

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 26<sup>th</sup> June, 2012

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

#### WELCOME TO DELEGATION FROM PARLIAMENT OF NAMIBIA

**Mr. Speaker:** Order, hon. Members! I have two Communications to make. First, I wish to introduce to you and welcome this afternoon a delegation from the Parliament of Namibia seated at the Speaker's Row. They are a Joint Committee on the Parliamentary Service and consist of Members both from the National Assembly and the National Council of the Namibia Parliament. They are here to learn about the operations of the Parliamentary Service Commission, financing of Parliament activities and other matters related to Parliamentary operations.

The delegation Members are:-

- (i) Hon. Bernard Sibalatani, MP – Chief Whip of the National Council and Leader of Delegation;
- (ii) Hon. Peter Katjavivi, MP – Chief Whip, National Assembly;
- (iii) Hon. Hilma Nicanor, MP;
- (iv) Hon. Lebbius Tobias, MP;
- (iv) Hon. Elifas Dingara, MP; and
- (v) Hon. Agnes Limbo, MP.

They are accompanied by the following members of staff:-

Mr. Jake Jacobs - Secretary, National Assembly;

Ms. Juliet Mupurua - Deputy Secretary, National Council;

Ms. Emilia Mkusa - Director of General Services, National Assembly;

Mr. Petrus Husselmann - Director of Legal Services, National Assembly;

Mr. Benedict Likando - Legal Officer, National Council; and

Ms. Maria Mombola - Chief Human Resource Practitioner, National Assembly.

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

### ASSENT TO BILLS

Secondly, hon. Members, I have Communication to make regarding returns on Bills received from the Attorney-General pursuant to the Standing Orders. Standing Order No.125 requires the Attorney-General to present to the President, within 14 days of receipt from the

Clerk, every Bill passed by this House. Thereafter, at the expiry of 14 days, the Attorney-General is required to file a return with the Speaker indicating the time and the date that the Bill was presented to the President. The returns now received indicate that the following three Bills, which were all passed by the National Assembly on various dates, were presented by the Attorney-General to His Excellency the President for assent and were all duly assented to as hereunder:-

1. The Partnership Bill, 2010, passed by the National Assembly on 29<sup>th</sup> May 2012 and duly assented to on 15<sup>th</sup> June 2012 at 1800hrs.
2. The Judicature (Amendment) Bill, 2011, passed by the National Assembly on 29<sup>th</sup> May 2012 and duly assented to on 15<sup>th</sup> June 2012 at 1800hrs.
3. The Publication of Electoral Opinion Polls Bill, 2011, passed by the National Assembly on 30<sup>th</sup> May 2012 and duly assented to on 15<sup>th</sup> June 2012 at 1800hrs

I thank you.

### **PAPERS LAID**

The following Papers were laid on the Table:-

Financial Statements of the Town Council of Wote for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Bureti for the two year period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Koibatek for the two year period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Vihiga for the two year period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Wajir for the year ended 30<sup>th</sup> June, 2001 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Ijara for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Londiani for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Teso for the two year period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Auditor-General.

Financial Statements of the Municipal Council of Busia for the two year period ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Taveta for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Auditor-General.

*(By the Assistant Minister for Medical Services (Mr. Kambi) on behalf of the Minister for Local Government)*

Financial Statements of the School Equipment Production Unit for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Auditor-General.

*(By the Assistant Minister for Medical Services (Mr. Kambi) on*

*behalf of the Minister for Education)*

**The Assistant Minister for Medical Services** (Mr. Kambi): Mr. Speaker, Sir, there is one item, but I do not have papers to lay---

**Mr. Speaker:** Order! You table whatever you have! What you do not have, you cannot table.

### **QUESTION BY PRIVATE NOTICE**

#### **NON-PAYMENT OF COPY RIGHT COMPENSATION CLAIMS TO ENOCK ONDEGO BY KBC**

**Dr. Khalwale:** Mr. Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice.

(a) Is the Minister aware that Mr. Enock Ondego alias Mr. Hassan Rashid, aged 82, a freedom fighter from Kisauni, Mombasa County is in urgent need of medical care which he cannot afford due to failure by Kenya Broadcasting Corporation to pay him compensation claims for copyright violation?

(b) Is the Minister also aware that the freedom fighter who sung many freedom and patriotic songs including “*Kenya Yetu and Kenya ni ya Ajabu,*” has lost his eyesight?

(c) When will he be paid his dues?

Mr. Speaker, Sir, this is a Question concerning an old man in Mombasa.

**Mr. Speaker:** Order! You have asked the Question.

**Dr. Khalwale:** He wanted the Assistant Minister to respond in Kiswahili language. I made a mistake.

**Mr. Speaker:** Order! Assistant Minister, do you have answer to this? Try as much as possible to do it in Kiswahili language. If you cannot, just proceed in whatever language you are able to.

**The Assistant Minister for Information and Communications** (Mr. Khaniri): Mr. Speaker, Sir, my written answer is in English language. So, I will proceed and answer it in English unless hon. Member wants us to go and translate into Kiswahili language.

I beg to reply.

(a) The facts are that Mr. Enock Ondego, a resident of Kisauni Mombasa County moved to court by a plaint dated 19<sup>th</sup> August, 2002 against Kenya Broadcasting Corporation (KBC), Director of Culture and Social Services and the Attorney-General and the first, second and third defendants, respectively. The plaintiff had sought for general damages, cost of the suit, interests thereof and any other relief the honourable court would deem fit and just to grant.

Mr. Speaker, Sir, the basis of this plaintiff’s alleged claim was for infringement of a copyright on his recorded songs and fraud by the first and second defendants which he discovered sometimes on 31<sup>st</sup> April, 2001. Upon further investigation, he established that the breach had commenced in 1973 and continued every year thereafter. In its defence dated 16<sup>th</sup> March, 2005, the first defendant, KBC, denied the allegations by the plaintiff and most importantly pleaded that the suit has filed was fatally defective for non-compliance with Section 46 of the Kenya Broadcasting Corporation Act and that a preliminary objection would be raised at the hearing.

Mr. Speaker, Sir, for the benefit of the hon. Member and the House, Section 46 provides, and I quote:-

“where any action or other legal proceedings is commenced against the corporation for any act done in pursuance or execution or intended execution of this Act or of any public duty or authority, in respect of any alleged neglect or default in the execution of this Act or of any such duty or authority, the following provisions shall have effect-

(a) the action or legal proceeding shall not be commenced against the corporation until at least one month written notice containing the particulars of the claim and of the intention to commence the action or legal proceedings has been served upon the Managing Director by the plaintiff or his agent.

(b) the action or legal proceedings shall not lie or be instituted unless it is commenced within 12 months next after the act, neglect, default complained of or, in the case of continuing injury or damage, within six months next after the cessation thereof.”

Mr. Speaker, Sir, on 1<sup>st</sup> October, 2009 the counsel for the first defendant raised the preliminary objection as alluded to in its defence at the hearing thereof. The court did uphold the said preliminary objection on the grounds that it was not disputed that the alleged breach occurred in 1970s and the plaintiff became aware of the same in April, 2001. However, the suit was filed on 19<sup>th</sup> August, 2002, a period of over 12 months after the cause of action arose.

This was in contravention of Section 46(b) of the aforementioned Act which bars claims instituted after the expiry of 12 months from the date of the cause of action. The said provision is a mandatory requirement with no exceptions. Therefore, the suit having been statute-barred, the court proceeded to strike out the same as against the first defendant with costs to the first defendant.

In the circumstances, there exists no legal basis for payment of any compensation by KBC to Mr. Enock Ondego, a competent court having heard the matter and issued an order in the terms earlier mentioned. Thus any claim by Mr. Ondego against the KBC is untenable---

**Mr. James Maina Kamau:** On a point of order, Mr. Speaker, Sir. Is the Assistant Minister reading a Ministerial Statement or giving an answer?

**Mr. Speaker:** Order! The Assistant Minister is just about to finish! If you allowed him a minute, he would have finished!

**The Assistant Minister for Information and Communications** (Mr. Khaniri: Mr. Speaker, Sir, yes, I am just winding up. Thus any claim by Mr. Ondego against the KBC is untenable, misleading and has no legal standing.

(b) I am not aware that Mr. Enock Ondego alias Rashid is blind.

(c) There are no dues to be paid to Mr. Enock Ondego by the KBC for reasons given in paragraph (a) herein above.

I beg to table the plaint, proceedings and the judgment by the court.

*(Mr. Khaniri laid the document on the Table)*

**Dr. Khalwale:** Mr. Speaker, Sir, I want to thank the Assistant Minister for an honest answer but maybe the Government might have forgotten that in 1961, Messrs. Jaramogi Oginga Odinga, James Gichuru and Tom Mboya took ten Kenyan youths in their 20s to the Coast to resist the pressure by the Sultanate of Zanzibar that the ten mile strip be part of Kenya. Mr. Hassan Rashid was one of them and all the others died with the exception of three. After Mr.

Hassan Rashid helped the Government in ensuring that the ten mile strip remained part of Kenya, he then started patriotic songs. You know about *Kenya Yetu* and *Kenya ni Nchi ya Ajabu*. It is just one of those songs.

**Mr. Speaker:** Dr. Khalwale, so much of the history what is the question?

**Dr. Khalwale:** Mr. Speaker, Sir, the only mistake is that this old man was overtaken by the 12 months' rule. We agree with the judgment but KCB had invited his daughter to ask the man to come so that they could negotiate. Could the Assistant Minister undertake to restart the process so that we can appreciate the roles played by the freedom fighters in this country?

**Mr. Khaniri:** Mr. Speaker, Sir, the initiative for compensation for Mr. Ondego has to be initiated by Mr. Ondego himself by application to the KBC. The action he took was to sue the KBC and the matter was dealt with by the court and concluded. Therefore, we cannot reopen the matter until Mr. Ondego himself initiates the procedure by way of application to the corporation for compensation.

**Mr. Njuguna:** Mr. Speaker, Sir, while thanking the Assistant Minister for that very clear answer, could he inform the House what specific steps the Ministry has taken to make sure that retirees are paid their dues immediately?

**Mr. Khaniri:** Mr. Speaker, Sir, to the best of my knowledge that is a different Question but I want to assure the hon. Member and the House as a whole that we pay retirees their dues as and when they are due. If there is any case or any complaint, let it be brought to our attention.

**Mr. Hassan:** Mr. Speaker, Sir, I wanted to welcome and salute the people from Namibia having been a guest and a worker in Namibia for several years. I want to say welcome to our National Parliament.

Ningependa nizungumze Kiswahili na kumuuliza Waziri Msaidizi swali kwa sababu kuna tabia hii ya Idhaa ya Taifa kupuuza watungaji wetu wakubwa ambao wamejitahidi; wazalendo kama huyu Hassan Rashid Ondego ambaye amechangia pakubwa utamaduni wetu wa Taifa. Mtu kama huyu anahitaji kuheshimiwa. Mtu kama huyu anahitaji kulipwa kwa kazi aliyofanya ambayo haiwezi kupimwa kwa urahisi. Kuna watungaji wengi ambao nyimbo zao zimetumika katika Idhaa yetu ya Taifa ambao wamepuuzwa na wamefariki wakiwa fukara. Kwa hivyo, ningemsihi Waziri Msaidizi alifikirie jambo hili kwa maslahi ya wazalendo wetu. Na kwa sababu hii ni Idhaa ya Taifa; ni ya wananchi, isiwadhulumu wananchi ambao wamechangia kwa ujenzi wa Taifa letu.

**Mr. Khaniri:** Mr. Speaker, Sir, I really want to agree with the hon. Member that the Government should find ways and means; not just my Ministry but I believe this should be the Ministry of State for National Heritage and Culture, of compensating our heroes and artists who have made a contribution to the Republic. Therefore, maybe as a way forward, a Bill should be brought so that it can address all these issues. I agree with the hon. Member.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I am just curious about the double standards by the Government. The Assistant Minister said the claims by this hero, Mr. Ondego, are untenable, misleading and have no legal standing and so as far as the Government is concerned, they will not pay this man. So I am just curious about what basis the Government decided to buy a house for the late Vice-President Kijana Wamalwa, who was a hero. On what basis or legal standing did the Government decide to construct a house for Dedan Kimathi? Could they not use the same reasons they used for those particular people to build for these heroes and many others?

*(Applause)*

**Mr. Khaniri:** Mr. Speaker, Sir, my response to Dr. Khalwale's Question was specifically on Mr. Ondego's claims which I stated that Mr. Ondego moved to court. It is not the Government; it is the court that dismissed Mr. Ondego's case. It is not my Ministry or the corporation.

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

**Mr. Speaker:** Order, hon. Members! Last question, Dr. Khalwale.

**Dr. Khalwale:** Mr. Speaker, Sir, all factors remaining equal, Mr. Khaniri is going to be the Senator of Vihiga and this old man was lifted from Vihiga when he was a young man to go and fight in Mombasa. The hon. Member knows his home. Could he not take this to be the last thing he will do before he is sacked as an Assistant Minister?

*(Laughter)*

**Mr. Khaniri:** Mr. Speaker, Sir, as a Minister of the Government, I am not only serving the Vihiga people; I am serving Kenya as a nation. I want to assure the hon. Member that I will not be biased against anybody or be in favour of anybody. As I said, Mr. Ondego could be assisted but let him initiate the process of making an application to the corporation and we will consider it, as earlier promised?

**Mr. Speaker:** Order, Mr. Assistant Minister! I am at a loss and I think that is the concern of the Member for Ikolomani. Somehow, you have restricted this Question to the court case. But the Question is general. It asks you why Ondego has not been compensated, whichever way. It is not necessarily restricted to the court case. Maybe, you want to go back and think about that.

**Mr. Khaniri:** Mr. Speaker, Sir, to the best knowledge of the corporation, there is no compensation due to Mr. Ondego. But let him initiate, apply and state what compensation he is seeking. Thereafter, we will discuss and agree on the matter.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. It is, indeed, a fact that the process the Assistant Minister is talking about was initiated by Mr. Ondego. When the corporation received the correspondence, it invited the daughter so that she could bring the father to go and scale down his claims. He had claimed Kshs500 million. So, simply because a technicality of court overtook the old man's claim, could they now revisit the issue, which had already been initiated by that old man? Is he in order to mislead the House?

**Mr. Speaker:** Order, Order! You may proceed, Mr. Assistant Minister.

**Mr. Khaniri:** Mr. Speaker, Sir, let me undertake to do that with Dr. Khalwale who is the Questioner, and see how best Mr. Ondego could be assisted.

**Mr. Speaker:** Member for Dujis!

## ORAL ANSWERS TO QUESTIONS

*Question No.1604*

IRREGULAR ALLOCATION OF  
KMC LAND TO PRIVATE DEVELOPERS

**Mr. Duale** asked the Minister for Lands:-

(a) whether he is aware that huge acreage of land and properties that is owned by the Kenya Meat Commission (KMC) has been irregularly allocated to private developers across the country;

(b) whether he could provide a list of all the land parcels and properties owned by KMC indicating the land reference numbers, their locations and status of ownership; and,

(c) what action the Ministry has taken to safeguard properties owned by KMC.

**The Assistant Minister for Lands** (Mr. Rai): Mr. Speaker, Sir, I want to seek the indulgence of the House---

**Dr. Khalwale:** Why! Why!

**Mr. Speaker:** Order, Member for Ikolomani!

**The Assistant Minister for Lands** (Mr. Rai): Mr. Orenge started answering this Question and he is out of the country. I am trying to seek some time because the information which is being sought involves about 15 parcels of land. I have actually completed the searches with the Chief Land Registrar and I am actually about to consult the Registrar of Companies to get the names which are being sought by this House. So, I am seeking some time to give them the information.

**Mr. Speaker:** Order, Order! How long do you need, Mr. Assistant Minister, to get all the information? Two weeks from today?

**The Assistant Minister for Lands** (Mr. Rai): Yes, Mr. Speaker, Sir.

**Mr. Speaker:** Member for Dujis, will you accommodate the Assistant Minister? You are looking for information.

**Mr. Duale:** Yes, Mr. Speaker, Sir. That is because the information that I require will be of interest to the nation. So, I am obliged. Let us give him two weeks!

**Mr. Speaker:** Very well. I so direct two weeks away from today.

*(Question deferred)*

Member for Samburu East!

*Question No.1629*

DETAILS OF HEALTH FACILITIES/PERSONNEL  
IN SAMBURU EAST CONSTITUENCY

**Mr. Letimalo** asked the Minister for Public Health and Sanitation:-

(a) whether she could provide details of health facilities and the medical personnel in Samburu East Constituency, indicating those operational or under construction either by Constituencies Development Fund (CDF) or government funded; and,

(b) what the Government policy is on expansion of health facilities started by CDF.

**The Assistant Minister for Medical Services (Mr. Kambi):** Mr. Speaker, Sir, under the principle of collective responsibility, I beg to answer this Question on behalf of the Minister for Public Health and Sanitation.

**Mr. Speaker:** Proceed.

**The Assistant Minister for Medical Services (Mr. Kambi):** Mr. Speaker, Sir, I beg to reply:-

(a) I hereby table the details of health facilities and medical personnel in Samburu East Constituency indicating the funding agency, those that are operational and those which are under construction.

*(Mr. Kambi laid the document on the Table)*

(b) The Government policy is to allow expansion of health facilities started by CDF as recommended from time to time by the District Health Management Team (DHMT), and to gazette and take over the running of those facilities as per the DHMT recommendations.

**Mr. Letimalo:** Mr. Speaker, Sir, I really want to thank the Assistant Minister for that detailed answer. Now, Mr. Assistant Minister, if you look at Wamba Mission Hospital, it is more or less like a referral hospital because it covers the entire region. I want to appreciate the Government because so far, it has seconded four medical officers, including a surgeon. But my concern is that, that hospital requires a radiographer, who is actually critical for X-Ray services. We also require an anesthetist. That request has been made to your Ministry.

If you look at No.3, Archers Post Health Centre, which is Level Three, although it has several nurses and laboratory technologists, it has no single clinical officer. When will you consider sending a radiographer and an anesthetist to Wamba Mission Hospital and, at least, a clinical officer to Archers Post Health Centre which covers the entire division?

**Mr. Kambi:** Mr. Speaker, Sir, if you look at the Budget for this financial year, we were given money to recruit doctors, clinical officers and all the other health sector personnel. We are also expecting new graduates, particularly at the end of July. So, as soon they are out of colleges, I want to promise the hon. Member that we are going to send officers to those facilities, so that we can minimize the pain and suffering of our people.

**Mr. Mwangi:** Mr. Speaker, Sir, the Assistant Minister has informed the House that the District Health Management teams in the Republic will take over when the centres that are built using CDF funds will be provided with staff. Mr. Assistant Minister, could you tell us when that will be? In Kiharu, I have one particular complete health centre which has no nurses. How soon shall we get the nurses to manage those completed health centres?

**Mr. Kambi:** Mr. Speaker, Sir, I do not know whether the hon. Member was listening. I said that we were given a lot of money to recruit medical personnel. I do not want to promise this House anything but, once that is done, we will send officers to all those facilities.

**Mr. Kiptanui:** Mr. Speaker, Sir, the Assistant Minister, in answering this Question, listed a number of dispensaries and health facilities in the constituency, one of which is Swari Model Health Centre, which is funded under the Economic Stimulus Programme (ESP).

Mr. Assistant Minister, that project is not complete. In my constituency and other constituencies, many of the projects that are funded under ESP are not complete. How much money have you set aside to complete the projects under ESP?

**Mr. Kambi:** Mr. Speaker, Sir, there is enough money to complete all the projects that have not been completed during this financial year.



**Mr. Letimalo:** Mr. Speaker, Sir, if you look at those health facilities, out of 16 only three, one hospital and two other health centres--- Majority of them were constructed under CDF. How come none of the 13 dispensaries has been upgraded or expanded to a health centre? What plans do you have to upgrade the same?

**Mr. Kambi:** Mr. Speaker, Sir, I have said that there is a committee at the district level. So, once that committee meets and recommends an expansion or upgrade of a dispensary to a health facility, then the Ministry will automatically upgrade it.

**Mr. Speaker:** Mhe. Mbunge wa Bura.

*Question No.1552*

LACK OF ELECTRICITY IN BURA CONSTITUENCY

**Dr. Nuh** alimuuliza Waziri Wa Kawi:-

(a) ni lini halmashauri ya usambazaji umeme mashinani ilizindua mradi wa umeme eneo bunge la Bura; na,

(b) ni kwa nini hakuna umeme katika eneo bunge la Bura mpaka sasa.

**Mr. Speaker:** Mhe. Waziri wa Kawi! Mheshimiwa Waziri wa Utumishi wa Umma, tueleze ni nini kinafanyika kuhusiana na Waziri wako!

**The Minister of State for Public Service** (Mr. Otieno): Bw. Spika, nitamjulisha Bw. Waziri alete jibu wiki ijayo.

**Mr. Speaker:** Dr. Nuh, je, wewe unakubaliana na Bw. Waziri?

**Dr. Nuh:** Bw. Spika, ningekubaliana na maombi yake kama anangelituambia Bw. Waziri wa Kawi anashughulika na mambo mengine muhimu ya Serikali mahala pengine. Lakini yeye hakutuambia Bw. Waziri wa Kawi mahali alipo na ni kwa nini hakuhudhuria kikao cha leo alasiri. Maswali mengi hapa hukosa kujibiwa kwa sababu ya Mawaziri kutohudhuria vikao hapa Bungeni.

**The Minister of State for Public Service** (Mr. Otieno): Bw. Spika, ikiwa mhe. Mbunge hajaridhika na ahadi yangu, basi tunaweza kungoja mpaka mwisho wa Maswali, tuone kama Bw. Waziri wa Kawi atawasili hapa.

**Hon. Members:** Hapana!

**The Minister of State for Public Service** (Mr. Otieno): Bw. Spika, nimetoa ahadi kuwa nitamweleza---

**Mr. Speaker:** Bw. Waziri, unaelewa vizuri kuwa huo sio utaratibu wa Bunge; hatufanyi kazi hivyo!

*(Applause)*

Swali hili litawasilishwa tena katika Ratiba ya Shughuli za Bunge, Alhamisi wiki ijayo. Tutahitaji kujua ni kwa nini Bw. Waziri wa Kawi hakuweza kufika katika kikao hiki leo. Ikiwa hatafanya hivyo, hatua zitachukuliwa dhidi yake.

**The Minister of State for Public Service** (Mr. Otieno): Sawa, Bw. Spika.

*(Question deferred)*

*Question No.1608*

STATUS OF INVESTIGATION INTO AMBASSADOR RANNEBERGER/USA  
GOVERNMENT COMPLAINTS ABOUT HEROINE PACKAGING  
AT MOI AIR BASE

**Mr. Mwau** asked the Minister of State for Defence:-

(a) whether he is aware that the Criminal Complaint Report dated December, 2010 by Michael Ranneberger and/or the Government of the United States of America alleged that Eastleigh Air Force Base in Nairobi was used as a processing/packing facility for heroine which is then shipped out of the Base using military vehicles and escorted by Base property; and,

(b) what action the Government has taken to investigate the complaints since 17<sup>th</sup> February, 2011, when the Report containing the said allegations was tabled in the House.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Speaker, Sir, this Question was answered by my Assistant Minister on Tuesday, 19<sup>th</sup> of June, 2012. The only outstanding matter was that the hon. Member wanted to know whether we had sent a protest note because of the allegation made by the American Ambassador.

Mr. Speaker, Sir, the military or defence forces do not normally write any protest notes to any country. That is under the mandate of the Ministry of Foreign Affairs. On the same day this Question was answered, the Assistant Minister for Foreign Affairs said they had written a protest note. So, if there was any protest note to be brought before the House, then it was the Minister for Foreign Affairs to do so.

Thank you, Mr. Speaker, Sir.

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

**Mr. Speaker:** Order, Mr. C. Kilonzo! Let us not lose too much time here. There was a commitment given by your Assistant Minister that a protest note was sent. The entire House wanted you to table it because he gave an undertaking to do so in compliance with my direction. So, table it; do not tell us that it is in a different Government Department.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Speaker, Sir, if I read the---

**Hon. Members:** Table it!

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): No, I do not have it! What do I table if I do not have it?

**Mr. Speaker:** Order! Order, hon. Members! The Minister will be heard! Read the HANSARD! What does it say?

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Speaker, Sir, the HANSARD says:-

“**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** What is your information, Mr. Onyonka?

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): Mr. Deputy Speaker, Sir, the matter was raised with the Ministry of Foreign Affairs and we immediately issued a protest note to the individuals. The matter, according to us, has been clearly stated.”

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. Is the Minister in order to read the HANSARD in a selective manner when it is very clear that the ruling of the Chair was very simple, that the Government has to act as one? He was directed to table a copy of the protest note. In any case, the Minister for Foreign Affairs did confirm that it was sent. So, it was just a matter of tabling the document.

**Mr. Speaker:** Order, hon. Member of Yatta! What material facts of the HANSARD are you referring to? Could you, please, draw my attention to the material facts of the HANSARD?

**Mr. C. Kilonzo:** Mr. Speaker, Sir, I am just drawing from my good memory. If I can have a copy of the HANSARD, the ruling of the Chair was very simple---

**Mr. Speaker:** Order! Order! In that case, I will defer this Question! I will let it appear on the Order Paper on Thursday afternoon, next week and, please, come equipped with the relevant part that you are referring to.

Mr. Minister, please, be available on that afternoon.

Next Question, D. Muoki.

*(Question deferred)*

*Question No.1430*

NON-PAYMENT OF HARDSHIP ALLOWANCE TO  
TEACHERS IN MWALA DISTRICT

**Mr. D. Muoki** asked the Minister for Education:-

(a) whether he is aware that teachers in Mwala District do not receive hardship allowances while those working at the neighboring districts of Mbooni and Yatta, with similar climatic conditions as Mwala, receive the allowances;

(b) what criteria the Ministry uses to gazette districts as hardship areas and if he could indicate if Mwala District meets such criteria and, if so, why teachers from Mwala District are not paid hardship allowances; and,

(c) when they will be paid the allowances.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Speaker, Sir, the Minister for Education referred this Question to us and I have an answer, which I beg to give.

**Mr. Speaker:** Proceed!

**The Minister of State for Public Service** (Mr. Otieno): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that the Teachers Service Commission (TSC) does not pay teachers in Mwala District the hardship allowances because Mwala District is not gazetted as a hardship area.

(b) Hardship areas for the TSC were determined following a Collective Bargaining Agreement (CBA) of 1997. The following criteria were used by the teachers for classifying hardship areas:- Lack of or unavailability or inaccessibility to food, inadequate transport and communication network; limited basic social services and amenities; persistent harsh climatic conditions; insecurity and high possibility of security threats. Mwala District does not meet the criteria and, therefore, the teachers there cannot be paid hardship allowances.

(c) Teachers in Mwala District can only be paid hardship allowances if the district is gazetted as a hardship area which can only be visited again after the next CBA process between Kenya National Union of Teachers (KNUT) and the Ministry.

Thank you, Mr. Speaker, Sir.

**Mr. D. Muoki:** Mr. Speaker, Sir, I would want to know from the Minister, in cases of errors during the classification, what mechanisms exist to ensure that affected civil servants are not discriminated against?

**Mr. Otieno:** Mr. Speaker, Sir, I did make effort to obtain a comprehensive survey of socio-economic conditions throughout the country to see if we could reclassify hardship areas, but the teachers insisted that they must be excluded from this process until the next CBA. So, their Gazette Notice of 1997 continues until the next round of CBA between KNUT and the Government.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, there are teachers who are working in lower eastern, namely, other districts just apart from Yatta, especially in Kitui District, who are suffering because they are not being paid hardship allowances, yet the socio-economic conditions are all the same. If you look at the terrain under which this region is, it is the same. What justification does the Ministry have to deny these people extraneous allowances yet the conditions are the same? Would the Ministry's mistake make the teachers to be punished? What is the Ministry going to do to ensure that, that is corrected immediately?

**Mr. Otieno:** Mr. Speaker, Sir, I beg the hon. Member to listen to me carefully. If it is teachers, you have to wait until the next survey is done in consultation with the teachers under the context of a CBA. But if it is about the rest of the public service, I have done a survey which is broken down all the way up to divisions and captures the issues that he has raised in this context.

**Mr. Mwangi:** Mr. Speaker, Sir, I think the Government should take positive action. What happens because of this kind of classification is that one area suffers shortage of teachers. I can give an example of Kiharu where the boundary between it and Maragua Constituency is Maragua River. The teachers across the river on one side are paid this allowance whereas those others are not paid. So, that particular area loses teachers to the area that has this allowance. While I agree that we could wait for the teachers to get the CBA, could the Government not decide, as he has done in the Civil Service, that teachers are just classified under the TSC, but they are civil servants? Could the Minister consider that aspect because of some of these hardship areas which lose teachers to these neighbouring districts because of the allowance?

**Mr. Otieno:** Mr. Speaker, Sir, I am aware of the situation. However, the teachers' union insists on approving the areas themselves. As of now, they have 38 approved areas, while the rest of the public service has only 15. So, I think we have to keep it there, given that the collective bargaining process is a legal process which I cannot breach.

**Mr. Speaker:** Last question, Mr. D. Muoki!

**Mr. D. Muoki:** Mr. Speaker, Sir, would I be in order if I donated my time to hon. C. Kilonzo!

**Mr. Speaker:** Order! That does not happen with Questions.

**Mr. D. Muoki:** How often are these classifications reviewed to ensure that teachers are not discriminated and do not continue seeking transfers to the neighbouring districts?

**Mr. Otieno:** Mr. Speaker, Sir, the next round of collective bargaining with the teachers is 2013.

*Question No.1377*

PRESERVATION OF L.R. EAST WANGA/ELUCHE/  
702 IN MUMIAS CONSTITUENCY

**Mr. Washiali** asked the Minister of State for National Heritage and Culture:-

(a) what measures the Government has taken to protect and preserve land No. LR. East Wanga/Eluche/702, the cultural shrine of Nabongo Kweyu of Wanga Kingdom in Mumias Constituency; and,

(b) whether he could consider allocating land to the family members of the kingdom for the preservation of the shrine.

**The Assistant Minister, Ministry of State for National Heritage and Culture** (Mr. Ombui): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry is aware of the existence of the cultural shrine of Nabongo Kweyu of Wanga Kingdom and considers this to be a significant national heritage. However, the shrine has been hitherto run as community heritage and, thus, may not have received the national recognition from my Ministry. For my Ministry to consider gazettement and protecting this important shrine, the requisite conditions to be met would be; consultation and consent from the community and its leadership; consultation and consent from the elected leadership; and, comprehensive research and documentation of the significance of the site.

Mr. Speaker, Sir, once this is achieved, then a gazette notice for my signature will be prepared. To kick-start the process, I wish to invite the hon. Member to be the link person between the community and my Ministry through the National Museums of Kenya. Since, this is not a gazetted national site, there are no measures taken so far by my Ministry to protect this area. However, as stated above, my Ministry will be pleased to start the process towards protection of the shrine.

(b) Mr. Speaker, Sir, my Ministry does not allocate land. That is a function of the Ministry of Lands and the proposed Land Commission. However, once the gazettement is done, my Ministry will support and recommend to the Ministry of Lands such an allocation to the community.

**Mr. Washiali:** Mr. Speaker, Sir, I would like to thank the Assistant Minister for the answer, especially where he talks of kick-starting the process of recognizing this shrine afresh. I want to assure you, Mr. Assistant Minister, that I am available for consultation. I would just wish to know from you when we are likely to kick-start the process, so that I can consult His Highness, Morris Rapando, who is the current king.

**Mr. Ombui:** Mr. Speaker, Sir, I want to thank the hon. Member for that acceptance. He should come to the Ministry so that we can organize with the Director of National Museums of Kenya for the day we can start the process.

**Mr. K. Kilonzo:** Mr. Speaker, Sir, this Assistant Minister has answered a similar Question before, on the Nzambani Rock, which if you go round seven times, you change your sex. That rock was gazetted. What does the Ministry do after it gazettes a shrine to be a national monument? So far, we have not seen anything beyond that gazettement.

**Mr. Ombui:** Mr. Speaker, Sir, I do not know about the rock, but the question is a bit general, regarding the gazettement and protection of the shrines. I think the leadership of that

community should liaise with the Ministry to see how they can develop the area and the community can benefit.

**Mr. K. Kilonzo:** On a point of order, Mr. Speaker, Sir. The Assistant Minister has not answered my question. My question is: After you gazette, what is the input of the Ministry to the gazetted shrine?

**Mr. Ombui:** Mr. Speaker, Sir, in most occasions, I have been very clear that the Ministry is supposed to assist the community in protecting the area by fencing it. But I have always said it clearly that the problem that we have is finances. If you approve the finances, then we can assist the community to get income from the protected area.

**Mr. Chanzu:** Mr. Speaker, Sir, I would like to know from the Assistant Minister the measures that the Ministry is putting in place to preserve all these sites which are all over the country, like the Maragoli Hills, which is the ancestral land or origin of the Maragolis in that area.

**Mr. Ombui:** Mr. Speaker, Sir, the Ministry is ready to assist those areas which have been identified and recognized by the Ministry. But as I have said, there are several steps to be followed and fulfilled before the Ministry takes over and protects the area. The other important aspect of it is the financial constraint, which hits the Ministry.

**Mr. Speaker:** Last question, Member for Mumias.

**Mr. Washiali:** Mr. Speaker, Sir, the Assistant Minister was not clear in his answer, because he has not gazetted the shrine. What are you doing to recognize these cultural kings because the equivalent of the Nabongo of Wanga is Mukasa of Buganda? You will find that the Government of Uganda has recognized the king of the Baganda. Why is this Government, especially your Ministry, not recognizing the cultural kings that we have in this country?

**Mr. Ombui:** Mr. Speaker, Sir, the Ministry has developed a policy which was passed in March, 2010. The policy stipulates very clearly what is supposed to be done in trying to recognize such kind of people. More importantly, as I have said from time to time, we have a policy in place but what is lacking is the financial support.

*Question No.1589*

INTRODUCTION OF BILL TO HAND OVER  
MANAGEMENT OF NATIONAL MUSEUMS  
OF KENYA TO COUNTIES

**Mr. Twaha** asked the Minister of State for National Heritage and Culture:-

(a) whether he is aware that under the new Constitution, museums will fall under the County Government; and,

(b) when he will introduce a Bill in Parliament to realign the functions of the National Museums of Kenya in view of provisions of Part II Section 4(g) of the Fourth Schedule to the Constitution.

**The Assistant Minister, Ministry of State for National Heritage and Culture** (Mr. Ombui): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that under the new Constitution, the functions of the museums fall under the jurisdiction of the county governments, as per the Fourth Schedule, Part II, Section 4(G). However, the National Museums of Kenya is a body corporate whose mandate covers being a

national repository of all our cultural and natural heritage collections, antiquities, ancient and historical sites and monuments; world heritage sites, international conventions, research, training and capacity building, which are all functions of the national Government, as per the Fourth Schedule Part I, various subsections.

(b) Mr. Speaker, Sir, as the Lamu West Member of Parliament may be aware there is a general global review of all legal mandates of all the State corporations alongside those of Ministries that are currently underway.

In the same section that the hon. Member is quoting; the Fourth Schedule, Part II confers libraries, cultural centres and museums functions which are all under my Ministry currently to the county governments. So, the review of the National Museums and Heritage Act 2006 will be done alongside all these other functions of the Ministry. Moreover, we are in close consultations with relevant State agencies such as the State Law Office, State Corporations Advisory Committee and the Commission for the Implementation of the Constitution among others to streamline the existing and foreseen functions of the State corporations under my Ministry including the National Museums of Kenya.

In addition, once the county governments are elected next year, it is anticipated that the respective county assemblies will quickly enact local legislation or regulations to operationalize the functions of the museums, cultural centres and public libraries. My Ministry will be at hand to offer technical advice to all the 47 county governments on how to achieve this.

Meanwhile, I urge the hon. Member for Lamu West to liaise with my Ministry very closely to see how we can safeguard Lamu World Heritage Site, the icon and pride of Kenya by seamlessly synchronizing the national and county functions.

Thank you, Mr. Speaker, Sir.

**Mr. Twaha:** Mr. Speaker, Sir, the people of Kenya voted overwhelmingly for the new Constitution mainly because they wanted to take care of their local affairs through their duly elected leaders. Unfortunately, for Lamu, due to the world heritage status, the National Museums of Kenya has usurped the role of the county council presently and it is our fear that it will also usurp the role of the county governments in these matters. When will the Bill come to free us from authority of unelected body corporations based in Nairobi and the United Nations Educational, Scientific and Cultural Organization (UNESCO) sitting in Paris where we are not represented? The people we send to represent us get brainwashed and end up championing foreigners' interests against the interest of our people. When will the Assistant Minister bring the Bill so that we can separate these functions so that the national Government does what it has to do and the county government does what it has to do?

**Mr. Ombui:** Mr. Speaker, Sir, I agree with the hon. Member that it is important for us to have the Bill coming to Parliament.

**Mr. Speaker:** Order, Mr. Assistant Minister! You have a simple question. When will you bring the Bill? Just answer. Is it next year?

**Mr. Ombui:** Mr. Speaker, Sir, I cannot estimate that right now because there are very many stakeholders who are involved in the process.

**Mr. Twaha:** Mr. Speaker, Sir, could the Assistant Minister assure us that whenever he sends delegations to the UNESCO, he will include some elected representatives of the people of Lamu because he has sold the heritage of our children and made it world heritage without compensating our children?

**Mr. Ombui:** Mr. Speaker, Sir, the observation and request can just be taken into consideration.

**Mr. Speaker:** Yes, the Member for Gatundu North.

**Mr. Waibara:** Mr. Speaker, Sir, although I have not received a copy of the written answer, I beg to ask Question No.1385.

*Question No.1385*

RECRUITMENT OF GSO/SPECIALIST OFFICERS  
IN GATUNDU NORTH CONSTITUENCY

**Mr. Waibara** asked the Minister of State for Defence:-

(a) whether he could provide the names of the persons from Gatundu North Constituency who applied for the positions of General Service Officers (GSO), Cadets and Specialist Officers in the most recent recruitment exercise;

(b) whether he could also provide the names of the applicants from Gatundu North Constituency who were shortlisted in each category and how many were successful among those who reported to the Kenya Military Academy in Lanet in September, 2011; and,

(c) the reasons for failure for each one of those who were unsuccessful.

**Mr. Speaker:** Mr. Minister, what is the position? You have not supplied a copy of the written answer to the Member for Gatundu North?

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Speaker, Sir, I was ready to answer the Question but in view of the fact that the hon. Member claims not to have received a copy of the answer, I have shared this with him. I have told him that I can give him a copy right now, but he has said that he does not have enough time to interrogate it. Therefore, he wishes that the Question is deferred to another day.

**Mr. Speaker:** Is that the correct position, the Member for Gatundu North? Have you asked for more time?

**Mr. Waibara:** Mr. Speaker, Sir that is the position.

**Mr. Speaker:** Will Thursday 2.30 p.m. be good for you?

**Mr. Waibara:** Thank you, Mr. Speaker, Sir.

**Mr. Speaker:** I so direct, Mr. Minister! The Question is deferred to Thursday at 2.30 p.m.

*(Question deferred)*

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Much obliged, Mr. Speaker, Sir.

*Question No.1533*

FAILURE TO CONSTRUCT CHEPKAITIT BRIDGE

**Mr. Speaker:** Thank you. Where is the Member for Cherangany? Is he not here? The Question is dropped!



*(Question dropped)*

*Question No.1517*

SUPPLY OF WATER TO MOMBASA RESIDENTS

**Dr. Nuh**, on behalf of **Mr. Yakub**, asked the Minister for Water and Irrigation:-

(a) whether she could provide the details of Government funded water projects undertaken by the Ministry in Mombasa County in the 2010/2011 Financial Year, indicating the respective names of their locations, the amount of money allocated and the current status of each project; and,

(b) what measures the Government is taking to ensure constant supply of water to Mombasa residents.

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

(a) My Ministry has undertaken seven projects in four districts in Mombasa County. During the financial year---

**Mr. Speaker:** Order, Mr. Assistant Minister! Even as you proceed, the Member for Bura, are you really able to prosecute this Question to finalization? I do not want to deal with this matter piece meal.

**Dr. Nuh:** Thank you, Mr. Speaker, Sir, for that concern. I wanted to go ahead but I have just been supplied with a copy of the written answer and it appears a bit loaded. I have consulted the Member on phone and I request that the Question be deferred so that it can be interrogated more extensively.

**Mr. Speaker:** Mr. Assistant Minister, can we do this on Thursday?  
The Member for Bura is not adequately briefed to ask supplementary questions on behalf of his colleague.

**The Assistant Minister for Water and Irrigation** (Mr. Waititu): Mr. Speaker, Sir, it is okay. It can come at the right time.

**Mr. Speaker:** Very well. We will also defer this Question to Thursday at 2.30 p.m.

*(Question deferred)*

*Question No.1659*

INSTALLATION OF CCTV CAMERAS  
IN NAIROBI METROPOLIS

**Mrs. Shebesh** asked the Minister for Nairobi Metropolitan Development:-

(a) when CCTV Cameras would be installed in all strategic areas within the Nairobi Metropolis;

(b) whether he could consider introducing a Bill in Parliament that would require all building owners to install CCTV Cameras so as to enhance urban security; and,

(c) what plans he has to enhance metropolitan policing in the Central Business District (CBD).

**The Minister for Nairobi Metropolitan Development** (Mr. Jamleck Irungu Kamau): Mr. Speaker, Sir, I beg to reply.

(a) My Ministry has already invited tenders for the installation of CCTV cameras within the Nairobi Metropolis. The tender was advertized on 5<sup>th</sup> June, 2012, and the opening of the tender documents has been scheduled for 19<sup>th</sup> July, 2012.

(b) The Government is in the process of revising the current Planning and Building Regulations, 2012. In the course of this revision, the requirement to install CCTV cameras will be considered for incorporation. That notwithstanding, my Ministry will provide the basic infrastructure for basic CCTV cameras for building owners to tap into.

(c) My Ministry is in discussion with the Commissioner of Police to enhance metropolitan policing by setting up a metropolitan police unit within the Central Business District.

Thank you.

**Mrs. Shebesh:** Mr. Speaker, Sir, I thank you and the Minister. I also want to give my condolences to the Minister for a gruesome murder that happened in his constituency this morning.

Could the Minister tell us clearly and be a bit firm because I believe that CCTV cameras will act as a deterrent to many of the grenade attacks that are happening in Nairobi, what he means when he says that private buildings owners will tap into the infrastructure of CCTV that he will set up as a Ministry? Currently, there is a CCTV infrastructure that is used by radio and TV stations. Is that a CCTV infrastructure that can be tapped into? Is the Ministry aware that, that CCTV infrastructure is currently also being used by the police?

**Mr. Jamleck Irungu Kamau:** Mr. Speaker, Sir, what I mean is that once my Ministry is through with installing the CCTV cameras within the CBD, we will provide links to various business owners who will be able to tap into them, so that their business premises can also be monitored by the police. So, we will provide links to the various television stations in the country, especially in Nairobi. The cameras will be able to link up the Kenyan viewer to what is happening on the road at any one time.

**Dr. Khalwale:** Mr. Speaker, Sir, the need for CCTV cameras goes beyond Nairobi. Could the Minister tell us when this programme will be rolled out to the other cities in the country, for example Mombasa, Kisumu, Eldoret and Kakamega so that the whole county can be secure? Which Ministry is supervising this exercise? Is it his Ministry or the Office of the Prime Minister?

**Mr. Jamleck Irungu Kamau:** Mr. Speaker, Sir, my Ministry is fully in charge of this particular programme. Of course, the Prime Minister's Office supervises all the Ministries and we are working together. About the key thing hon. Dr. Khalwale is asking, it is important for hon. Members to understand that my Ministry specifically deals with the Nairobi metropolitan area. Therefore my Ministry may not be in a position to go outside the Nairobi metropolitan area. However, I am aware that the Office of the President, through the Ministry of State for Provincial Administration and Internal Security, is also trying to roll out CCTV cameras in other cities in the country.

**Mr. Mbuvi:** Mr. Speaker, Sir, could the Minister consider installing modern CCTV cameras within estates in Nairobi, which will be automatically monitored through mobile phones, so that when a man enters your house you are able to monitor him from where you are?

**Mr. Jamleck Irungu Kamau:** Mr. Speaker, Sir, I am not sure which one that is. However, I can tell hon. Members that the CCTVs we are bringing in are hi-tech. They will be able to capture somebody's face using technology called "face-recognition technique". If your face is captured and you walk anywhere else within the vicinity of any other camera, that particular camera will reveal that hon. Sonko is there and he is the one we need. If, for example, the camera reflects on the number plates of a vehicle we are looking for, at the end of the day we will only need to press a key to know where that vehicle is at any one given time.

**Mr. Njuguna:** Mr. Speaker, Sir, I thank the Minister for the good job he has done in my constituency by supplying flood lights. What plans does the Ministry have to extend its territory to other regions in this country because the same services are required?

**Mr. Jamleck Irungu Kamau:** Mr. Speaker, Sir, my Ministry is coming up with a new Bill, the Metropolitan Areas Bill. According to the Vision 2030 that Bill will encompass six different metropolitan areas in the country. Once that Bill comes before the House, I am sure the House will discuss it and once approved, it will only need the President to activate it and almost the whole nation will be covered.

**Mr. Pesa:** Mr. Speaker, Sir, the Minister seems to have a very good vision for Nairobi City. However, for us to accept that, could he tell us what he has in terms of finances to implement this programme?

**Mr. Jamleck Irungu Kamau:** Mr. Speaker, Sir, in this 2012/2013 Budget, my Ministry has an allocation sufficient to tackle the installation of these cameras in the first phase. You reckon that the entire metropolitan will require over Kshs2 billion. What we have factored in the current budget will take care of the first phase, which is basically within the CBD area.

**Mr. Hassan:** Mr. Speaker, Sir, while I commend the Minister for what they are going to do in the Nairobi CBD, much of the crime in Nairobi takes place outside the CBD; it occurs in Eastlands in places like Muthurwa, Gikomba, Eastleigh and so on. What plans has the Minister got to extend this particular programme to other areas? On the issue of standardization, has he put in place any standardization policy?

**Mr. Speaker:** Order, Member for Kamkunji! One question at a time! With supplementary questions, we allow only one!

**Mr. Jamleck Irungu Kamau:** Mr. Speaker, Sir, as I said earlier, this is the first phase and it will encompass only the CBD. The second phase will go even further. When we finish the whole project, we will definitely make sure that we cover the whole of the metropolitan area. I want to assure the hon. Member that my Ministry will stop at nothing to make sure that Nairobi is completely safe. It is not only about CCTVs. This project also comes with traffic lights management. This means that we are going to decongest the city. Time will tell in just a little while.

**Mrs. Shebesh:** Mr. Speaker, Sir, the Minister has very good intentions. I wonder whether he is aware of the Nairobi Central Business District Association (NCBDA), which is an association of private businessmen and businesswomen who would happily partner with the Ministry so that, as quickly as possible, Nairobi is made safe and we continue to generate the resources that we are currently generating. Is he able to work together with NCBDA? I am sure they would want to work with him.

**Mr. Jamleck Irungu Kamau:** Mr. Speaker, Sir, that is a very good point. Indeed, in addition to my Ministry partnering with other Ministries of the Government, we are also partnering with the NCBDA. We have had several meetings with them and they are well aware of what we are doing. We are all moving together.

**Mr. Speaker:** Order, hon. Members! That brings us to the end of Order No.6.

## **MINISTERIAL STATEMENT**

### **PUBLICATION OF THE APPROPRIATION BILL**

**The Minister for Finance** (Mr. Githae): Mr. Speaker, Sir, I just wanted to inform the House that I have today published the Appropriation Bill, 2012 in compliance with Section 222 of the Constitution.

**Mr. Speaker:** Is there any other Ministerial Statement? There is no request for Statements? So, we will take the next Order!

## **PROCEDURAL MOTION**

### **EXTENSION OF SITTING TIME**

THAT, notwithstanding the provisions of Standing Order 20(2) this House resolves that the time of today's sitting be extended until conclusion of business appearing on the Order Paper.

**The Minister for Transport** (Mr. Kimunya): Mr. Speaker, Sir, I wish to request that I withdraw the Motion under Order No.8 because of some developments affecting Order No.9.

**Mr. Speaker:** Fair enough. If you, the Deputy Leader of Government Business, wishes to withdraw the Motion at Order No.8, I grant that request and it stands withdrawn.

*(Procedural Motion withdrawn)*

Hon. Members, if you are guided by the Order Paper, you will see that the next Order is Order No.9 which relates to the Public Financial Management Bill. It was also on the Order Paper last week, but it required the input of the Parliamentary Committee, more so in respect of necessary amendments. Before we commenced the sitting this afternoon I received a report from the Committee at my office and, among other things, some amendments had been prepared and processed and are on the Order Paper; they cover the Bill up to Clause 209.

However, subsequently, I was informed that other amendments cropped up which are necessary to the Bill and even as we sit this afternoon, the Committee has not been able to go through all those possible amendments. They will therefore not be able to have a complete dossier of amendments until tomorrow morning. So, in those circumstances, Order No.9 is stood down and will reappear on the Order Paper tomorrow afternoon at 2.30 p.m.

*(Order No.9 (Committee of the whole House) deferred)*

## **BILL**

### *Second Reading*

### **THE TEACHERS SERVICE COMMISSION BILL**

*(The Minister for Education on 21.6.2012)*

*(Resumption of Debate interrupted on 21.6.2012)*

**Mr. Speaker:** The Minister for Trade was contributing.

**The Minister for Trade** (Mr. Wetangula): Mr. Speaker, Sir, how much time do I have left?

**Mr. Speaker:** You have 13 minutes.

**The Minister for Trade** (Mr. Wetangula): Thank you, Mr. Speaker, Sir. When we adjourned, I was encouraging a synergy between the teachers' trade unions and the Teachers Service Commission (TSC) in ensuring that performance in schools is part of their focus and that head teachers who constantly post poor results should be deprived of the opportunity and privilege to head schools.

Mr. Speaker, Sir, I want to look at Article 18 on page 1360 which talks of the Commission in its recruitment policy, taking into account persons with disabilities and regional and ethnic diversity of the people of Kenya. While this is very good and consistent with the provisions of the Constitution, increasingly this provision of regional and ethnic diversity is being abused and I hope that the Commission in adhering to that, will take into account the route of equity and not equality because equity is as important in balancing the diversity and the regions as it is provided in the law.

Mr. Speaker, Sir, Article 30 on the removal of teachers from the register, first of all, it is my humble view--- I do not see the Minister for Education here and I do not know who will take into account what we are saying because this is his Bill.

**Ms. Karua:** We are here!

**Mr. Speaker:** Order! The hon. Member for Gichugu is answering you though unlawfully but given that you are a Minister, you are in the Cabinet and so you can carry your statements to your colleague.

**The Minister for Trade** (Mr. Wetangula): Mr. Speaker, Sir, Article 30 talks of removal from the register. I want to propose that we expand the provisions so that teachers who have been removed from the register for aggravated offences like molestation of school children and other felonies should not be given an opportunity even to teach in private schools because what does happen is that you will find a teacher is removed from the register from teaching in a public school and the next morning he is in a private school and some of them go on to do the same things for which they have been removed from the register. Indeed, I would want to see the Bill expanding its provisions so that a teacher on the register means and includes a teacher teaching in any school in this country – whether public or private. This is the only way we can standardize. This is the only way we can institutionalize good conduct among our teaching fraternity.

Mr. Speaker, Sir, Article 31 talks of reinstatement to the register. First of all, I would suggest that when a teacher's name is removed from the register, publishing it in the *Kenya Gazette* is not enough because people hardly read the *Kenya Gazette*. The TSC should publish the names of teachers removed together with the offences for which they are being removed in the dailies for all and sundry to know – what we would ordinarily call name and shame. This is so that if somebody is a child molester, he or she should not be given an opportunity to run from one county to another to hide and continue with the same activities and if it is published widely, our children will be safe.

Mr. Speaker, Sir, on the question of reinstatement to the register, my suggestion to the Minister is that depending on the gravity of the offence, there should be a prescribed period of suspension so that if a teacher is suspended for 18 months or two year, at the end of the suspension period, the return to the register should be automatic unless there are other aggravating circumstances because you should not be exposed to double jeopardy. To be removed from the register means that you have no employment at that period and if the Minister takes into account what I am saying, it means that you cannot teach in either private or public schools and at the end of your suspension period you should be able to go back to the register and take back your job unless, of course, the suspension is such that you should never be able to return back to the register depending on the offence for which you have been found guilty. Offences such as molestation of children and sexual offences should render a person unqualified at any other time in their life time to go back to the register as a teacher.

Mr. Speaker, Sir, I also have a bit of difficulty with that clause, in that, where the Commission is being given unfettered authority on their motion to return a teacher to the register, this is likely to be abused. So, we need some caution. Like I have said, the suspension period should be defined clearly and if it is not defined, then a process must be undertaken so that the return to the register is through due process. Article 34 is not quite clear on where a teacher is suspended for a period not exceeding 18 months, whether that suspension will be with or without pay. I think we need to make it clear so that people know where their rights stretch up to.

Mr. Speaker, Sir, on Article 35 which deals with the issue of teaching standards, I agree that we need continuous improvement of standards. We need to encourage our teachers to improve their lot intellectually by going for refresher courses which should be properly tailored to guide them in their subjects but we must also be a little careful in encouraging this. In my view, teachers should be encouraged to go for their refresher courses and those who are taking studies to do so during holidays so that the time we expect them to be teaching our children is not compromised and conflicted with the time the teachers themselves are also doing their studies. This is because teaching a class of 40 or 45 children is a full time engagement and the Ministry and the TSC should avail time during holidays and encourage teachers. They should even avail them loans through the Higher Education Loans Board (HELB) to pay for their fees so that they can continue improving their lot not at the expense of the children but as a compliment to what they are doing for the children that they teach.

Mr. Speaker, Sir, I also want to encourage that such centres of improvement be available in every county, so that they are not just found in Nairobi or Mombasa or in the big cities. Each county should have a centre for continuous improvement of teachers' skills and standards, to offer an opportunity for them to improve their lot.

Article 35(3) of the Bill sets a penalty for a teacher who does not undertake a prescribed career or professional development programme. This is unnecessary. If we make it available for them, we do not have to punish them. Those who stagnate in their positions should simply not be considered for promotion, rather than saying that we will terminate their services. There are some teachers who, after qualifying, feel satisfied with what they are doing, and they want to remain so. So, this particular provision is not necessary.

Mr. Speaker, Sir, as I come to my conclusion, I want to urge that, as we revamp the constitutionally-provided TSC, the Ministry of Education should look very seriously, working in conjunction with the Treasury, into recruitment of more teachers in the country. If you go to some schools, including some in my own constituency, you will find a school with four streams, and with a total 1,000 pupils, with only five or six TSC teachers. So, you find children from

urban schools doing a lot better than children from rural schools at the end of each year, because urban schools attract more teachers. The TSC posts more teachers to urban schools. Teachers posted to rural schools, especially in areas that are described as “hardship” just get there and run away, and the children are left without anybody to care for them.

Mr. Speaker, Sir, the teacher to student ratio must be addressed urgently. We know how many teachers are required for every stream, and how many teachers are required in every school. Therefore, I want to urge this House to provide enough resources to the Ministry of Education and, by extension, to the TSC; to recruit as many teachers as we possibly can to meet the quotas. It is not that we do not have trained teachers. We have a lot of trained teachers. Some of them are, in fact, leaving the country. The new Republic of Southern Sudan, and our good neighbour, already boasts of over 15,000 Kenyan teachers who are teaching there simply because we cannot employ them in Kenya yet we have schools that do not have teachers.

Mr. Speaker, Sir, I want to urge the Minister, because I know that my learned friend is a go-getter; to encourage and engage the Ministry of Finance in this financial year, so that we can, at least, recruit a minimum of the 60,000 teachers that the KNUT is crying for, so that we can make our schools better.

With those few remarks, I beg to support.

**Mr. Hassan:** Mr. Speaker, Sir, I rise to contribute to this particular debate.

First of all, I want to pay tribute to teachers for the enormous contribution they have made to the education of our children under the difficult circumstances they have had to operate in performing their tasks in the different parts of the country. I particularly feel that it is important to pay our respect to teachers for contributing to the major strides that we are making towards our Vision of becoming a middle-income country by 2030.

Mr. Speaker, Sir, this particular Bill is very important in terms of improving and professionalising this noble profession. Hardly do we give a thought every day to the contribution that teachers make. This particular Bill will make an important contribution towards ensuring that teachers in our communities get the respect they deserve.

There are two things I want to mention, in terms of the requirements for serving in the Commissions. For example, Article 6 of the Bill provides that in order for one to qualify to serve on the Commission, one must hold a Bachelor’s Degree in Education from a university that is recognised in Kenya. I just want to find from the Minister for Education whether it is only a Bachelor’s Degree in Education that prepares one for the tasks that are required to be carried out by the Commission. I would have thought that a holder of any other recognised degree would be able to effectively contribute to the Commission.

Mr. Speaker, Sir, I have seen a similar requirement in Article 16 of the Bill, where, again, members in another part of the Commission are required to hold a similar degree. I would, therefore, like to appeal to the Minister to re-consider this provision. Even amongst teachers, there are people who have graduated in history, literature and other areas of education, including science-based degrees, who could also be considered for appointment to serve in the various segments or sections of this particular Commission.

There are other requirements that have been included in the Bill, under, Clause 27, which provides that the Commission should not register a person as a teacher if such person:-

- (a) does not possess the prescribed qualifications;
- (b) is not of good moral character;
- (c) has been convicted of a sexual offence or an offence committed against a child; and,
- (d) has been convicted of a criminal offence.

Mr. Speaker, Sir, paragraph (e) of Clause 27 in particular says that a person shall not be registered as a teacher if such person is engaged in any activities which, in the opinion of the Commission, are prejudicial to peace, good order or good government in Kenya.

I just want to seek clarification on this particular provision, because it does not say specifically what this engagement is. Therefore, perhaps the Minister can clarify this provision as it seems completely unnecessary in the sense that if a person has committed crimes, under our laws, such person should not be registered as a teacher. This is, however, an ambiguous requirement that could be misinterpreted or misused or even abused.

Mr. Speaker, Sir, I would also like to add my voice to the fact that we require to increase the number of teachers. In my constituency, we have several primary and secondary schools which are crowded with large numbers of students with very few teachers. Teachers are assigned more teaching subjects and more other duties to perform at school. It will be in our best interest, in terms of improving our education standards, if we were to put more teachers on the job. Therefore, I would like to appeal to the Ministry and to the TSC to undertake that task effectively and ensure that we give our children the best quality of education. We know that the higher the student to teacher ratio, the less likely children are to do better in their education. Therefore, to produce students who are well qualified and well taught, we need sufficient teachers to be posted to our schools. This will guarantee the quality of our education in our education system.

With those few remarks, I support the Bill.

**Mr. Kosgey:** Thank you, Mr. Speaker, Sir, for giving me this opportunity to contribute to this very important Bill dealing with employment of teachers. I want to address myself to Section 11 which deals with the functions of the Teachers Service Commission (TSC). As specified in Article 237 of the Constitution, the TSC deals with employment of teachers.

At the moment, the number of teachers in Kenya is approximately 240,000. The distribution of this number is really what I want to address myself to. In primary schools, the ratio is one teacher to probably 40 pupils. At the moment, the distribution of teachers is pathetic. It is only high cost schools and academies which have enough teachers. The rest of the primary schools in rural Kenya do not have enough teachers and yet this is where the majority of pupils in Kenya are. In order to ensure that there is equity and justice in future, we need to ensure that every child in Kenya gets accessible, affordable and quality education. This can only happen if there are enough teachers.

At the moment, we hear that the shortage of teachers in Kenya is maybe 60,000 or 70,000 and yet the Government and the TSC do nothing to redress this problem. We are told that they will employ 10,000 teachers. Employing 10,000 teachers is a drop in the ocean. What is happening is that the rights of the child which we have spelled out again in our Constitution such as the right to quality and equitable education is not being adhered to.

The Minister is here, and that is why I would like to talk about this point only to ensure that in future we provide adequate teachers for all our primary schools and secondary schools. If you look at secondary schools, you will realise that there are schools that go without a Maths or English teacher for a whole year and you expect students in those schools to sit the same examinations as those whose schools have more than one English or Maths teacher. This is inequity. In future, you will hear that certain areas have been marginalized. They are marginalized from the day they are not given adequate teachers or they are not given teachers at all and they will continue lagging behind. This is one of the major causes of inequity in Kenya; the inability to provide all our children with the right number of teachers.



Another aspect in Article 11 has to do with the management of teachers' payroll. We have had very many times teachers wanting to go on strike and we wonder why teachers have to threaten to go on strike in order to get their rights all the time. Even an increase which has been agreed on, for it to be implemented, it takes a threat of a strike or sometimes a strike. We want to hear in future that the education of our children is not disrupted in any way. This is because we do not have to go on strike in order to get our salaries. Other professionals also get their salaries without threatening to go on strike. Why does this happen to the teachers all the time? They have to threaten to go on strike so that the Minister for Education can go to the Ministry of Finance and the next thing you will hear is that money has been released. This includes free primary education money. I know this aspect is not covered in this Bill but it is the same because it affects education of our children. Once in a while, teachers have threatened to go on strike so that they can get their pay and money for free primary education. Once they are not working harmoniously, then this disrupts the education of our children.

Mr. Speaker, Sir, this Commission is also supposed to be composed of eight commissioners including one chairman. We do hope that these eight commissioners will be distributed equitably countrywide so that there is no area which will not be represented by a commissioner.

Recently, we saw the same TSC employ County Education Directors. I looked at the list and it was very surprising. There was nobody from Rift Valley; a whole area where there are over 20 counties. This is nearly half of the country and yet we do not have even one County Education Director from there. You really wonder what happened to the equity that is inbuilt in our Constitution. From now on, it is not our job to fight for these jobs. The Constitution states that if you will employ 47 County Education Directors, honestly there should be, at least, two from Rift Valley. With the new Bill being passed, we hope that the employment of these commissioners will be done in an equitable manner. There should be one, at least, from the Coast, one from Western, one from Central and so forth. We hope that all of them will not come from Makeni.

Mr. Speaker, Sir, with those few remarks, I beg to support.

**Ms. Karua:** Thank you, Mr. Speaker, Sir. I rise to support this Bill which makes the teachers' profession rank among other professions because most professions have an Act of Parliament that guides their operations. For the first time pursuant to our Constitution, the TSC will now have an Act that guides their operations.

I was just wondering because professional bodies normally manage themselves, whether it is possible for the Minister even if not now, to start thinking about this organisation being self-sustaining. This is because it is possible and it can be done painlessly to the members of the teaching profession so that we do not create bodies all the time expecting that the burden will be on the Exchequer.

I do recognize that it is necessary because it is the equivalent of the Public Service Commission when it comes to employment of teachers for public institutions.

For the first time in this Bill, we have a clear criterion of recruitment of members of the Commission. Up to now, interested parties have been quietly giving the names of the persons they want to be commissioners even if they may not necessarily be the best. It is a competition to see the Minister so that your names get on to the roll. Now, there will be open and transparent recruitment pursuant to the Constitution.

The criterion is clear, the professional qualifications are clear and whoever wants to serve on the Commission will have to undergo competitive recruitment. This is a plus and it is a great thing.

Mr. Speaker, Sir, issues of discipline have also been clarified in this new law but I want to refer to Clause 31 on reinstatement and ask the Minister to relook at this particular clause. We need to have clear criteria on matters of reinstatement, so that we do not have people who have serious disciplinary cases being reinstated in an opaque manner. This is an area that needs strengthening.

On Clause 27, which gives the grounds upon which the Commission can refuse to register a teacher, I am referring in particular to Clause 27(c), which I find too nebulous and reminiscent of the past. It says that the Commission may fail to register a teacher if they are engaged in any activities which, in the opinion of the Commission, are prejudicial to peace, good order or good government in Kenya. What exactly does that mean? Who is going to determine what good order is? This clause ought to be struck out.

Mr. Speaker, Sir, clause 27(b) says that a person of good moral character suffices. I would want the language aligned because in Clause 26(a) we are talking of “is of good conduct”; then in clause 27(b) we say, “is not of good moral character”. We should harmonize that language, so that it does not confuse the people who are going to use this Bill.

I also laud the Bill for including Clause 35, which talks of teaching standards. We need to have the same standards applicable in the entire country. We need them monitored occasionally. Therefore, this is a good provision, which will enable the Commission to do its work.

Clause 42(2) allows members of the public, anybody who wishes, to apply for information from the Commission in line with the Constitution. This is in line with Article 35 of the Constitution. It is in line with this era of openness, transparency and accountability of all public officials. There are restrictions put on this clause which will enable the Commission to demand confidentiality, if the case so demands and also to impose a levy on the person who needs the information.

I think, generally, I have looked at the Bill and it is basically fulfilling what is envisaged in the Constitution. It is worthy of support and will strength the areas that Parliament will deem fit.

With those many remarks, I beg to support.

**The Assistant Minister for Public Works** (Mr. Kiunjuri): Mr. Speaker, Sir, I also stand to support this Bill on the establishment of the Teachers Service Commission (TSC).

Noting that I am also a teacher by profession, I think this is one of the good things that will happen to the profession. It is equally important that we will establish this independent Commission; we will bring the right things first. Today, we have already placed the horse before the cart by the fact that we have already addressed ourselves to issues concerning and affecting primary schools teachers and high school teachers, but we have forgotten that the foundation of everything is very important. Even the foundation of this Parliament is important.

Mr. Speaker, Sir, if we have primary school going children who never attained proper background at the early childhood development (ECD) level, it will become useless to those children. Some of those children will never catch up. This is because they will never be able to attain what they missed at the foundational stage throughout their eight years of primary education. The point here is that as we go recruiting secondary school teachers, we must ensure, first of all, that the early childhood education (ECE) is taken seriously, because that is the

foundation. If this child will go Standard Two or Three and he did not get any background, we will be doing a disservice to most of those primary school going children.

I would propose that it be mandatory that all teachers at the ECD level be properly trained and given the right facilities. The reason why your son and my son, your daughter and my daughter are doing very well when they get to primary school is because we give them very a firm background in Pre-primary I, Pre-primary II and Pre-primary III. In the rural areas a child will go to pre-school for few months and then join primary school. We should give those teachers attention. I am happy that this year's Budget addressed that question, but not adequately. What they are giving is a drop in the ocean.

Mr. Speaker, Sir, when it comes to remuneration of teachers, you can imagine that today, police officers are earning more than teachers. I do not say that they do not deserve salaries. We have other professions that earn better than teachers. If you look at the standards, which are well articulated here, how do you attain standards if this teacher is supposed to walk for ten kilometers to school, because the primary schools cannot afford staff housing? The teachers are supposed to walk another ten kilometers back to where they come from. There is no transport and teachers in most cases will get to school two hours late; instead of getting to class at 8.00 a.m., they will get there at 10.00 a.m. It is important for this Commission to address the working standards of teachers. Issues of sanitation, water and roads should also be addressed. When this Commission is set up, those are some of the things it will look at.

Other issues that also come with standards is the issue of the condition of the child in classroom. For example, in semi-arid and arid lands (ASALs), a child gets to class; he has not fed for the last two days and you expect the child to concentrate. It is also equally very important that we look for a way to improve conditions, for example, through the feeding programmes, when it comes to children going to school in ASAL areas.

Mr. Speaker, Sir, the Government is already doing very well and wants to establish special schools. However, they are not facilitating them. It is once again the work of the CDF to go ahead and make sure that classrooms are available. Yes, we can set up classrooms, but what about teaching aids? That is why the Commission should concentrate on those things. It should not just look at how much salary is going to be earned.

When it comes to appointment of commissioners, this is not just with the TSC. You get a situation where if you want to appoint commissioners from the regions only one or two constituencies benefit from all the appointments. Even if you want to have balance in appointments, we should look at the already existing Commissions and where the commissioners come from. This way, we can go back to counties; for example, we should not have Rift Valley with more than 11 counties but all appointments are made from one county. We do not want to have a situation where you say you are appointing people from Central Province yet all the appointments come from the same county. Somebody will come here and tell us we are balanced. However, by the end of the day, names are just floated and lobbying is done. Even those who will be shortlisted are predetermined. Those are the issues that we must look at; we want distribution.

When it comes to the employment of teachers, it is very unfortunate that there are some areas in this country where those who graduated from universities and teacher training colleges 17 years to 20 years ago are still at home. They have not been employed. Why? Everything uses the quota system. You get some areas in which those who graduated last year are already waiting to join the TSC. They are already assured of employment, while other people who graduated 20 years ago are still at home, and have no hope at all of being recruited.

For example, in my county and it is not the only one, we have so many of the teachers yet we have not yet been able to employ teachers who qualified in 2000. Other areas that I know of like Nyeri, we still have teachers who qualified in 1993 who are not yet employed. But if you go to other areas, teachers coming out of colleges are ready to join the profession. There must be a way of looking at it and balancing it. Even if we want to go the quota system, we must take care of all those people. Being at home for 20 years means you will retire before you even join the profession. If you qualified at the age of 30 to become a teacher and 20 years down the line you have not been employed, today you are 50 years and you are not serving any purpose, you are only frustrated. So, it is important that those things should be addressed when this Commission comes into being.

With those few remarks, I beg to support.

**Mr. Pesa:** Mr. Speaker, Sir, I want to add my voice to what most hon. Members have said. I think we are very lucky that the Teachers Service Commission (TSC) is now recognized by the Constitution and now it will have to play the independent role that we require for the management of teachers affairs in this country the way it should be.

From the start, the TSC must take into consideration certain issues that have created a lot of problems currently and in the past. One of them is the way they have been handling teachers. We know that in all Government Ministries, when somebody retires or is about to retire, his retirement must be considered but when you come to the TSC, many teachers who retired five years ago have not been given their retirement benefits up to now. This is the problem that ends up endangering the lives of these teachers. I am very sure that the newly constituted TSC will consider that, so that when teachers retire, they have a programme for retirement. They should be given adequate notice the way it is done and should be followed with the money being given on time.

Mr. Speaker, Sir, we have the issue of early childhood education. For those of us who have been teachers, we know very well that when children go to school at an early age, that is the time they benefit most from the education curriculum but at the moment, the Ministry has not been taking the early childhood education seriously. We want the Ministry together with the TSC to consider this area so that teachers who are going to handle these young children are properly trained and given the right salary that can motivate them to work hard. I know that there has been some training going on in the past but I think we need to streamline it so that we get good teachers to take on these children at this early stage.

On the issue of employment of teachers, again, we have a problem here. The previous speaker spoke about teachers having been out of the field without employment for ten to 20 years. I know the problem has been the training of teachers. In some areas, we have over-trained. The same Government keeps on training teachers knowing very well that there are no teaching vacancies for them in their districts. At the moment, the policy is that teachers are employed in their original districts but you will find that there are areas where, because of the type of education and the type of development, teachers have been over-produced. Definitely, that has created a problem and so there should be proper restructuring in the training of teachers which I think is the duty of the Ministry of Education in consultation with the TSC so that they know exactly where teachers are needed most. Teachers should be trained and given the opportunity to be employed.

Mr. Speaker, Sir, it is very unfortunate that in most of the schools which have been put up using the Constituencies Development Fund (CDF), Migori not being an exception - in the last four years, I have put up about 16 new secondary schools and 17 primary schools - you will find

that in schools which go up to Form IV, there is only a principal and the deputy. This is because those are paid up jobs and so people apply for them. However, there are no assistant teachers manning the schools with four classes. It cannot be done anywhere! I do not think there is a teacher who can teach all the subjects in any single stream secondary school curriculum. Staffing levels must be considered with the incoming of the TSC so that we have teachers properly staffed in the schools which have recently been built.

I know that we have heard members of this Commission but because of the ongoing changes, at the moment, the number is minimized. I am sure they are not more than four commissioners manning the TSC today. But this requires that this Bill is fast tracked so that we can put it into practice so that we get enough members to function as the TSC in this country.

With those many remarks, I beg to support.

**The Minister for Public Works (Mr. Obure):** Mr. Speaker, Sir, thank you for giving me an opportunity to make a contribution on this Bill. This is a very important Bill intended to manage the affairs of the teaching profession which has a very strong bearing on the quality of our education. With the introduction of this Bill in Parliament, we are definitely, as a country, moving in the right direction. The new TSC will be an independent body; a body corporate with full independence. This is a big move that will see the new TSC independent. It will be allowed to function independently from the Ministry. I am looking at a situation where the Ministry of Education will solely be responsible for initiating policy in matters of education so that their involvement in the staffing of teachers and management of teachers will be minimal. There has been a lot of duplication of efforts and a lot of interference by the Ministry for Education in the management of our schools, ignoring the fact that the TSC exists.

I also notice that in this Bill, the interest of the child will be uppermost, and that this Commission will be expected to observe the national values and the national principles on which we are all agreed on as a nation and that the interests of the children in particular will be taken into consideration at all times throughout all the actions that they are likely to initiate. We hope that matters relating to staffing, promotion, discipline and all that will be dealt with independently by this Commission after all the processes have been exhausted. One of the major functions of this Commission would be to ensure that we all comply with the prescribed teaching standards and that this body will also be involved in monitoring the conduct and performance of the teaching staff. This is a very major function. We hope that in carrying out these functions, the TSC will be objective and that they will be independent as they perform these functions.

Mr. Speaker, Sir, one of the areas that has not been performing very well is disciplining of teachers. I know that in certain cases, they have been hasty. I believe that the interest of the people to have them disciplined has not been taken into consideration fully. I am also aware that, as much as we want teachers to conduct themselves properly and not involve themselves in matters relating to sexual offences, the teachers are completely above board in their conduct. We must discourage dealings between teachers and their pupils in every form. We must protect that at every cost.

But I also feel that, in certain instances, the teacher has not been accorded sufficient protection. Nobody has listened to him. Disciplinary action has been taken against teachers without listening to them. Teachers have been removed from the teachers register without due consideration being given to their feelings or whether they were actually involved or not. I urge the new Teachers Service Commission (TSC) to ensure that teachers are accorded proper avenues to defend themselves. Investigations should be conducted exhaustively before such severe action such as the removal of a teacher's name from the teacher's register is taken.

Mr. Speaker, Sir, I am aware of certain cases which took place and every day, I come into contact with those category of teachers. I come across teachers whose names were removed from the register of teachers because of certain things that took place. Those teachers have become destitutes. They were trained to be teachers and they are professionals. But when that incident happened--- There were allegations of obtaining transfers fraudulently from one district to another. There was a very large number of such teachers who were involved, particularly in the counties of Kisii and Nyamira. They were being aided by people within TSC to obtain those transfers. Whether the transfers were regular or not regular, I am not sure whether the matters were exhaustively dealt with. I plead with the new TSC to revisit those cases so that those people are afforded an opportunity. In any case, if they were teachers, they cannot be removed from the teachers' roll permanently. I think we should have a limit. If they were suspended, there should be a definite period of time within which that suspension lasts. But they cannot be suspended forever. So, I am appealing to TSC to re-look at those cases and ensure that an opportunity is given to them to be listened to.

*[Mr. Speaker left the Chair]*

*[Mr. Deputy Speaker took the Chair]*

Mr. Speaker, Sir, finally, I want to say something about quality assurance. When I look at this Bill, I see that one of the major functions of TSC is to ensure that we observe the prescribed teaching standards. Now, I am also aware that within the Ministry of Education, there is a Quality Assurance Department. I am not very clear whether that quality assurance function will now be transferred to the TSC or not. But I think there is a need to look at this.

Mr. Deputy Speaker, Sir, there is an urgent need to review the Education Act itself, so that we can specify the role of each of the stakeholders participating in the education sector. At the moment, we know that we have the churches involved in this. We have other stakeholders in the education sector. I think those roles have not been properly defined before. I think after the passage of the new TSC Bill, we will streamline that. We want the role of the church and community to be understood properly. We should introduce more discipline and professionalism in the management of the education sector.

With those few remarks, I support.

**The Assistant Minister for Regional Development Authorities** (Mr. ole Metito): Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I also want to add my voice in support of this very important Bill. As my colleagues have said, it is a very important sector for the development of this country.

Mr. Deputy Speaker, Sir, this Bill has got a lot of good things. If you look at Clause 4 on the guiding principles, where there is reference to Articles 10, 232 and 53 of the Constitution that will make the education sector universal for the whole country. Everybody will be taken into account on the issues of national values and principles of governance. I think it is going to be very inclusive and everybody is going to enjoy the fruits of this Constitution with respect to education.

Mr. Deputy Speaker, Sir, I am also very happy with Clause 6 on qualifications for the appointment of the Chairperson and members of the Commission. They are very clear and they have really taken qualification and education background of people into consideration. It is good that the right people are in the right places. Also, the functions of the Commission are very clear

in Clause 11. I think it is a turning point because, first of all, the issue of formulating policies--- I think this time, we are giving the sector that is charged with education affairs to really come up with policies, directions and strategies in the education sector.

I want to urge TSC to focus on market-oriented curriculum and come up with courses that are going to help students. People should now focus on specialization on certain factors rather than taking--- You find a kid reading 14 subjects in primary level or all the 12 subjects at the secondary level. We should really start specialization at lower stage. I think TSC will make market oriented curriculum that is going to be used all the way down from the basic education.

The issue of giving TSC the function to manage the payroll of teachers is also very important. It will streamline all the issues that have been there before and all the agreements that have been made between the teachers and the Government. They have an independent constitutional Commission that is going to manage the payroll and whole welfare of teachers. I think we are moving in the right direction. That is a good function. Above all, it is very important that the Commission has been given a very clear mandate to facilitate career progression. I think this is going to be very good for our teachers. Career advancement is a must and is being now regulated by TSC. Professional development of teachers is going to be a must. It will be on-going. That will really build capacity of our teachers and give us quality education. Monitoring the performance of teachers is very important. It is now very clear that although teachers have been opposed to performance contracting before, but since the Commission has been given that function to monitor the performance of teachers in the teaching service--- It is good that everybody is put on performance contracting or some benchmarking to ensure that the objectives of the profession are achieved. I think that is very good.

Mr. Deputy Speaker, Sir, if you look at Part III of the Bill, it is very important in terms of discipline. Generally, it talks about discipline in the teaching profession. I think many have talked about the discipline of teachers. I am happy that if you look at the Third Schedule, the Bill has analyzed some of the disciplinary offences. But I was just concerned about some of them such as negligence of duty, lateness to duty, chronic absenteeism, desertion and drunkenness. Those are some of the offences that have been highlighted. This calls for what my colleagues have talked about, monitoring and evaluation. This really tied up with performance contracting, which is going to reduce some of those disciplinary cases. Almost in all of these issues of disciplinary cases, what has been lacking there before is the TSC trying to discipline teachers under those categories that I have mentioned. They have been taking them very far from where the headquarters of the supervising agency is located. You will find teachers who have been found not to be conducting themselves properly with respect to those disciplinary cases being taken to very remote areas as a disciplinary measure. I do not think that is good because you are now taking them very far from supervision. These people really require close supervision. Therefore, they should even be brought closer to the monitoring or supervisory agencies. If you take them, for example, to these Arid and Semi-Arid Lands (ASAL) areas, nobody will supervise them. You will find a teacher who has been accused of negligence of duty, laziness to duty, drunkenness or chronic absenteeism being transferred to the very remote area in that district – about 100 kilometers away from the DEOs office or the Ministry's office. By so doing, I think you are even encouraging him or her to go and continue with that behaviour because he sees his seniors maybe once in a term or a year. So, it should even be the other way round, they be brought very close to the nearest school to the supervisory agency.

So, Mr. Deputy Speaker, Sir, those are some of the very good clauses in the Bill. But I have some issues that I would like the Minister to clarify at the Committee Stage. One is Clause

8 of the Bill which deals with the procedure for nominations and appointments of the selection panel. Clause 8(2)(b) says:-

“the Cabinet Secretary in the Ministry responsible for matters relating to education or his representative;”

Clause 8(2)(f) further says:-

“two persons, one man and one woman, nominated by the Cabinet Secretary representing the interest of registered teachers.”

I think that is the same office. Clarification is required here. I would propose that maybe he should say “two persons; one man and one woman, nominated by trade unions representing the interest of registered teachers.” This is because they are being nominated by the Cabinet Secretary responsible for education. In sub-clause (b), it is the same Cabinet Secretary doing nomination. This needs to be clarified.

Mr. Deputy Speaker Sir, Clause 13(5) is also not clear. Hon. Members should check on what that committee is, because the Bill says:-

“In addition to the committees established under subsection (1), the Commission shall constitute a consultative committee on the terms and conditions of service of registered teachers.”

Mr. Deputy Speaker, Sir, I think it is the Salaries and Remuneration Commission that will look into the terms and conditions of service of all state officers. If you look at that clause and then you look at Clause 37(2), it is the same thing. It says:-

“The staff of the Commission recruited by the Commission under Article 252(1)(c) of the Constitution shall serve on such terms and conditions as the Commission, in consultation with the Salaries and Remuneration Commission.”

Mr. Deputy Speaker, Sir, it is actually the same thing.

Mr. Deputy Speaker, Sir, coming to the general issues about education, and my colleagues have said a lot, I would also wish to actually say that teachers deserve good welfare. We are having a lot of problems on the ground because of teachers not having houses in the very remote houses they serve in. Now that the TSC will be independent and it is a constitutional Commission, that is another positive thing in the Bill. They should really take into consideration the provision of houses for teachers in all schools. There should, at least, be staff houses in all schools.

Mr. Deputy Speaker, Sir, we have been using the Constituencies Development Fund (CDF) to construct classrooms all over the country. Nowadays, I can actually confirm that it is very difficult to get students or pupils moving very far or more than five kilometers to get a school. That is courtesy of CDF. But there is something that the new TSC has to really look into; the maintenance of those infrastructures because it has been neglected for a long time. We build beautiful schools, but once we hand them to the community, they are neglected. If we keep on using CDF kitty to maintain them, then we will never add up new facilities.

Mr. Deputy Speaker, Sir, the teacher to pupils ratio has been an issue in this country. I would wish that the new TSC would consider this. Currently, we are talking of one teacher to 60 or 90 pupils. I think that in some cases, it is not applicable. In sparsely populated areas, you may find a complete school with only 100 pupils from Class One all the way to Class Eight. So, if you go by that ratio, then you will only provide that school with one teacher or, at most, two teachers. In terms of population, that will be the case. If we do so, we will be denying them justice. So, the TSC should come up with a teacher to pupil ratio and tailor made it to different categories we have in this country. For example, in urban areas, rural areas, sparsely populated



areas and ASAL areas; what is the teacher to pupil ratio? You may say that the teacher to pupil ratio in sparsely populated and ASAL areas may be one to 20, and maybe in urban areas, teacher to pupil ratio may be one to 100. That will be equity. Otherwise, just putting a general blanket will disadvantage some areas.

Mr. Deputy Speaker, Sir, I wish also to talk about the Economic Stimulus Programme. The TSC should operationalize schools under this programme---

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

Mr. Deputy Speaker, Sir, because I see that my colleagues want to contribute, I want to say that I support the Bill.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I want to congratulate the Minister for a Bill very well crafted. He performed excellently in the Ministry of Justice, National Cohesion and Constitutional Affairs and has done it yet again.

Mr. Deputy Speaker, Sir, for the first time, against all the Bills that we have looked at in this House, I have seen a Bill that very well mainstreamed the issues of human rights, children rights, women's rights, rights of persons with disabilities and rights of the marginalized through regional representation.

Mr. Deputy Speaker, Sir, I also want to just laud this Bill because it professionalizes the teaching profession. For example, if you look at the process of recruiting the commissioners, vetting body and even teachers, it is through a very competitive and open process. I want to laud the Minister, especially, for one, acknowledging the issue of the best interest of the child and also giving strength to the Sexual Offences Act; that when you are a teacher and sexual predator, then you have no business teaching. This is because in the teaching profession, you interact a lot with young children. A lot of times in the past when teachers have fallen culprits to abusing children, they have been subjected to disciplinary action where they are suspended for a few days and then they come back. But I am glad that this Bill takes a very bold step that punishes those teachers. Actually, it is one of the reasons to disqualify a person from the teaching profession.

Mr. Deputy Speaker, Sir, I am also very happy on the provision, in the best interest of the child, in Clause 27. I am very happy about the issue of facilitating career progression for teachers. Many teachers are actually doing a lot of training on their own. It is good to institutionalize that and recognize and reward the hard work that the teachers are doing. I know many teachers who during holidays go back to schools to do a lot of work related to their career progression.

Mr. Deputy Speaker, Sir, I also want to just laud the provision on access to justice in Clause 12. It says that the Commission shall not put too much attention or will not be bound by strict rules of evidence. That acknowledges the fact that most of the population in this country are not lawyers. Many have not had access to education, but if they have certain complaints, they may also be able to access the Commission without too much attention to technicalities.

Mr. Deputy Speaker, Sir, I know that the Minister is very well intentioned when he makes provision that one of the reasons that teachers may be disqualified, is if he or she does not have good moral character. When I first read that, I had actually indicated that we need to define what not having good moral character is. But I have actually then seen under the Third Schedule, that there is an attempt to define what disciplinary offences are, especially in relation to description of the word "moral."

*(Mr. Musila consulted with Mr. M. Kilonzo)*

Mr. Deputy Speaker, Sir, I would want to encourage the Minister to listen. Hon. Musila is distracting him, yet I would like him to note the issue of moral or immoral description. One of the things that you have indicated, if you actually look at it from a legal perspective, is misleading. It says that one of the immoral behaviour includes, but is not restricted to sexual intercourse. What you are basically doing here is saying that any person engaging in sexual intercourse, meaning husbands and wives, shall not qualify to be teachers. So, please, if you can consider correcting that because I am sure that, that is not what you intend.

Mr. Deputy Speaker, Sir, that Schedule is also not gender sensitive. You have also indicated that one of the immoral behaviour that is excluded is the issue of lesbianism. Lesbianism talks to the female gender. So, I do not know if you think only female teachers are likely to be lesbians. So, I would want the Minister, especially to make reference to the Sexual Offences Act that has very good definitions of sexual harassment and flirtation. Flirtation fits within the issue of sexual harassment. So, you do not necessarily need to define it on its own, especially because you will be getting into very murky waters. If you have teachers who are flirting between themselves willingly, you cannot criminalize it.

Mr. Deputy Speaker, Sir, I would also want to indicate that, again, I know that the Minister is very well intentioned, under Clause 30(2). But it may also lead to discrimination of persons with HIV/AIDS. This is because the Bill is suggesting that when somebody is excluded from teaching because of being unwell, then there is a list that is put. Sometimes everybody knows the persons with HIV/AIDS. So, when you put that list, you will actually be stigmatizing. So, I would also want to urge the Minister to consider revising that.

Mr. Deputy Speaker, Sir, again, Clause 31(2) says that if a teacher is removed from the register, for him or her to be reinstated would take 18 months. I am looking at a teacher that has been erroneously removed from the register. Waiting for 18 months is too long. It is denying the teacher access to justice. So, I would really request that we look at it and reduce that timeframe.

Mr. Deputy Speaker, Sir, again, I would also want to request and urge that we revise the timeframe for the offences because they are too lenient. Where somebody has committed an offence and you tell them to pay a fine of Kshs100,000, this is really not much. Most people can do a quick *Harambee* and would be out in two minutes. Unless the law is meant to be punitive, it does not serve much purpose.

Mr. Deputy Speaker, Sir, I also want to laud this Bill because of the issue of access to information. Not many Bills are this bold enough to show that the public is entitled to information, under Article 35 of the Constitution. I am really happy that it is a very progressive Bill.

Mr. Deputy Speaker, Sir, I also want to talk to the issue of conflict of interest that I have seen in Schedule Two, Section 5. It talks about spouses and conflict of interest in relation to spouses. A lot of people do not realize that every Kenyan is entitled to a job. They presume that if I am related to a person in high places, I cannot apply for a job for whatever reason. I know, for instance, that some of the persons that have been ever targeted about these issues are the Prime Minister, President and Ministers. If their relatives are qualified, including mine, then they can apply for these positions. But if the Minister or any of those people is sitting in the panel, then they must declare, so that it is known. Otherwise, there is absolutely nothing wrong because they are Kenyans and qualified. There is absolutely no reason we should exclude a certain category of Kenyans from accessing certain opportunities. Indeed, some of us, as Members of

Parliament, were saying the other day that we have relatives who are qualified, but do not apply for positions because we are so careful. We are over-careful that if my sister is qualified and applies for a job, then people would say: “You are only giving your sisters,” even when I am not involved. So, really we should not demonize ourselves and our relatives just because we happen to be in the public.

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

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity. On the outset, I would like to say that I support the Bill and equally congratulate the Minister for a job well done.

The best thing that ever happened to the teaching profession is making the Teachers Service Commission (TSC) a constitutional body. In this respect, I would like to say that the Parliamentary Committee on the Implementation of the Constitution is the unsung hero in this case. This is because it is that Committee, I recall, in Naivasha that ensured that the TSC was made a constitutional body. These things are important for history because if it were not for that Committee, probably, we would not be talking about the operationalization of the TSC.

Let me very briefly touch on issues that have been touched by my colleagues. First, hon. Kosgey has talked about equity and distribution of teachers. The first business that the TSC should do is to ensure that teachers are equitably distributed in this country. Every now and then, we hear that there are some counties which are over-supplied with teachers and yet we know, for a fact, that there are counties without teachers at all.

In my constituency, for example, I have secondary schools whose students sit the Kenya Certificate of Secondary Education (KCSE) and yet there is only one TSC teacher. This is unacceptable and you cannot expect such a school to perform well and compete with other schools in the country full of teachers. I want the TSC to take a stock of the teachers that they have and publicly tell us where the 240,000 teachers are because there are some areas with more teachers than others and we cannot accept this.

On the disciplining of teachers under Clause 34 of the Bill, I just want to say that the suspension of a teacher for a period not exceeding 18 months is too long. If a teacher is suspended for an offence, disciplinary measures should be put in place so that within the shortest time possible – surely it should be no less than six months - a decision as to whether he or she is guilty or not should be taken. However, keeping a teacher up to 18 months and claiming to be investigating something, I think is unfair not only to the teacher but also to the students that he teaches. Therefore, I would like to request the Minister to consider reducing this period to say 12 months at the most because in 18 months, the teacher might become rusty and even if you reinstate him, he may not be able to teach.

The same thing concerns promotion of teachers. In the past, it has been known that teachers have not been promoted on merit. Teachers travel from wherever to the TSC and go back with letters of promotion. I think this is unfair, particularly, to teachers who expect to be promoted on merit. So, I want the new TSC to streamline the issue of discipline and that of promotion of teachers so that promotions are done on merit and disciplinary measures are taken expeditiously.

Mr. Deputy Speaker, Sir, finally, because I know that the Minister would like this to be finished is the quality of education. I see a grey area here. I would like the Minister to clarify to the nation the role that will be played by the County Education Directors and the TSC Directors in the counties. Unless we are careful, we may end up with duplication of roles and we may not

get the results that we want. Therefore, it is very important from the word go that the Ministry of Education spells out the roles of these two directors working in the same place.

I know that the quality of education and inspection of schools is left to the Ministry of Education. This is where there is a lot of weakness. These officers have no transport and yet they are supposed to inspect schools so that schools can perform well. However, in most cases, education officers sit in their offices. I plead with my brother, the Minister for Education, to ensure that the officers who are supposed to inspect schools in the counties have the means to travel to schools and inspect them. I know that schools have gone for years without seeing an inspector. So, how do we expect such schools to perform? That is why there is a lot of laxity of teachers because they know that there is nobody who inspects them. Therefore, I emphasize the issue of the two officers. As you go down, the Bill reads that the Ministry of Education shall spell out that there will be no duplication and that every person will know his role. If anything, these officers will only ensure that the quality of education and discipline of teachers is maintained in these areas.

With those few remarks, I beg to support.

**Mr. Njuguna:** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to contribute to the TSC Bill. Let me start by thanking the new Minister at the Ministry for the very visible reforms that he has started to inject into the stagnated Ministry. The Minister has brought some vibrancy and energy into the Ministry.

In addition, I would like to recognize the good leadership that has been provided by the current Chief Executive Officer of the TSC and even the former Chairman of the Commission. Giving the TSC a mandate to operate independently is very important. This will make the Commission perform its functions without any interference. We note that the TSC headquarters will be stationed in Nairobi. It is important, as the TSC continues to execute its mandate to engage in the computerization of its services. You will realize that currently, the TSC manually handles its services. It is also prudent that the TSC has decided to establish offices in the counties. The TSC has also sent the TSC Education Directors. These officers must be given offices and vehicles so that they can perform their functions well. I recognize that the TSC was the first Government Department to conduct credible interviews in terms of getting the 47 county officers.

Concerning the discipline in the teaching profession, this is an area that the Bill has given a lot of thought because time and again, the teachers in this country have performed well. Other times, a small number of teachers has neglected its duties. We have seen teachers who are drunk and this is an issue that the TSC must address. We have seen immoral behaviour by teachers where pupils have been raped by teachers and defilement taking place in our schools. Proximity should not be allowed in our schools. Even some teachers have been smoking. This must be addressed by the new Teachers Service Commission (TSC). Corporal punishment has also been prohibited and teachers must be notified of this new development.

Concerning the actual discipline of teachers as stipulated in Clause 34, suspending a teacher for 18 months, in my view, is too long a period. By keeping the teacher out of the classroom for 18 months, you will destabilize learning in our schools. I, therefore, urge the Minister to reduce this period to one year.

Concerning quality and standards in our schools, we would like the new TSC to ensure that teachers work out the lesson plans, schemes of work and marking schemes. It also needs to address the issue of punctuality in class. We cannot talk of quality education if these issues are not keenly addressed. The stakeholders; that is, the sponsors, parents, and the community must

work in harmony. If they do so, the recent demonstrations that we saw in the country will not recur. All the stakeholders must ensure that we attain excellence in the education sector. Teachers are human beings and they must, therefore, be accorded respect and dignity, so that they can continue performing their functions.

Concerning false registration as stipulated in Clause 44, a teacher who is considered to have made false registration is supposed to be handed a one year sentence. This, in my view, is a very light sentence. We need to consider a more deterrent action. For example, a two-year sentence would be appropriate and even a fine of, say, Kshs200,000. This would deter others from engaging in this kind of problem.

With regard to motivation of teachers, they need to be promoted. We have seen able and dynamic teachers being promoted. We should also consider demoting teachers who misbehave, misappropriate public finances and so on. Motivation must accompany ability and credible leadership provided by the teachers.

Concerning transfer of teachers, when a teacher has misbehaved or engaged in a professional misconduct, he or she must be disciplined in their school. That problem must not be transferred to the neighbouring school. Fair punitive action should be taken against the teacher instead of destabilizing a neighbouring school. We have seen teachers being promoted, but we wonder why they were promoted. The new TSC should use merit only as the criterion for promotion of teachers.

Mr. Deputy Speaker, Sir, in order to improve the quality of teaching workshops and seminars must be encouraged. In order to address the shortage of teachers, the Treasury should give more funds to the Ministry of Education, so that all counties in the country have a fair share of teachers. By so doing, equity will be realized.

With those few remarks, I fully support the Bill.

**Mr. C. Onyancha:** Mr. Deputy Speaker, Sir, I rise to support this Bill. I want to thank the Ministry of Education and the very vibrant former Minister for Justice, National Cohesion and Constitutional Affairs.

I want to point out one or two issues which are of concern to me. The first one is the qualifications for the appointment of the chairperson and members of TSC, and specifically with regard to the knowledge and experience of at least ten years in the following fields: education, governance, management, law, and others. My concern is that my profession has been left out. I think there is no Commission which can operate without finance. I would like to see a degree in finance as one of the recognized qualifications in this regard.

Secondly, Clause 9 states that the chairperson, members and the secretary shall each make and subscribe before the Chief Justice the oath or affirmation set out in the First Schedule. I believe that it should be the Chief Justice or a judge of the Supreme Court. This is because it is not always possible to have the Chief Justice at hand to carry out duties.

On Clause 10 on disqualifications, the office of the chairperson and a member shall become vacant if the holder, in sub-clause (c), is convicted of a criminal offence and is sentenced to a term of imprisonment of not less than six months. I think this is contrary to Chapter Six of the Constitution. Any criminal offence, or rather any sentence, should suffice to disqualify somebody permanently.

Mr. Deputy Speaker, Sir, with regard to numbering, if you look at Part II of the Bill on page 1,343, that is the first page after the Short Title, you will realize that the numbering has been confused. Those clauses should be running thus number five should remain five, but number six needs to be relooked at up to the end, because they are running---

**Mr. Deputy Speaker:** What page is that?

**Mr. C. Onyancha:** Mr. Deputy Speaker, Sir, I will give an example. Take any clause of the Bill, say Clause 14, which is on page 1357. If you look at the title there, that is, Units of the Commission, and then refer to the first page, that is page 1343, you will notice that Units of the Commission come under Clause 15 on that page and not Clause 14 as set out in the body of the Bill. This is the case with the rest of the clauses until the end.

With those few remarks, I wish to support.

**Mr. Deputy Speaker:** I hope the Minister has noted that. They are basically typing errors. Is there any hon. Member who wants to contribute? There being no other Member who wants to contribute, the Minister may now reply.

**The Minister for Education (Mr. M. Kilonzo):** Mr. Deputy Speaker, Sir, it is a privilege for you to call upon me to reply to this fundamental law that is going to bring forth true reforms in the teaching profession. I have listened to all the hon. Members and I want to assure them that I am going to do polishing of the Bill during Third Reading. I would like to request the Chairman of the Departmental Committee on Education, Science and Technology, hon. Koech, that if there are amendments that have not been given to him--- Any hon. Member with a proposal for enriching this Bill, kindly let me have the same, so that I can include it in the Third Reading. This is a law whose time has come and I have particularly noted issues like equitable distribution of teachers, increase of teachers, suspension to be reduced from 18 months to six months and the promotions on merit and early childhood education. All these are critical and, above all, for hon. C. Onyancha, to note that there are typos that I am going to polish.

Mr. Deputy Speaker, Sir, I want to thank hon. Members for taking such serious interest in this particular law. I am going to address issues like reinstatement and particularly to hon. Martha Karua, a self-sustaining Teachers Service Commission (TSC) is going to be my goal – to develop policies that I will be tabling in this House any time now. For hon. Wetangula - too much discretion to the TSC on discipline - indeed, I agree with him and, therefore, I will be asking hon. Members to join me in the Third Reading to make sure that we qualify all those. Thank you very much, hon. Members for standing up to the occasion.

I beg to move.

*(Question put and agreed to)*

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

**Mr. Deputy Speaker:** Hon. Mutula Kilonzo, you had a personal statement to make.

## **PERSONAL STATEMENT**

### **TREATS TO THE LIFE OF HON. M. KILONZO**

**The Minister for Education (Mr. M. Kilonzo):** Yes, Mr. Deputy Speaker, Sir. I want to thank the Chair and this House so that I can say through a Personal Statement that in the course of this afternoon - and that is why I was delayed in coming in - I have received two messages threatening my life, the lives of my family and threatening my home. Those who are sending

these messages are telling me - if I may just say a bit because in some of it, they are even claiming responsibility for terrorist activities in Kenya - Minister Mutula Kilonzo, be ready to die.

Mr. Deputy Speaker, Sir, allow me to say that as a Christian, I am always ready to die. I expect to die. I am ready for death but it should not come at the hands of criminals and crooks that are undermining the safety and security of our country. This is really a frightening afternoon and I have already sent these messages to the Director of National Security Intelligence Service (NSIS). He has acknowledged them and he says that he is working on them. These people are even sending me the numbers they are using, the telephone numbers of their sponsors and so on.

I would like to request that I be given security such as the NSIS and the police because from this statement, I intend to walk to the police to record a statement so that I can give them this information so that they can be able to follow the culprits who are behind it. Time has come for the fools who have these habits to know that people like I do not do things to please them or to please anyone else. I only do what is right and I only do what is right correctly.

Mr. Deputy Speaker, Sir, so, I want to thank you very much for giving me this opportunity. I have been threatened before but I never bothered your office. But after receiving two messages 30 minutes apart from two different numbers saying that: "Be ready to die" as though they are God, I thought that this is something I should share with my country and hon. colleagues so that should anything happen to me, you will know that I told you so. If they are threatening me because of my work, they are in for a rude shock because I have no intention whatsoever to change my way of life – the way I speak, the way I put positions clearly because I do so out of my own understanding as the only senior counsel in this Parliament, out of a very careful teaching and education as a lawyer.

Mr. Deputy Speaker, Sir, therefore, thank you very much.

**Mr. Deputy Speaker:** Indeed, the Chair views such threats on the personal safety of Members of Parliament with all the seriousness it deserves and I will direct from the Chair: The Sergeant-at-Arms will move with speed and co-ordinate the security of the hon. Mutula Kilonzo with the relevant other security organs – the police and the NSIS for that matter, for purposes of making sure that hon. Mutula Kilonzo is safe and is able to contribute to this country and to the future of this country the way he has done in the past without any fear, and that is one thing that everybody who thinks that he can shake the resolve of this country and its people and leadership should know as a lesson. We will move on and nothing, no terrorist or so-called serial terrorists are going to threaten and achieve anything by making us lose our routines. All Government officers are going to work and leaders are going to work with all the diligence, efforts and sacrifices they have always done without changing anything.

Thank you.

Next Order!

## **BILL**

### *Second Reading*

#### THE PUBLIC SERVICE COMMISSION BILL

**The Minister of State for Public Service** (Mr. Otieno): Mr. Deputy Speaker, Sir, I beg to move that The Public Service Commission Bill, Bill No.16 of 2012 be now read a Second Time.

This is one of the Chapter 15 Independent Commission Bills and as hon. Members will have noticed from the Bill itself, I proposed to separate the Public Service Commission Bill itself just to govern and make additional provisions on the Public Service Commission itself and separate it from a Public Service Management Bill which we will be bringing later on in the House.

Mr. Deputy Speaker, Sir, as in the Bill itself, it sets out further provisions on the functions and powers of the Public Service Commission (PSC) to provide for the appointment of the chair, the vice-chair---

**Mr. Deputy Speaker:** Hon. Dalmas Otieno, you have missed on something that is not only procedural but very critical. You have to move the Motion first of all in its format. You have not moved it. You have to say the Public Service Commission Bill number so and so be read a Second Time.

**The Minister of State for Public Service** (Mr. Otieno): Mr. Deputy Speaker, Sir, I beg to move:-

That The Public Service Commission Bill, Bill No.16 of 2012 be now read a Second Time.

As I was saying, I have proposed to separate the Public Service Management Bill from the Public Service Commission Bill and this Bill is just limited to making further provisions on the functions and powers of the Commission, its administration, the appointment of its members, the appointment of the secretary and other financial provisions that are necessary in most of the independent constitutional commissions.

Mr. Deputy Speaker, Sir, I want to draw the attention of the hon. Members to provisions that may be different in this Bill compared to the other chapters. First, this will be a full time Commission. So, all the nine members will be full-time. We are recommending this because of the size and volume of work given that we have over 200,000 civil servants. So, the PSC and the Teachers Service Commission (TSC) are going to deal with very large numbers of officers and it is recommended all the Commission members are full time.

On identification and qualifications of the members, we have listed requirements which are substantially similar; being a citizen of Kenya, holding a degree, 15 years experience and at least six years experience at top managerial level and the person would be qualified for appointment if he meets that kind of criteria.

Mr. Deputy Speaker, Sir, the functions of the Commission are already listed in the Constitution, but we have provided for a single term of six years for Commissioners, so that there can be no lobbying for re-appointment. So, we are recommending a non-renewable term of six years.

In addition to the functions that have already been enumerated in the Constitution under Article 234, we have provided that the Commission will formulate policies necessary for the achievement of its mandate; provide strategic direction, leadership and oversight over the Secretariat; and, do all such other things necessary in the process of discharging its mandate.

We have just added that the Commission may require any person or state organ to provide to the Commission, any information that may be necessary for the proper performance of its functions because all the other functions are already listed in the Constitution.



Mr. Deputy Speaker, Sir, we have listed the qualifications necessary for the Secretary to the Commission, as hon. Members will see under Clause 16 of the Bill. Other than that, the rest of the provisions relating to the process through which the appointments will be made are contained in the Schedules in the manner we have drafted all the other Commissions under Chapter Fifteen.

So, this is a straightforward Bill aimed at helping to establish the Commission and provide for its management and administration by the members so appointed. In the four Schedules, we have provided for processes by which any appointments will be made, and for the oath of office that is required, *et cetera*.

Mr. Deputy Speaker, Sir, with those precise remarks, I beg to move and request my colleague, hon. (Prof.) Margaret Kamar, to second.

*[Mr. Deputy Speaker left the Chair]*

*[The Temporary Deputy Speaker  
(Dr. Laboso) took the Chair]*

**The Minister for Higher Education, Science and Technology** (Prof. Kamar): Madam Temporary Deputy Speaker, as I second this Bill, I would like to congratulate my colleague, the Minister of State for Public Service, for the well articulated Bill that is before us. I would also like to congratulate him for highlighting some of the salient points, and particularly for citing the relevant Sections of the Constitution.

However, one of the things that have not come out clearly, which we should all continue to bear in mind, is that of equity in appointment of the members of the Commission. This is extremely important, bearing in mind that we passed the Teachers Service Commission Bill only a few minutes ago. There are issues that seem to be arising, particularly on appointment of Directors. We have been told that some counties have not contributed to the directors that were appointed recently and deployed to the various counties.

We have got a very good example, arising from the Constituencies Development Fund (CDF), where each constituency supplied one person to be appointed Constituency Fund Manager (CFM), who were then rotated. Looking at appointments in the various Commissions and the Directorates being established by the various Commissions, it is very important that we adhere to the equity principle of the Constitution.

Madam Temporary Deputy Speaker, I am saying this because, as we transit to the devolved system of government, unless we show fairness and equity in public appointments, some counties will develop a tendency to go ethnic, especially if they feel that their own people are not being hired to serve anywhere in the country. People will want to retain positions existing in their counties for members of their own communities.

There are fears being raised always about hiring and ethnicity in public institutions. I say this because I am battling with the problem of ethnicity in institutions of higher learning. Therefore, it is very important that every part of Kenya feels represented. Even counties hosting public institutions should host other Kenyans and feel that members of their communities are hosted in institutions that are not within their own counties.

Madam Temporary Deputy Speaker, the PSC is an institution which must ensure that this country remains a unitary country, and a country that respects all ethnic groups, including minority groups. I hope that this Commission will be the first one to show equity, right from

balancing of its membership, which we have been told will comprise of nine persons. The PSC should actually be a model for other Commissions to emulate.

With those few remarks, I beg to second.

*(Question proposed)*

**The Minister for Medical Services** (Prof. Anyang'-Nyong'o): Madam Temporary Deputy Speaker, I thank you for giving me permission to talk on the Public Service Commission Bill, 2012, which my colleague, hon. Dalmas Otieno, has moved so ably, and which my sister, Prof. Margaret Kamar, has seconded.

One thing that the Minister said, which is extremely important, and which should be underlined in the establishment of any Commission, is the idea that this Commission will serve for a non-renewable term of six years. The only other country that I know which practises this principle of one term is Mexico. Mexico practices this principle with regard to the election of the Mexican President.

Madam Temporary Deputy Speaker, the Mexican President is elected for one term of six years. He chooses his team. So, he has six years to pursue and implement his policies and, therefore, he does not need to curry favour with anybody, which would be inimical to the policies that he is pursuing. Therefore, being compromised for some reasons is not very easy.

In order for us to have a PSC that is going to be respectable, nationally conscious, and one which will not be inhibited in exercising its powers as by Constitution and law established; and, more importantly, a Commission that is going to be impartial; the six year principle is extremely important.

Madam Temporary Deputy Speaker, having said so, there is another principle that we must follow if, indeed, that mandate is going to be exercised effectively. The second principle, which is extremely important, is the qualifications for appointment as Chairperson and Secretary to the Commission as well as members of the Commission. This Bill works out a very careful criterion for composing the Commission, and for appointment as Chairman and Secretary to the Commission. The criteria are very impressive.

The PSC should, again, serve as a model in establishing other statutory bodies in our nation. The terms are clear. They are detailed. It will definitely attract people with experience, proper professional qualifications and integrity.

Madam Temporary Deputy Speaker, let me come to the issue of integrity. This is what I would like to request the Minister to look at rather carefully. Although the issue of integrity will partly be handled, given the fact that all the persons proposed for appointment as members of the Commission, and Secretary to the Commission, will be vetted by the National Assembly, I am wondering, having not seen it addressed explicitly in the Bill, whether we could indicate how the issue of integrity will be handled.

This is an issue which might be overcome by the Public Officers Ethics Act and Chapter Six of the Constitution. So, maybe, it does not need to be repeated in the Bill. I think if, indeed, we take into account Cap.6 of the Constitution as well as the Public Officers Ethics Bill and the fact that the people will be vetted by Parliament, then we are safe on the issue of integrity, and maybe it does not need to be spelt out in black and white in the Bill.

Madam Temporary Deputy Speaker, having said that, another issue that I think Parliament should have its attention drawn to is; the conditions under which certain officials of the Commission may be ruled out of office from the chairman and so on. I think again, here, we

avoid the lacuna that we had in the Teachers Service Commission (TSC) where teachers could be stopped from teaching on certain grounds that are very subjective. But I think in Article 8 of the Bill, for example, referring to the disqualification of the Secretary, maybe these are much more clearly placed. The Secretary may only be removed from office by the Commission, in accordance with the terms and conditions of service, for –

- (a) inability to perform functions of the office arising out of physical or mental infirmity;
- (b) gross misconduct;
- (c) incompetence;
- (d) bankruptcy, violation of the Constitution; or
- (e) any other ground that would justify removal from office under the terms and conditions for service.

Having said that, I hope that the Commission having been constituted by men of great professional qualifications and education and, of course, having passed through Parliament and having been conscious of the fact that they must operate above board given Cap.6 of the Constitution as well as the Public Officers Ethics Act, I only hope that we may not have certain intrigues that have occurred in the past, where certain statutory bodies have used such provisions and other extremely subjective approaches to dealing with such high officials. That quite often distabilizes institutions unecessarily and definitely calls upon such commissions to be mindful of the wider society on behalf of whom they exercise such responsibility.

Madam Temporary Deputy Speaker, let me go to another issue which I think is equally important. That is the last Article before the Schedules; and that is to do with regulations. It is important that in such Bills we pay attention to such regulations because sometimes they are ignored while they are as important as the main provisions of the Bill. This is because regulations in any organisation are usually rules and regulations laid down for the conduct of members, civil servants or employees of an organisation. Therefore, regulations for establishing any such commissions are extremely important. I am just drawing the attention of the House because they may come towards the end of the Bill, but I think in terms of functioning of a commission or organisation, rules and regulations of how it operates are very important. This is because they lay the framework of the day to day conduct and they are the bedrock on which further regulatory procedures by the Commission itself will elaborate once it is established, will derive from. The Commission may make regulations for the better carrying out of its functions under the Constitution, this Act and any other national legislation, without prejudice to the generalities of sub-section 1. Such regulations may provide for the establishment or abolition of offices in the public service, the appointment including the power to confirm; appointment of persons, promotions and deployment of any office in respect of which the Commission is responsible under the section.

I think it is important and I must applaud the drafters of the Bill to have included extremely detailed provisions for the manner in which the Commission will establish these regulations. This is because quite often what I have been seeing in the Government is that statutory bodies and such commissions, sometimes in terms of the day to day performance, find it difficult or do find certain problems if such regulations are hapazardly established or if they do not follow a format that would help in better functioning of such statutory bodies or commissions. It is good that such regulations find themselves in the mother law rather than just saying generally that the Commission will establish its own regulations for running itself without giving as many details as this particular Bill provides.

No wonder this Bill was from the Ministry of State for Public Service because they deal with such issues on the day to day basis and they found it necessary that a commission going to look after their civil servants must also run on regulations that are sound and an example to other commissions and statutory bodies subsequently.

I am quite sure that when we finally propose the Health Service Commission, we will borrow a leaf from the structure of this Bill and especially from these regulatory provisions that I think are very important. I think these regulations are also very important for bodies that exist at the moment as regulatory bodies in various sections of the Government.

Madam Temporary Deputy Speaker, finally let me just say one last thing before I fully support this particular Bill which I commend to the House and I hope that we shall pass it expeditiously. Let me just say that on the issue of panels that are established to appoint people to the public service, we know for certain that our experience since Independence has been varied as far as the performance of the public service is concerned. The Public Service Commission (PSC) has gone through many regimes in this country. Generally, it has attracted men and women who have served before and who really know how the Civil Service works. However, there has been one major problem in the PSC which I hope will not be repeated especially with this new law. That is the insensitivity of the public service to the demands of renewal and change in the Civil Service. Appointments sometimes take too long, interviews quite often are not very transparent and promotions are slow. I hope that like the Minister said when he was presenting the Bill, that the Civil Service is very big and the PSC as well as the TSC will both handle extremely large numbers. The PSC will definitely be challenged as far as the speed with which they do their appointments and the fairness with which such speed observes the quality of the appointments and the manner in which they schedule promotion panels for the Civil Service so that we do not get through what we have been going through in the Government since 2003, of huge backlogs of promotions that really lower the morale in the Civil Service and definitely affect efficiency and performance. So, knowing that the size of the population which the Commission is dealing with is huge, I do not know how many panels are envisaged to deal with these issues. But obviously, the provision is here in the schedule that they are necessary. I only hope that the number of the panels established to deal with promotions, appointments and so on will be many enough to make speed up something of importance and to ensure that efficiency and morale in the public service is not hampered.

Madam Temporary Deputy Speaker, I would like to support the Bill.

**Dr. Eseli:** Thank you, Madam Temporary Deputy Speaker, for giving me this chance to also support the Public Service Commission Bill, 2012.

First, I would like to congratulate the Minister for bringing this Bill before the House. The PSC as it is constituted now is probably guilty of the skewed employment methods in the public service in the sense that right now the human resource audit of the public service is definitely skewed on tribal and regional lines. The new PSC should endeavour to correct this and in future also endeavour to ensure that all those people who are eligible are given the full chance to be able to get those jobs.

My only fear is that this Bill, as it is now--- I am not sure that it will remedy the situation. If you go into the First Schedule on how the Commissioners will be appointed, you will find that the President shall, by notice in the Gazette, declare vacancies in the Commission and constitute a selection panel comprising seven professionals drawn from the public and private sector. That means we have given the President the freedom to pick anybody on that panel probably with instructions to appoint certain people. That is not right. We are starting on the wrong foot. We

should have that panel also vetted here, so that we are sure that the people constituting that panel to appoint the Commissioners are people we, as Parliament and representatives of the people, are confident with. Otherwise giving the President unfettered authority to just appoint panelists who will then carry out the appointment of the Public Service Commissioners, we might be falling in the old trap and that will not be right.

Madam Temporary Deputy Speaker, while it has been well explained as to the merits of having a six-year non-renewable term, I think we need to also relook at the issue of institutional memory and continuity. If they are going to be all appointed at the same time and for a fixed six year term, I think there might be a problem; probably the Minister knows the reason why they opted for that and, therefore, did away with the issue of continuity and institutional memory.

Lastly is the issue of the secretary to be appointed under Clause 16(1), who shall be a State Officer. It is very interesting how some State Officers are appointed and how others are appointed. Some State Officers are appointed after vetting by Parliamentary committees and this House, but some of them are appointed directly and then designated as State Officers. I think we need to come out clearly; are State Officers people who have been vetted by Parliament or are State Officers people who have been appointed elsewhere and then classified as State Officers?

I remember when the controversy came up when we were appointing the new Commissioner of the Kenya Revenue Authority (KRA). It was stated clearly that he is not a State Officer, and so his appointment did not need to come through Parliament. Not being a State Officer, therefore, his name did not have to come to Parliament for vetting. Now, if the Secretary of the PSC is going to be a State Officer, as is stated in this Bill, then that Secretary's name must come to Parliament for vetting, otherwise he should not be a State Officer.

With those few remarks, I beg to support and state that I will be bringing some amendments to the Bill at the Committee Stage.

**Ms. Karua:** Madam Temporary Deputy Speaker, I rise to support this Bill, which corporatizes the PSC and seeks to reform it.

The PSC is one institution that has failed to reform alongside the rest of the country. Time and again, as other Members have said, appointments in the public service have left a lot to be desired. Promotions have not been done on merit. I had occasion, when I served as a Minister, to complain about an officer; at the time somebody was seeking the transfer of that officer, a letter promoting that officer arrived. Therefore, the way the PSC interacts with the client Ministries leaves a lot to be desired. The PSC is like a management consultancy firm, but for the Government departments. Therefore, even though it is independent under the Constitution, it must be sensitive that it works for clients who are the Ministries and departments of Government and it should be responsive.

Madam Temporary Deputy Speaker, I remember once complaining about promotions when I was in the Ministry of Water and Irrigation. Those who had been promoted included people who had recently been reprimanded; some had committed criminal offences and had been convicted, yet long serving officers, who were dedicated according to the PSC, did not merit the appointment. The blame does not go directly to the Commissioners alone, because they work under a delegated system, and they appoint officers of the client Ministry as the authorized officers. If they have no mechanism of supervising how work is done, it means corruption will go on. We will blame it on the PSC, but it is in house-work within the client Ministry.

I am very glad that the qualifications for the people being appointed now are set. Previously the PSC Commissioners have been appointed through the prerogative of the President; the Minister's concerned forwarded names, people lobbied, it was actually a home for

the retired, as far as I know it. Now we are being told you have to be recruited competitively. There is nothing wrong with somebody who has experience and who has served for a while. However, you cannot make it that everybody in the Commission must be retired. Therefore, I note with appreciation that there is set criteria and qualifications, and that appointments will be in accordance with the principles guiding the public service, which are to be found in Article 232 of the Constitution. It means that appointment has to be open, transparent and competitive. This way, we will get officers who will appreciate the enormity of the job before them. I think this is happening for the first time. Previously in some of the key commissions we have had officers, sometimes chairmen or certain commissioners, serving upwards of 20 years. This is not necessarily in the PSC but also in the other sister commissions. This is totally unacceptable.

Madam Temporary Deputy Speaker, I am, therefore, very much okay with the provision of six years, non-renewable. For colleagues who are worried about institutional memory, there will be a secretary to the Commission. The secretary holds the institutional memory. Maybe the Minister could ensure that the appointments are staggered, so that they do not all leave at the same time. They could be staged over three months or over a certain period, so that we have Commissioners who will remain as new ones come in. However, I have no problem with the provision even as it is because the institutional memory will lie with the secretary to the Commission.

I think that the person who drafted this legislation became very lazy, because when you just say, "in addition to functions set out in Article 234" what about that person in County X who is reading this Act and the Constitution is not near? Will they know what you mean? What is so difficult about reproducing the functions of the Commission? What is so difficult about reproducing Article 232, so that the values and principles the public service are there, and this Act on its own, even when the Constitution is not there, can be user friendly? This Bill needs to be re-molded. The spirit is good; it is necessary but let us polish it. The drafter may have had many other Bills because we know this is a time when we are trying to catch up with the Bills demanded of us by the Constitution. Let us, therefore, as Parliament take up and make this Bill stronger by reproducing Articles 234 and 232 in extensor, so that the Act even on its own can make sense to those who will read it.

Madam Temporary Deputy Speaker, I am also looking at other further provisions of this Bill: Appointments, removal of the chairperson, members and the secretary. I want to say that anybody designated as a public officer, let them come to Parliament for vetting, including the commissioner. The work they are doing is enormous; they are in charge of the entire Public Service in the corporation called Kenya. Because of the enormity of their job, let them come through vetting. Let them appreciate the enormity of the job they are holding so that they truly then can have the mandate to reform the country. Let us have a unified procedure of appointments for public officers of a certain level for State officers. I would, therefore, echo what Dr. Eseli has stated that we need to ensure that we harmonize and all State officers come before the House for vetting.

Otherwise, I want to congratulate the Minister because this is one of the Bills that ought to be passed before this House breaks for elections and, therefore, it is good that the Bill has been brought before us in this House but it is also important that we help in strengthening it.

With those many remarks, I beg to support.

**Mr. C. Onyancha:** Madam Temporary Deputy Speaker, thank you. I rise to support this Bill but I have a few comments to make. It is very unfortunate that in the previous Bill we have just discussed, we were noticing errors in numbering and in this particular Bill, on the very first

page, page 1313, there are two sections (8) on Part II – Composition and Administration. I hope the Minister will take note of that and do the relevant correction. But I believe the mistake is because the issue about general principles has been left out of the main Bill.

Secondly, Section 8 of the Bill refers to the oath or affirmation of office prescribed under the Second Schedule. Looking at the Second Schedule, the affirmation of oath is basically to be done by the Chief Justice and because of his many duties I was proposing that the Minister looks at the possibility of saying the Chief Justice or any other judge of the Supreme Court. The same goes for Schedule 4 of the Bill which is basically the second last page of this Bill. We are talking about the chairperson here. The chairperson is the one to take that oath.

There is one other issue which I wanted to bring to the attention of the House and that is that the Bill is silent on the issue of the appointment of the representative of the Commission to other Boards. I am a member of the Kenya National Audit Office Commission and one of the representatives is the Public Service Commission (PSC) and until that Act is changed, there will be a representative from this body. There have been cases where we do not know whether it should be the secretary or the chairman who should represent the Board and it will be good to clarify that anybody with the permission of the Commission should be able to represent the Board. I also want to support the issues put forward by Dr. Eseli about staggering the appointments of the Commission for obvious reasons. Under Section 25(1) of the Bill on Annual Estimates, it reads as follows:-

“Before the commencement of each financial year, the Secretary, with the approval of the Commission, shall cause to be prepared estimates of the revenue and expenditure of the Commission for that year.”

Madam Temporary Deputy Speaker, when you say “before commencement”, our year commences on 1<sup>st</sup> July. The Secretary could possibly give the estimates to the Cabinet Secretary in charge of finance a day before Budget Day. I think we should have a period of, at least, three months so that the Treasury could have enough time to include it in other estimates, so that we do not have a rush at the very end.

Madam Temporary Deputy Speaker, Section 2 of the Third Schedule reads:-

“The Chairperson and members of the panel shall, before assuming office, take and subscribe to the oath or affirmation of office prescribed in the Third Schedule.”

I have looked at the Third Schedule and there is no such oath or affirmation. Maybe, it was meant to be in the Second Schedule or the Fourth Schedule.

With those few remarks, I beg to support.

**Mrs. Odhiambo- Mabona:** Madam Temporary Deputy Speaker, I rise to support this Bill and congratulate the Minister for bringing it.

Madam Temporary Deputy Speaker, as the Constitutional Implementation Oversight Committee (CIOC) this is one of the Bills that we had flagged off for purposes of the implementation of the Constitution. Therefore, I want to congratulate the Minister and urge other Minister to hasten the Bills that are within the two years span, so that we do not get into a crisis or put into a rush dealing with the Bills at midnight, and then we are forced to recant the things that we have said, when we are either too sleepy to notice or too rushed. I raised that issue last week when we were dealing with the Statute Law (Miscellaneous Amendments) Bill. It has faced the consequences of Bills that are rushed and we are forced to “eat” back our words. It was very embarrassing and shaming for us as Members of Parliament. I am, therefore, happy that you are bringing this within a good time. Members can actually look at the Bill within proper time

and any mistake that will be done will be honest because we will have had the opportunity to look at the Bill.

I want to encourage the Leader of Government Business to bring us Bills in good time. We do not want to be the laughing stock of this country. We seem to be passing Bills whose contents we have no idea of. I am not raising this just because the President has refused to assent to Sections of the Statute Law (Miscellaneous Amendments) Bill. I raised it last week that we look like we are doing things we do not know and, for sure, we look like we did things that we had no clue of. Members were coming out of here and saying: We did not know we were passing such things. It is a bit embarrassing.

Madam Temporary Deputy Speaker, having said that, I just want to raise some issues that I have noticed. First, I want to laud the Minister for entrenching the issue of openness and competitiveness in this Bill, and also including the private and public sectors in those jobs. I have noticed in the past that there are very good jobs that are advertised and, kind of, just left open for the public sector and not the private sector. Yet, we have many Kenyans in the private sector who have very brilliant brains. So, that is very good. That is also to further the private-public sector collaboration.

However, I want to indicate that I am concerned about the provision which is made for appointing the panel that will appoint the Commissioners. The reason is that if you actually look at all the other Commissions that we have appointed, there is a very clear procedure. You do not just get persons from the public and from the private sector. That is part of the openness and transparency. If we leave it this way, what is there to stop me from picking all of my friends, as a leader, to go and sit in the panel? After that, they will appoint only persons whom they deem friendly to them. We must know who is sitting in that panel and they must be persons who have gone through a process. So, I agree with Dr. Eseli that, that process must be open and clear, just like in the other Bills. Indeed, if Dr. Eseli does not bring an amendment to that effect, I will bring it.

Madam Temporary Deputy Speaker, I would also want to comment on the issue of the removal of the secretary or any commissioner from office. I would want to urge the Minister to borrow the language, with modification, of the Teachers Service Commission Bill that we have just looked at. One of the things that he should look at is the issue of making reference to the Sexual Offences Act and persons with disability in the Public Service Bill. These deal primarily with employment in the public service. Therefore, the issue of sexual harassment is likely to be more pronounced here than even in the education sector. So, if we thought we wanted to cover the education sector because of employment, then we need to cover it much more here. This is especially so because the persons who are usually the greatest victims are women and persons with disability. We have heard of situations where we were informed that persons, especially even in--- I remember there was a time I was actually given a question to ask about sexual harassment of persons with disability in the sporting sector. Now, in the public sector, it is even worse; that if you want a job and you are a person with disability, especially a woman with disability, then you actually have a double tragedy because then the discrimination and instances of sexual harassment go high.

Madam Temporary Deputy Speaker, I also want to laud the Minister for the Bill providing for the inclusion of regional and ethnic diversity. But I want to urge him to also include gender and age diversity; gender will take into account both men and women while age diversity will take into account the youth. I know there are very good provisions on persons with



disability, but we always forget our youth; can we, please, make provisions that take into account our youth?

Madam Temporary Deputy Speaker, again, just like the Teachers Service Commission Bill that we have looked at, I want to laud the Minister for making very strong provisions on freedom of information. Again, I think this is the first time I am actually seeing in a Bill that we are very conscious of constitutional provisions on limitations. When you want to limit a provision of a Bill of Rights, then it must be done according to the Constitution; that you must state to what extent you are providing those limitations. This Bill seeks to do so. It is a good first step, which I laud.

Madam Temporary Deputy Speaker, I also want to indicate that if you look at Clause 32(1) which talks about transition of the existing commissioners. I would really have benefitted to know from the Minister how many commissioners are still serving and what their time limits are. We do not know whether their time was extended yesterday to evade the provisions of this Bill; we do not know if it will be extended between the process of the Third Reading and the Presidential Assent because then they will still be covered. To avoid such mischief, because some of us are not very confident with the way the Executive does its thing, the only security we have is when you have very clear pronouncement in law. Even if it is transition, we say it must be a term as is already being served, not a term that is extended.

Legally, you can do it and, therefore, make nonsense of the Bill that you are passing. You can actually pass this and then extend their time tomorrow. By the time you extend their time tomorrow, they will be within legal limits, yet what we are trying to do is to reform the Public Service sector. We cannot reform it by having the same old people who are not yet vetted. Indeed, we were informed that I think the term of the Chair has already expired and yet he is representing the Commission in other areas. That puts the Commission in an awkward situation. Some of them are very able people, but things must be done properly.

Madam Temporary Deputy Speaker, again, there is the issue of the fixed six-year term. I do not know why we must have a fixed six-year term. We must borrow from the other provisions that we have done before, and I have not seen where we have Commissions that have a fixed six-year term. We have three years renewable, so that if there is any Commissioner who is now working effectively, we do not have to go through the long constitutional process of removal. But we can have an opportunity within those three years to choose somebody afresh.

Madam Temporary Deputy Speaker, I also want to talk about the issue of penalties, just as I spoke on the other Bill. We must look at the penalties and try to harmonize. You can see that under this Bill, for the same offence a person is being fined Kshs500,000 or imprisoned for a term not exceeding seven years or to both such fine and imprisonment. I have no problem with it, but if you look at The Teachers Service Commission Bill that we have looked at, it is the same offence but with lower penalties. So, I would want to urge the Minister that when you sit in the Cabinet, one of the things that you should be doing is harmonizing those provisions of these Bills.

Madam Temporary Speaker, finally, there is the issue of conflict of interest, I think under the Third Schedule, Section 12. I do not understand, again, here because there are two Bills that are following each other and so, it is very easy to pick those differences. But this Bill is more general in terms of the issue of conflict of interest. The Teachers Service Commission Bill, specifically talks about spouses. I do not know whether there is something very significant about the Teachers Service Commission, that is not unique to the Public Service Commission. So, I would want to urge the Minister, again, because some of these issues are crosscutting with the

Teachers Service Commission Bill, if he could sit with his counterpart in the Ministry of Education, who also happens to be a very good lawyer, and look at some of those and harmonize the provisions of this Bill, which are very similar and yet have very different provisions.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Dr. Laboso): I now call upon the Minister to respond.

**The Minister of State for Public Service** (Mr. Otieno): Madam Temporary Deputy Speaker, I wish to thank all the hon. Members who have contributed.

Madam Temporary Deputy Speaker, very quickly, I want to clarify, first, that there are currently five Commissioners that are continuing and their terms will not expire until November. The five will not qualify because they are currently defined as state officers. So, they would not apply for these positions. So, once this Bill becomes an Act, we shall have four appointments. Regarding the chair, which is vacant, somebody is acting. The vice-chair is also vacant and somebody is acting and two Commissioners. So, we will appoint four and automatically, by virtue of the fact that this is a continuing constitutional Commission, it will be staggered. We will have five being renewed in November.

Madam Temporary Deputy Speaker, hon. Prof. Kamar did raise the issue of equity of appointments, particularly, the fact that the public service needs to reflect the diversity of the Republic. This one, as I had mentioned, would come in the Public Service Management Bill itself; this law will govern the spread and terms of appointments in the public service.

On integrity, I think we have already said that anybody who qualifies for this Commission must meet Chapter 6 requirements. With regard to regulations, they will be allowed regulations governing their own business but the other regulations touching on public servants will come under the Public Service Management Bill.

On the issue of skewed employment as raised by hon. Dr. Eseli, this Commission will definitely have to reflect the face of Kenya but I guess he had in mind the entire Public Service Commission (PSC) which as of now some communities may appear over represented. However, I can assure you that there is no community with more than 25 per cent. So, the PSC as a whole, currently, is within the Act as regards the percentages. Dr. Kibunjia did an audit and found out that we were within the percentages prescribed under the National Cohesion and Integration Act.

With regard to job groups, that is a matter that will be addressed slowly as we go on. With regard to gender, we already have an overall of 34 per cent females in the Public Service Commission as we speak now. We are looking at the job group details.

Hon. Karua rightly said that the Commission should be responsive to the client which is the Government itself. That is something we have been arguing about and there will be adequate provisions in the practice as they will be delegating some of their functions to authorized officers within the Government. I appreciate the corrections which were pointed out by hon. Onyancha and hon. Millie Odhiambo; that is the areas we should address. I will be looking at the Teachers Service Commission Bill to see where, through amendments, we can harmonize provisions which will cover the appointments of the panel, removal of the Secretary, regional diversity, freedom of information and the transition provisions that I have explained.

With those few remarks, I beg to move.

*(Question put and agreed to)*

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

## MOTION

### ADOPTION OF REPORT ON IRREGULARITIES AT CIVIL SERVANTS OUTPATIENT MEDICAL INSURANCE SCHEME

THAT this House adopts the Report of the Departmental Committee on Health on alleged irregularities of the rolling out of the civil servants out-patient medical insurance scheme, volumes I and II, laid on the Table of the House on Tuesday, 5<sup>th</sup> June, 2012.

*(Dr. Monda on 13.6.2012)*

*(Resumption of Debate interrupted on 13.6.2012)*

**Dr. Monda:** Madam Temporary Deputy Speaker, looking at the clock, I would like to request that the House Business Committee allocates sufficient time for us to move and have the Motion seconded so that we do not have pieces of a Motion moved 20 minutes last week, today for one minute and possibly tomorrow. There will be no coherence in this matter. So, I am requesting the House Business Committee to prioritize and allocate us sufficient time so that we are able to move this Motion.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow, Wednesday 27<sup>th</sup>, June, 2012, at 9.00 a.m.

The House rose at 6.30 p.m.