public purposes.

(2) The Commission may make rules for the better carrying out of the provisions of this section, and without prejudice to the generality of the foregoing, the rules may provide the following.

- (a) prescribing the procedures for applying for extension of leases before their expiry.
- (b) prescribing the factors to be considered by the Commission in determining whether to extend the tenure of the lease or re-allocate the land to the lessee.
- (c) the stand premium and or the annual rent to be paid by the lessee in consideration of extension of the lease or re-allocation of the land.
- (d) other covenants and conditions to be observed by the lessee.

(Question of the new clause 12A proposed)

(New clause 12A read the First Time)

*(Question, that the new clause 12A be
read a Second Time, proposed)*

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, this is a very important provision because it lays a basis for dealing with expired leases. There has been some controversy on this. It states that any holder of lease or lessee would be entitled to pre-emptive rights in regard to an allocation of an extension, so long as the land is not required by

the national or county government, and then certain conditions have to be fulfilled. So, it fills a very big vacuum in the law as it exists today. So, I support it fully.

(Question, that the new clause 12A be read a Second Time, put and agreed to)

(The new clause 12A was read a Second Time)

(Question, that the new clause 12A be added to the Bill, put and agreed to)

New Clause 148A

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, the following new clause be inserted immediately after clause 148-

Land Settlement Fund

148A (1) There is established a Fund to be known as the Land Settlement Fund which shall be administered by the National Land Commission.

(2) There shall be paid into the Fund-

- (a) any monies appropriated by Parliament for the purposes of the Fund;
- (b) any funds provided by bilateral or multilateral donors, for the purpose of the Fund;
- (c) gifts, grants, donations or endowments as may be given to the Commission for the purpose of the Fund;
- (d) monies that may be borrowed by the Commission for the purposes of the Fund;
- (e) the rates, charges, dues, or fees levied by the Commission under this Act;
- (f) all monies derived from the payment made by beneficiaries of settlement schemes;

and

(g) such sums as may be payable to the Commission pursuant to this Act or any other written law.

(3) The Fund shall be applied to the following purposes-

(a) provision of access to land-

- (i) to squatters;
- (ii) to displaced persons;
- (iii) for development projects;
- (iv) for conservation; or
- (v) such other causes that may lead to movement and displacement of persons;
- (b) purchase of private land for settlement programmes;
- (c) establishment and management of refugee camps;
- (d) provision of shelter and a livelihood to persons in need of settlement programmes;
- (e) research, documentation and dissemination of information on settlement programmes;

and

(f) any other purpose that would enhance the development and promotion of settlement programmes that may be approved by the Commission.

(4) The Fund shall be administered in accordance with the provisions relating to public funds under the law relating to public finance management.

Mr. Gunda: Mr. Temporary Deputy Chairman, Sir, what about Clause 83A? It is also a new clause.

The Minister for Lands (Mr. Orengo): It is not a new clause.

The Temporary Deputy Chairman (Mr. Imanyara): We dealt with that more than an hour ago. We are now on New Clause 148A.

Mr. Musyimi, you have already moved? Therefore now let me propose the Question.

(Question of the new clause 148A proposed)

(New clause 148A read the First Time)

(Question, that the new clause 148A be read a Second Time, proposed)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I support but I want to move further amendment at the end of---

The Temporary Deputy Chairman (Mr. Imanyara): We will come to that. It is a new clause.

The Minister for Lands (Mr. Orengo): As it stands, I support it but I would wish to move a further amendment. I support it but the amendment is not on the content but it is about additional provisions.

(Question, that the new clause 148A be read a Second Time, put and agreed to)

(The new clause 148A was read a Second Time)

The Temporary Deputy Chairman (Mr. Imanyara): This is the stage at which to amend, Mr. Minister.

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

THAT the Bill be amended by inserting at the end of the new clause after sub-clause (4) the following new sub-clause (5) which will read as follows:-

“In carrying out its functions under Part VIII of this Act the Commission shall consult and co-operate with the departments responsible for land, finance, agriculture, environment, natural resources and special programmes, and with the relevant county government where applicable.

The Temporary Deputy Chairman (Mr. Imanyara): You need to sign that and pass it on to the Chair.

(Question of the amendment proposed)

Mr. Musyimi: Mr. Temporary Deputy Chairman, Sir, I do not know why you need to add the word “co-operate” once you have said “consult”. I think you are being repetitive.

The Temporary Deputy Chairman (Mr. Imanyara): Are you in agreement?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I was using the word “co-operate” because some of your amendments have used the words together. So, I was just being consistent both in the National Land Commission Bill and the Land Registration Bill. So, the words are from the Committee.

The Temporary Deputy Chairman (Mr. Imanyara): Very well! I notice that there is agreement there.

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

(Question, that the new clause 148A as amended be added to the Bill, put and agreed to)

New Clauses 177A and B

The Temporary Deputy Chairman (Mr. Imanyara): In your Order Papers, you will see Consequential Amendments. These are the amendments being referred to as the new Clauses 177(A) and (B).

Mr. Musyimi: Mr. Chairman, Sir, I beg to move:-

Amendments of Section 168 of the Agriculture Act, Cap.318

THAT, Section 168 of the Agriculture Act, Cap.318 is amended by deleting paragraph (e) of sub-section (2).

Amendments of Section 169 of the Agriculture Act, Cap.318

THAT, Section 169 of the Agriculture Act, Cap.318 is amended by deleting paragraph (d) of sub-section (1)

(Question of the new clauses 177 A and B proposed)

(New clauses 177 A and B read the First Time)

(Question, that the new clauses 177 A and B be read a Second Time, proposed)

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Minister, are you in agreement?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, the marginal notes should not read; “amendment of section---” but “repeal of section---” What would appear in the Act is not an amendment of a section. So, that will apply to both 168 and 169. These are the marginal notes. I do not know whether the heading; “Consequential Amendments” is supposed to be part of the Bill.

The Temporary Deputy Chairman (Mr. Imanyara): No.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, if it is not, then I am in agreement.

*(Question, that the new clauses 177 A and B be read
a Second Time, put and agreed to)*

(The new clauses 177 A and B were read a Second Time)

*(Question, that the new clauses 177 A and B be added to
the Bill, put and agreed to)*

Schedule

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Musyimi, did you have some amendments to make on the Schedule? It is on page 3470?

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

THAT, the First Schedule of the Bill be amended by inserting the following –

The Land Control Act, Cap. 302

This is, again, for clarity.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Mr. Imanyara): Mr. Minister, have you seen it?

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I support.

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

(Schedule as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

Mr. Musyimi: On a point of order, Mr. Temporary Deputy Chairman, Sir. I know that during the meetings, with the wisdom of the Minister, we did at some stage agree that the Land Registration Bill and the Land Bill need to be collapsed into one Bill. I do not know at what stage we will deal with that particular sentiment.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I said right at the beginning that we cannot do that during this process. The Attorney-General under his general powers can bring a Bill or a Motion to reorganize the way we consolidate and harmonize. That can still be done but not in the present proceedings.

The Temporary Deputy Chairman (Mr. Imanyara): Yes, Mr. Minister!

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Land Bill (Bill No.6 of 2012) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Mr. Deputy Speaker in the Chair]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

Mr. Imanyara: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Land Bill, Bill No.6 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.

The Minister for Finance (Mr. Githae) seconded.

(Question proposed)

Mr. Ogindo: Mr. Deputy Speaker, Sir, I want to agree with the Committee. However, I want to commend the hon. Minister for having done such a wonderful job. As you can see, he has relied, purely, on logic, law and patriotism. He has not mobilized anybody to come and help bulldoze his course. I want to commend the House because this has been done in a most sober environment. I wish that the rest could be handled similarly.

Thank you.

Mr. Musyimi: Thank you very much, Mr. Deputy Speaker, Sir. I stand to thank my colleagues in the Committee on Lands and Natural Resources. They went beyond the call of duty, they went round the country and had many meetings. They brought a tremendous spirit in terms of consultation, openness and professionalism and I take this opportunity to thank them most sincerely.

May I also through you, Mr. Deputy Speaker, Sir, thank the Minister. It has been a joy working with my good friend, *Mheshimiwa* James Orengo and he is not a---

Mr. Deputy Speaker: It is hon. James Orengo. You cannot mix Kiswahili and English at the same time.

Mr. Musyimi: Mr. Deputy Speaker, Sir, I stand guided. I wish to thank hon. James Orengo. It has been a joy working with him and I know that there were many fears in many

quarters but somehow, maybe because of old commitment to reforms, we were able to close ranks and find each other and, thereby bring others within our constituencies to work together towards helping our nation. I also take this opportunity to thank many of our people who attended the public hearings across the country and for their submissions, we are very grateful.

Thank you, Mr. Deputy Speaker, Sir.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I also want to thank the House and the Committee led by its able Chairman, hon. Dr. Mutava Musyimi. I think more than any other committee dealing with legislation relating to land, it is a very difficult exercise; a very difficult undertaking. Initially, there were fears that this process would not move forward. But I think they were able to go round the country, take time and look at these Bills, clause by clause. In fact, I think if it was within my powers to confer honorary doctorates on all the members of the Committee, I will do it. That is because I saw them in action. They were engaging very senior lawyers, the Law Reform Commission, the Law Society of Kenya (LSK), the Commission on the Implementation of the Constitution (CIC) and many eminent lawyers that are referred to in some of these sessions. I could see them interrogate not only the Bill itself, but the views that were being presented to them by experts. I thought for a moment that I was sitting in a committee of lawyers but, at the end of the day, good laws is good common sense. I think the Committee has done a wonderful job.

Mr. Deputy Speaker: Hon. Minister, I would hate to interrupt you but, ordinarily, when the Question is put and the Motion is carried, at the Third Reading, then you have the opportunity to celebrate. You still have another moment to do that.

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, yes, I will have another moment but you know, you can see how the Chair prosecuted the amendments. It is not easy to prosecute so many amendments involving many technical issues and the Chair who has just presented this Report of the Committee to the House - also under his able Chairmanship - we were able to resolve in Committee many of the issues that arose. I am now under your hands on how we are going to move forward.

(Question put and agreed to)

Mr. Deputy Speaker: Mr. Minister, can you move the Third Reading?

The Minister for Lands (Mr. Orengo): Mr. Deputy Speaker, Sir, I beg to move that the Land Bill, Bill No.6 of 2012, be now read the Third Time.

Mr. Deputy Speaker, Sir, during this Third Reading, I would like to take this opportunity to repeat my salutation and felicitations of the people that I mentioned during the Committee's Report and at the end of that Committee Report to the House. I also would like to thank the officials at the Ministry of Lands who are here. Despite all the accusations, for them to agree that that Department should be reformed--- There are provisions in this Act that they will have to undergo a vetting suitability test if they wish to join the Commission. They were part of the team that brought some of these proposals which meant like signing a death warrant on their jobs and for that, I want to really thank them.

Mr. Deputy Speaker, Sir, I now beg the House that in a similar fashion of bringing to fruition this legislation, the Committee could have another round to educate Kenyans on the law that we have just passed. That is because I visited many areas where the Committee had gone round and there were a lot of expectations. They will think that with the new law and

Commission, people are just going to get land everywhere. That land is not available. So, I think that civic education is necessary.

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

The Minister for Finance (Mr. Githae): Thank you, Mr. Deputy Speaker, Sir. Let me also take this opportunity to thank the Minister, his staff and the Chairman of the Departmental Committee on Lands and Natural Resources and his staff for a job well done. I think they have tried their best to balance the views of landlords and tenants. They have done their best to balance the views of the land owners and the landless. They have done their best to balance the views of land owners, tenants and squatters. They have really done a good job to balance. Initially, people were thinking that it was not possible. But it is actually possible to do that. For that, I thank them.

Mr. Deputy Speaker, Sir, I rose to bring out one issue; that this Bill has successfully been enacted today by this House because the Minister took time. He invited Members of Parliament and other stakeholders to a workshop where they had all the time to go through the Bill. I remember that there were reports in the newspapers that the Minister had invited Members of Parliament to Mombasa to go and bribe them. These are the allegations that we really need to stop as Members of this august House. When you issue those kinds of statements, you are hurting not only yourself but, this House, the country and everybody else. So, my request is: Hon. Members, please let us avoid making those reckless statements because the effect of that is just to lower the dignity of this House. Kenyans look up to us and they expect us to do our best.

Mr. Deputy Speaker, Sir, lastly, you can see that the way the Committee has done its work is actually what is going to happen in the new dispensation when we will have the county governments, the two chambers of the House and when Ministers will no longer be Members of Parliament. It is going to be a House of committees. Everything will be done by the committees exactly the way the Chairman has done. Were it not the fact that the Chairman of the Committee wants to be the president of this country, I would have recommended him to be a Member of Parliament so that he can guide the new hon. Members that will be coming. Otherwise, I wish him all the luck in his campaigns.

With those few remarks, I beg to second.

(Question proposed)

Mr. Deputy Speaker: Hon. Members, the Motion has been carried. As per the tradition, this is the moment when you can give you salutations, solicitations and you know, patting your own backs.

Mr. Mureithi: Mr. Deputy Speaker, Sir, thank you very much. I really take this opportunity to thank the Minister, our Chairman, the Committee and all the staff that we worked with. It was a very big eye-opener for me, particularly, when I was given the opportunity to go round in one area--- That is because we sub-divided ourselves into various sub-committee. I was able to cover Eastern Province and Nakuru. One of the things that really impressed me is the knowledge of the people - particularly the people from pastoral areas of Isiolo and Laikipia whom I was able to interact with. I found many underlying things that, probably, we have not really uncovered. I hope that when these Bills become Acts of Parliament – as Minister Orengo said - we shall be able to go out there - particularly the areas we covered - and interact with the people and tell them exactly where we are. That is because, probably, there are one or two things they may have forgotten.

Mr. Deputy Speaker, Sir, I must also thank Minister Orengo and our Committee for the period we spent in Mombasa, where we had various professionals, including representatives of the Law Society of Kenya (LSK), the Constitution Implementation Commission (CIC) and the Law Reform Commission (LRC). My exposition in terms of the land laws really made me understand land matters better. I thought I understood the laws relating to agriculture having served in the agriculture sector, but when I looked at the land laws, I was very impressed.

We also thank you, Mr. Deputy Speaker, Sir, because even yesterday, you came back and closed the session with us. Today you have again come back and we have concluded well. There has not been any acrimony. If debate in this House goes this way, we can create a harmonious country.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Njuguna: Mr. Deputy Speaker, Sir, I would also like to join my fellow hon. Members in congratulating all the stakeholders who have made some kind of contribution to the Land Bill. I will start by thanking hon. Martin Ogindo for the various amendments that he had suggested; Dr. Otichilo and lawyer Kioni. They have made very fantastic contributions to this Bill.

I would also like to extend my congratulations to the Chairman of the Departmental Committee on Lands and Natural Resources, Dr. Mutava Musyimi, for his credible leadership in the Committee. I also recognise the participation by the Members of the Committee.

Mr. Deputy Speaker, Sir, I would also like to extend my congratulations to other stakeholders, including the CIC, the civil society and any other stakeholder who has made some kind of contribution and shown commitment in the process of developing this Bill.

I would like to end by thanking the Minister for Lands, who has been patient and articulate throughout the deliberations on this Bill. I have really admired the way he has carried out the various amendments. I would like to challenge the other Cabinet Ministers to always display the kind of patience that he has displayed in this House, and particularly during the enactment of this critical Land Bill.

With those few remarks, I feel that this is the spirit we need to exhibit for the interest of this country and the posterity of our children.

Ms. Chepchumba: Mr. Deputy Speaker, Sir, I want to take this opportunity to thank the Minister and the Ministry officials for their contribution in the development of the Bill, and also thank my colleagues, led by the able Chairman of the Departmental Committee for the work we did.

I want to thank the women. Gender issues have been considered in the Bill. It is a step forward that our issues, as women, have been considered. The Bill that we have enacted is going to take this country forward.

Mr. Deputy Speaker, Sir, the land issue in this country has been emotive. Some of the problems that we have been having will be solved by this Bill.

Mr. Namwamba: Mr. Deputy Speaker, Sir, I feel the urge to add my voice to this debate more so because the issue of land really is one of those critical issues that were at the centre of the agitation for the transformation of this country. It is so gratifying. Indeed, it is actually historic for those of us who have the opportunity to see this transformation take place and even be part of the same in terms of this legislation. It is, indeed, both humbling and a great honour.

I want to congratulate the Minister for Lands, hon. Orengo, and the Chairman of the House's Departmental Committee on Land and Natural Resources, hon. Mutava Musyimi, for the very consultative process that has informed this legislation. In the spirit of the Constitution,

which celebrates public participation and consultation, this can be truly described as one of the most consultative pieces of legislation to go through this House.

Mr. Deputy Speaker, Sir, I have had the privilege of participating in some of those consultations and I can only say that the spirit that has been exhibited on the side of the Government and on the side of the House, through the Departmental Committee, is a spirit that should, indeed, be replicated in all processes that we will be engaging in as we legislate on the new Constitution.

I just want to hope that as we complete this journey; a journey I believe holds the hopes, the dreams and aspirations of many Kenyans who want to see a land regime that is better and more easily administered, and that is secure – we shall move with speed, with the leadership of the Minister, to make sure that all these Bills see the light of the day sooner rather than later.

Mr. Deputy Speaker, Sir, once again, I congratulate the Minister. It is so gratifying that it is hon. Orengo who has been responsible for this process, knowing that he has been such an accomplished “warrior” for the liberation of this country and for the completion of the long journey to see the birth of a new Kenya. I can only say *pongezi, Waziri*. Congratulations, hon. Musyimi and your Departmental Committee.

With those remarks, I support.

Mr. Ethuro: Mr. Deputy Speaker, Sir, it is my singular responsibility to appreciate the Minister and the Chairman of the Departmental Committee. I will be failing on my part if I do not do so. I say this because, severally on the Floor of this House, I have mentioned to the Minister in particular that he owes it to this country to realise all the struggles he had been engaging on the streets. We are now on the Floor of the House. We must make laws.

After the Constitution, the second most important pieces of legislations are those on land. I want to congratulate everybody and remind the Minister that the Community Land Bill must also be realised within the time period that you gave us, which is before August. That is when this newly found “oil Sheikh” will be very comfortable.

Thank you, Mr. Deputy Speaker, Sir.

Mr. Mututho: Mr. Deputy Speaker, Sir, I rise to support and congratulate the Minister. If I never did that, I will have betrayed the cause, being the Chairman of the Committee on Agriculture, Livestock and Co-operatives.

Mr. Deputy Speaker, Sir, I have always said, and I will continue saying it until people get what I am talking about – that, there are only four factors of production in agriculture, amongst which land is top, followed by capital, labour and management.

There are many areas to be polished as we continue with this long journey towards true land reforms. As we go on this journey, let us remember the wise words by our departed hero and first President of the Republic of Kenya in his famous quote “In land lies our survival”. As long as we carry that at the back of our minds we will see very good news ahead of us.

I would like to thank again hon. Orengo. I really must congratulate him for his patience. I have seen him from the time when he was in my Committee. All this time, up to the time ---- and I am glad his brother, the Minister for Finance is just next to him. When he got a major budget cut up to the level of Kshs1 billion at the time when he was advocating for computerization of the land registry so that we can process these land matters faster and be able to countercheck, it was a very sad moment for them. Hon. Minister for Finance, if it pleases your heart, this time round, listen to them so that their registry can be improved and it works out well.

I support.

(Question put and agreed to)

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

Mr. Deputy Speaker: Next Order.

Mr. Gunda: On a point of order, Mr. Deputy Speaker, Sir. We are going to Order No.9 and yet we have had no Motion to extend the sitting of the House today.

Mr. Deputy Speaker: There was a Motion that was passed yesterday that covered both yesterday and today. The House is sitting until 8.00 p.m.

Proceed, Mr. Mbau.

MOTION

ADOPTION OF REPORT ON BUDGET POLICY STATEMENT

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

THAT, this House adopts the Budget Committee Report on the Budget Policy Statement for 2012/13 laid on the Table of the House on Wednesday, 25th April, 2012.

Mr. Deputy Speaker, Sir, on behalf of the Members of the Budget Committee, and as is required under Standing Orders No.143(4), I hereby present to the House the Committee's Report on the 2012/2013 Budget Policy Statement laid on the Table of the House on Wednesday 25th, 2012, pursuant to Standing Orders No.143. Once before the House, the Budget Policy Statement stands committed to the Budget Committee for examination in consultation with the departmental committees and subsequently a report is read in this House.

The Constitution of Kenya establishes Parliament as the guardian of public finances and financial measures, and it has drastically changed the landscape of public financial management in this country.

The role of Parliament has shifted from a budget-approving legislature to a budget-making one. Budget-making entails identifying programmes and activities to be carried out during a specific period and outlining how revenues raised will be shared among competing needs. This is the third Report on the Budget Policy Statement to be tabled in Parliament in accordance with the requirements of the Fiscal Management Act, 2009 and the Kenya National Assembly Standing Orders, 2008.

Mr. Deputy Speaker, Sir, based on your ruling on 18th April, 2012, you did indicate that in consultation with departmental committees, the Budget Committee should immediately embark on reviewing the Budget Policy Statement and within seven days submit a report to this House. I am extremely glad that we have been able to undertake this task diligently and have adhered to the timelines. All this is courtesy of the commitment, diligence and dedication of the various chairpersons of various committees as well as their members and the support we have received from your office, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker, Sir, it is important to note that in as much as this Report is being laid in the House, at a time when the Estimates are also being submitted earlier today, the Committee would wish to reiterate that the Report will still follow the basis of reviewing the Estimates. Thus the recommendations herein, will be considered for interrogating the various

programmes of Ministries, departments and agencies, especially with regard to the 2012/2013 Budget.

The Budget Committee as currently constituted comprises of the following: hon. Elias Mbau, myself, as the chairperson; hon. Alfred Sambu as the vice-chairperson; hon. Martin Ogindo; hon. Danson Mungatana; hon. Moses Lessonet; hon. Omar Zonga; hon. John Mbadi; hon. Nemeysius Warugongo; hon. Yakub; hon. John Mututho; hon. Nelson Gaichuhie; hon. Emilio Kathuri; hon. Abdul Bahari; hon. Johnstone Muthama and hon. Jackson Kiptanui.

In addition, all the chairpersons of all departmental committees are ex-officio members of the Budget Committee where they actively play a very crucial role through their participation. This makes the Committee the largest and, indeed, this is in line with the importance of the issues which this committee handles in its day to day operations.

Mr. Deputy Speaker, Sir, the Budget Committee is established under Standing Order No.190 and is further given legal backing under the Fiscal Management Act, 2009. This Committee is mandated to undertake the following:-

1) Examine the budget policy statement presented to the House and report to the House what, if any, economies that should be made consistent with proper carrying out into effect of the policy implied in or by such statement and Estimates. This is the purpose of the Report that we are debating today.

2) To evaluate and estimate economic and budgetary policies and programmes with direct budget outlays.

3) Study all economic and budgetary issues falling within the competence of the National Assembly and transmit its recommendations thereon to the Assembly.

During the review of the Budget Policy Statement, the Budget Committee held nine sittings. It further received submissions from all departmental committees which it considered and included in this Report.

Once again I want to thank all the chairmen and Members of the 11 departmental committees that worked overtime and burned the midnight oil over the weekend and during the night to ensure compliance with the ruling and directions of the Speaker on the 18th of this month.

In addition, pursuant to Article 221(3) of the Constitution, the Budget Committee also met with the Parliamentary Service Commission on behalf of the Kenya National Assembly and the Judicial Service Commission on behalf of the Judiciary. I wish to sincerely thank all the Members of the Budget Committee as well as those of the departmental committees for their dedication, enthusiasm and support during the review of the Budget Policy Statement.

The Committee is equally grateful to the office of the Speaker and the Clerk of the National Assembly for the support they gave during its considerations of this Budget Policy Statement.

On behalf of the Committee and its Members, I now have the honour and pleasure to present this report of the Budget Committee on the Budget Policy Statement for 2012/2013 and the Medium-Term to this House as well as initiate debate with a view to adopting this report which is expected to be considered and incorporated in the final preparation of the Budget proposals to be adopted later this year.

Let me move and restate the purpose of the Budget Policy Statement. This Statement is a broad macro-economic strategy on issues that inform budgeting in the next financial year and the Medium-Term. The Budget Policy Statement includes an assessment of the economy in the current financial year, projected state of the economy in the Medium-Term, the macro-economic

and fiscal policies for the period and the criteria for resource allocation among specific programmes, including outputs expected from each of those programmes.

Given the various challenges facing our economy during this transition period, both internally and externally, the Budget Policy Statement, 2012, seeks to consolidate and sustain inclusive economic growth by restoring and maintaining macro-economic stability and focusing on economic policies and structural reforms aimed at removing hurdles to higher growth while facilitating private sector to expand its business, promote productivity and build resilience necessary for employment creation and poverty reduction.

The Committee wishes to point out that while the Budget Policy Statement for 2012 has broadly taken into account the provisions of the Fiscal Management Act and the Standing Orders, it failed to adhere to some pertinent provisions, notably; Section 7(3)(d) and (e) of the Fiscal Management Act that provides that the Budget Policy Statement should contain the total resources to be allocated to individual programmes within a sector or Ministry for the current financial year and succeeding three years and indicating outputs expected from such programmes during the period and, of course, the criteria used to apportion these resources among the Ministries and the individual programmes. This is as per the recommendations of the Committee over the period to ensure that we have programme-based budgeting to ensure the public is able to assess where resources and the outputs are put. However, the budgeting process has continuously missed these provisions making division of resources appear a mystery and we hope that this will change in future, hopefully, beginning with the finalization of the current Estimates.

Mr. Deputy Speaker, Sir, the body of the report that we laid yesterday takes an excursion on the recent developments in the economy and output, on fiscal policies and the Budget framework, on the CDF framework and the structure of the Budget itself as well as on specific expenditure priorities per sector as has been recommended by the various Departmental Committees.

Most of the recommendations are contained in the body of the report. I want to now narrow down to the specific recommendations that I will want to urge this House to ensure are taken on board and incorporated when the Minister for Finance eventually places or submits the Budget Estimates later this year.

The recommendations are as follows:-

On the fiscal policy and budget framework, the Committee recommends that given the weak fundamentals driving the economic growth over the period of 2012/2013, the growth target should be revised to 5.2 per cent so that, eventually, the estimated revenues are, at least, not at a very huge variance with what is realisable - with the actuals. We also recommend that the Equalization Fund, according to Section 221 of the Constitution Sub-section 2, be increased to Kshs6.7 billion as per the requirements of the Constitution.

Mr. Deputy Speaker, Sir, in addition, not later than 31st May, 2012, the Commission for Revenue Allocation should publish the criteria for identification of marginalized areas to enable operationalization of the Fund at the start of the 2012/2013 Financial Year. In addition, the requisite law should be enacted. The Minister for Finance should gazette rules and regulations governing the Equalization Fund. The Committee takes exception that in 2011/2012, it was recommended that the Equalization Fund be operationalized. But that was not realized.

Mr. Deputy Speaker, Sir, according to the Contingency Fund Act which was passed last year, the contingency fund must be increased to the statutory level of Kshs10 billion. The Committee, therefore, recommends for a full provision of that amount in the annual estimates for

2012/2013, noting that what is now provided in the Budget Policy Statement is a mere Kshs5 billion, which is 50 per cent of the statutory amount.

Mr. Deputy Speaker, Sir, to enhance manufacturing – and these are broad policy prescriptions - the Government should provide a ten year tax holiday for large industries that use:-

(a) 100 per cent local raw materials and labour to produce products for local markets and export.

(b) New or revitalized paper milling companies that sustainably use 100 per cent of local raw materials---

QUORUM

Mr. Ruto: On a point of order, Mr. Deputy Speaker, Sir. What we are transacting now is very important business. We agreed yesterday to extend time up to 8.00 o'clock. But I am surprised that Members are not here; not even the Government. I must thank only the Minister for Finance. The rest are all absent. There is no Government here at all. There are only three MPs.

Madam Temporary Deputy Speaker, Sir, I wonder whether there is quorum.

*(Mr. Ethuro stood up
in his place)*

Mr. Deputy Speaker: Order, hon. Ethuro! Hon. Ruto is on a point of order.

Mr. Ruto: Mr. Deputy Speaker, Sir, apparently, there is no quorum! I am bringing that to your attention.

Mr. Deputy Speaker: Yes, indeed, there is no quorum as you put it. Can you ring the Division Bell?

(The Division Bell was rung)

ADJOURNMENT

Mr. Deputy Speaker: Order! Order, hon. Members! There being no quorum, the House stands adjourned until Wednesday, 2nd May, 2012, at 9.00 a.m.

The House rose at 7.30 p.m.