

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 11th August, 2011

The House met at 2.30 p.m.

[Mr. Deputy Speaker in the Chair]

PRAYERS

(Eng. Rege stood up in his place)

Mr. Deputy Speaker: Do you have any papers to lay on the Table? Is it to do with Papers? Are you laying Papers on the Table?

Eng. Rege: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Then wait! You will rise on your point of order later.

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Resolution of the House on 23rd July, 2008, on Government action to protect Cherangany Forest from adverse human activities.

(By the Minister for Forestry and Wildlife)

Annual Reports and Financial Statements of South Nyanza Sugar Company for the year ended 30th June, 2007 and 2009 and the certificate thereon by the Controller and Auditor-General.

Annual Report and Financial Statements of Agricultural Development Corporation for the year ended 31st March, 2010 and the certificate thereon by the Controller and Auditor-General.

(By the Assistant Minister for Foreign Affairs (Mr. Onyonka,) on behalf of the Minister for Agriculture)

Annual Report and Financial Statements of East African Portland Cement for the year ended 30th June, 2010 and the certificate thereon by the Controller and Auditor-General.

(By the Assistant Minister for Foreign Affairs (Mr. Onyonka) on behalf of the Minister for Industrialization)

Audited Financial Statements of Kenya Airports Authority for the year ended 30th June, 2010 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Foreign Affairs (Mr. Onyonka)
on behalf of the Minister for Transport)*

Annual Report and Accounts of National Environmental Management Authority (NEMA) for the year ended 30th June, 2010 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Foreign Affairs (Mr. Onyonka,
on behalf of the Minister for Environment and Mineral Resources)*

Financial Statements of National Social Security Fund (NSSF) for the year ended 30th June, 2010 and the Certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Foreign Affairs (Mr. Onyonka)
on behalf of the Minister for Labour)*

Abstract of Accounts of Town Council of Mbita Point for the two years ended 30th June, 2003 and the certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of Town Council of Londiani for the eight years ended 30th June, 2003 and the certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of Town Council of Litein for the three years ended 30th June, 2003 and the certificate thereon by the Controller and Auditor-General.

Abstract of Accounts of Town Council of Litein for the year ended 30th June, 2004 and the certificate thereon by the Controller and Auditor-General.

*(By the Assistant Minister for Foreign Affairs (Mr. Onyonka)
on behalf of the Deputy Prime Minister
and Minister for Local Government)*

Mr. Deputy Speaker: Eng. Rege, you also had Sessional Papers to lay on the Table of the House.

Eng. Rege: Mr. Deputy Speaker, Sir, last week, three Sessional Papers; Papers No.1, No.2 and No.3 were brought to the Floor of the House but they were to be today. Yesterday, the Departmental Committee on Finance, Planning and Trade---

Mr. Deputy Speaker: Do you have the report on the Sessional Papers?

Eng. Rege: I request you, Mr. Deputy Speaker, to defer them until next week. That is because we do not have all the documents that we need from the Minister.

Mr. Deputy Speaker: Fair enough! You will lay them on the Table of the House when they are ready.

Eng. Rege: Thank you Mr. Deputy Speaker, Sir. It is because they are on today's Order Paper.

Mr. Deputy Speaker: Order! Let us move to Question No.1 by Private Notice, Mr. Shakeel Shabbir.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): On a point of order, Mr. Deputy Speaker, Sir. Considering the time available for us to pass all the required Bills according to the Constitution, I want to suggest and propose to this House that we do away with Question Time and concentrate on the Bills so that we can meet the deadline.

Mr. Deputy Speaker: Maj-Gen. Nkaisserry, the manner in which the business of the House is laid down is not arbitrary. It is a manner prescribed in the Standing Orders. As a matter of fact, Standing Order No.36 says: Each day after prayers have been said, the House shall – and by now, although you are not a lawyer, you understand the difference between “may” and “shall” – proceed with the Orders of the day as follows:-

- (i) Administration of Oath
- (ii) Communication from the Chair
- (iii) Petitions
- (iv) Papers
- (v) Notices of Motion
- (vi) Questions
- (vii) Statements

(Maj-Gen. Nkaisserry stood up in his place)

Order!

Then it continues to say: “Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the House, direct.”

(Applause)

You have not made a compelling argument why Questions or any other businesses of the House should be done away with, or dispensed with for that matter.

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, I was making a proposal to this House. Looking at the time available to us to dispose of the Bills required by the Constitution, I think---

Hon. Members: Where are the Bills?

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir, some are already here! I am not talking of today. But I am just proposing whether we can change.

(Loud consultations)

I hope hon. Members can listen to this because it is very important. The Government has already submitted about 10 Bills---

Mr. Deputy Speaker: Order, hon. Nkaisserry!

The Assistant Minister, Ministry of State for Defence (Maj-Gen. Nkaisserry): Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Hon. Maj-Gen.(Rtd) Nkaisserry!

(Laughter)

The Chair was very categorical that each day after the prayers, the business “shall” be disposed of in the manner it has been laid down. The business that the Speaker has the prerogative to rearrange is the substantive business after that. That is why you, if you look at your Standing Orders, they say: “Business as set down on the Order Paper”. This is the other businesses as set down on the Order Paper. But, as far as this is concerned, it has to be disposed of. Also, a certain provision of the Standing Orders says that you can have a maximum of 15 Questions and a minimum of 10 Questions. So, even if you wish to have five Questions to create more time for the business that you want us to deal with, which is equally very important – to operationalize the Constitution of the land - we are still limited by the provisions of the Standing Orders. But, nonetheless, the House has given an undertaking that business from the Government side, the Attorney-General, the Minister for Justice, National Cohesion and Constitutional Affairs--- We shall dispose of that business even if it means burning the mid night oil. We have the prerogative. With the leave of the House, the House can sit for as late as it wants. So, any business that comes will not be delayed because the House has adjourned early.

QUESTIONS BY PRIVATE NOTICE

SALE OF TELEPHONE POSTS BY TELKOM KENYA

Mr. Shakeel: Mr. Deputy Speaker, Sir, I beg to ask the Minister for Information and Communications the following Question by Private Notice:-

(a) Why are telephone posts which used to cost Kshs.25,000 each, currently being uprooted by Telkom Kenya and sold for Kshs.500 each in Kanyakwar and Gambogi areas?

(b) Is the activity a nationwide exercise and, if so, can the Minister confirm that Telkom Kenya is no longer interested in supplying fixed line telephone services to Kenyans?

The Deputy Speaker: Minister for Information and Communications? He had better be here today. Proceed, Minister.

The Minister for Information and Communications (Mr. Poghisio): Mr. Deputy Speaker, Sir, I must begin by apologizing because of what happened yesterday. However, I beg to reply.

(a) Telkom Kenya has, in the past and traditionally, used the light gauge power poles. However, in the last few years, technology in the telecommunications sector has been evolving quite rapidly.

(Mrs. Odhiambo-Mabona and Mr. Yinda consulted loudly)

Please, protect me from loud consultations!

Mr. Deputy Speaker: Order, Mrs. Odhiambo-Mabona and Mr. Yinda!

The Minister for Information and Communications (Mr. Poghisio): Mr. Deputy Speaker, Sir, I beg to reply.

(a) Telkom Kenya has, in the past and traditionally, used the light gauge power poles. However, in the last few years, technology in the telecommunications sector has been evolving quite rapidly. This has resulted in continuous change in the way the company delivers services as more efficient and cost effective means are sought. This implies that the same service can be delivered on a different or via a continuously changing medium. This is the current case with fixed line services delivery from Telkom Kenya. Some of the services which used to be delivered via overhead copper cables have been done away with, and the same service is being delivered through underground optic fibre cables network.

(b) As hon. Members may be aware, vandalism has been a big challenge affecting the network. The company continues to experience serious cases of vandalism of copper cables. That includes the overhead copper cables that are more easily seen. Replacement has not only been a big cost challenge to Telkom Kenya, but the empty poles are left in places looking haggard after the cables have been stolen. Telkom Kenya has been engaged in protecting the network and cleaning those cases through replacing the copper network with the underground optical fiber network. Where there are serious challenges in terms of continued vandalism and high cost implications, the company has opted to offer a wireless fixed service.

(c) Yes, Telkom Kenya intends to undertake a nationwide exercise of replacing poles especially in areas where vandalism has taken a toll on the company. I also wish to confirm and assure Members that the company has invested heavily in the fixed line service using underground optical fiber cables, since the fixed line service offers a faster broadband service. Recently, the company completed the rehabilitation of the fixed lines to give Kenyans a faster speed on internet of up to eight megabytes per second in Westlands, Parklands and Muthaiga, among other areas.

Mr. Shakeel: Thank you, Mr. Deputy Speaker, Sir. The Minister has answered part “b” of the Question very well. However, he has not answered part “a” where I have asked why telephone poles which cost Kshs25,000 each are being sold to members of the public at Kshs500 each. Surely, that is not their value. They are being disposed of and yet, Telkom Kenya wants the Government to pay a loan of US\$60 million. They are throwing away the assets that are owned by *wananchi* at a mere price of Kshs500, while their economic value is over Kshs10,000. Could the Minister tell us whether that is true and if it is, what he will do to stop the exercise immediately?

Mr. Poghisio: Mr. Deputy Speaker, Sir, the cost of the poles has never risen to Kshs25,000 per pole. Secondly, for more than 10 years now, the poles have been standing there without wires due to vandalism. Therefore, the cost cannot be Kshs25,000 or whatever cost they had been bought earlier. It is good to rid the country of those poles now in a very organized manner. That is why we are selling them. Some of them are old while some have been consumed by termites. Besides that, Telkom Kenya has a right to sell the poles at whatever price they want to sell them. That is part of the asset base that they want to get rid of.

Mr. Chanzu: Mr. Deputy Speaker, Sir, the Minister is not answering the question. Telkom Kenya is a public entity. Is the sale in conformity with the provisions of

the Public Procurement and Disposal Act? Is Telkom Kenya disposing them in accordance with the law?

Mr. Poghisio: Mr. Deputy Speaker, Sir, I think there must be a bit of misunderstanding because Telkom Kenya is a private company. The management is also private. So, they are not subjected to any of those laws.

Mr. Shakeel: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to misread what we are asking? We have said very clearly that public money was used to set up those poles. This Parliament has also been asked to confirm a loan of US\$60 million that Orange Company has not taken over and yet, the Minister is saying that it is a private company. The assets are still public until the US\$60 million guarantee is paid by Orange. So, we are asking for the protection of *wananchi's* property.

Mr. Poghisio: Mr. Deputy Speaker, Sir, there must be a better way of raising capital than to count on poles. I believe that the poles would be the lowest source of that capital. Besides, as I have said, they are old and some of them have been standing there for a long time. They are being removed to get rid of the sour picture that the empty poles without proper wires are posing to the country. Probably, I should ask that if the Member has any interest in the matter, he should declare it so that we could know what it is that he has against the poles.

Mr. Shakeel: Mr. Deputy Speaker, Sir, I have absolutely no interest in the matter. I am just sickened by the fact that a pole, even if it was sold as firewood, could fetch more than Kshs500 and yet, he has the audacity to tell us that those poles are rubbish. If they are rubbish, could they all be collected and sent to North Eastern Province so that they can be used as fuel to feed the hungry?

Mr. Poghisio: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead the House that I have referred to the poles as rubbish and yet, those are his words? I have not used the word. Is that parliamentary language, really?

Mr. Deputy Speaker: Indeed, that is not parliamentary language. But, nonetheless, let us go to the next Question.

INVASION OF ADC KASUKU/MATUNDA FARMS BY MORANS

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

(a) Is the Minister aware that over 100 *morans* invaded ADC Kasuku and Matunda Farms on 18th July, 2011 and attacked farm workers and other farmers, burnt three houses, stole 29 sheep, 2 cows and broke a windscreen of a vehicle belonging to one of the farmers?

(b) What measures has the Government taken to ensure that ADC workers and scheme farmers are safe?

(c) How many suspects has the Government arrested in connection with the incidence?

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

(a) I am aware that on 28th July, 2011, at about 1.00 p.m., about 100 Maasai Morans, armed with spears, bows and arrows, attempted to stop workers who were

ploughing ADC Kasuku and Matunda farms. However, they were repulsed by police officers from Mau Narok Police Station who had been deployed to provide security following threats against the workers the previous day. The Morans proceeded to Elengetia Scheme where they stole about 29 sheep and two heads of cattle belonging to the following persons: Joseph Konga, 12 sheep; Gladys Wanjiku, 10 sheep and two heads of cattle and Maina Muhoho, three sheep. The attackers also set on fire two houses belonging to Solomon Kitemu and Francis Ajaga.

Security officers managed to put out the fire. The same attackers smashed the windscreen of motor vehicle Reg. No.KWS 825 Suzuki belonging to James Maina Gitonga. Police officers tracked and recovered the two heads of cattle and 25 sheep at Ndiani Location with the help of the District Officer of Olkurto Division and the area chief. Efforts are being made to recover the remaining four sheep. A police camp has been opened but no arrests have been made yet. However, investigations are ongoing with the aim of apprehending the suspects.

Mr. Kiuna: Mr. Deputy Speaker, Sir, while I appreciate the answer given by the Assistant Minister, could he clarify to the House how come that they managed to recover the animals which were in the possession of some people, yet they did not arrest the people?

Mr. Ojode: Mr. Deputy Speaker, Sir, we recovered some animals and we are going to arrest those who attacked these fellows. Tonight, we are going to arrest two fellows. I do not want to disclose to the hon. Member who these fellows are for fear that they will go underground. Let him be assured that the police are going to arrest these two fellows, and they will be taken to court on Monday morning.

Mr. Kiuna: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that they are going to make an arrest tonight, yet they have not done that in the last two weeks?

Mr. Ojode: Mr. Deputy Speaker, Sir, first of all, we do not just go and arrest anybody. You arrest those who are culpable. In the investigation report which we have, we have identified those who went to cause mayhem. I have said that I am going to arrest them tonight and I will take them to court on Monday morning.

Mr. Letimalo: On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Assistant Minister to refer to *morans* as “thugs” when *morans* are a dignified group of young men in the Maasai Community?

Mr. Ojode: Mr. Deputy Speaker, Sir, among *morans*, there are thugs. If somebody torches your farm, attacks those who are living harmoniously and then steals animals, how will you describe that particular person? That is a real thug and we will arrest those who went to attack and steal the animals. I am saying that those who went to attack farmers who were at the scheme are thugs and will be arrested. That is impunity. They will be arrested.

Mr. Deputy Speaker: Order, Mr. Assistant Minister! The hon. Member’s point of order is: How sure are you they were *morans*? You are still trying to arrest some people. Are you satisfied that they are *morans*?

Mr. Ojode: Mr. Deputy Speaker, Sir, that is why I said that according to the investigation report, those who went to attack those who were living harmoniously in the scheme and then stole their animals were thugs. Those thugs will be arrested tonight and will be taken to court on Monday.

Mr. ole Lankas: Mr. Deputy Speaker, Sir, arising from the answer that the Assistant Minister has just given, he talked of Lengetia Farm and the hon. Member was asking about Kasuku and Matunda farms. The 29 sheep and two cows were said to have been grazing at Matunda and Kasuku farms. How come that he is mentioning Lengetia Farm when the hon. Member is asking about Matunda and Kasuku farms?

Mr. Ojode: Mr. Deputy Speaker, Sir, I said that they attempted to attack workers who were ploughing in the ADC Kasuku and Matunda farms.

Mr. Kiuna: Mr. Deputy Speaker, Sir, I appreciate the answer given by the Assistant Minister. He has assured this House that before dawn, he will have made some arrests. However, could he inform the House what measures the Government is taking to make sure that the residents of Matunda Farm, who have abandoned it and are camping at Tipis Centre due to fear of being attacked by the *morans*, will go back to their farms and make sure that the residents of Mau Division are secure?

Mr. Ojode: Mr. Deputy Speaker, Sir, I believe you heard me correctly when I said that I have already set up a camp within the farms. I have posted there both Administration Police (AP) and regular police officers to manage that camp. That is for purposes of bringing law and order within that area.

Mr. Kiuna: On a point of order, Mr. Deputy Speaker, Sir. Is the Assistant Minister in order to mislead this House that they have established a police camp on Matunda Farm, whereas when I was there last night; I was told that the reason why Matunda residents have gone to camp at Tipis Centre is because they fear for their security?

Mr. Ojode: Mr. Deputy Speaker, Sir, unfortunately he went to Matunda Farm, and did not go to Kasuku Farm. If you go to Kasuku Farm even with me today, I will show you the camp at which I have beefed up security. I want to encourage my friend that he should visit both farms and not just one farm. He should not worry because the police are doing a good job, and they are going to restore law and order within that area. We have also said that if something like this happens again, we have alerted the police in Mau Narok.

Mr. Kiuna: On a point of order, Mr. Deputy Speaker, Sir. Would I be in order to request the Assistant Minister to accompany me to the farm because this Question is very sensitive? Would I also be in order to ask that this Question be referred to the relevant departmental Committee for further investigations?

Mr. Ojode: Mr. Deputy Speaker, Sir, I thought the Question is quite explicit as to whether I have beefed up the security to maintain law and order in that place---

Mr. Deputy Speaker: The Assistant Minister has made a categorical statement that he has taken action. He says by Monday, some people will be arraigned in court. So, security of Kenyans has been assured. If he does not do it by Monday, then you can rise on a point of order and draw the attention of the Chair to the inconsistency in the Assistant Minister's statement.

Next Question, Mr. Oyongo Nyamweya!

VIOLATION OF ARTICLE 32
OF BILL OF RIGHTS

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

(a) Is the Minister aware that many schools in the country are forcing students to attend classes against their religious beliefs, particularly on Saturdays, in violation of the Bill of Rights in Article 32 of the Constitution?

(b) Could the Minister assure the House that the practice will be abolished immediately?

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

(a) I am aware that schools have programmes that run into the weekends when many religious groups have their prayer days. However, such schools have provision for students to proceed to prayers as per the requirement of their religious groups. That should not in any way violate their freedom of worship as provided for in the Bill of Rights, Article 32 of the Constitution.

(b) I have appointed Board of Governors for public schools. Part of their mandate is to develop rules and regulations for the everyday running of schools. Such rules should not in any way force students to attend school programmes on their day of worship as provided for under the Education Act, Cap.211, Laws of Kenya.

Mr. Oyongo Nyamweya: Mr. Deputy Speaker, Sir, the Minister himself is an Adventist. He has gone through Adventist schools. I am also an Adventist. We worship with him in the same church. My daughter is in Precious Blood School, a Catholic School. They are allowed to worship on Saturdays. They have their Sabbath on Saturday. However, some national schools do not allow students to worship on Saturdays. For example, Maseno High School administration does not allow students to worship on Saturdays. They are forced to attend classes instead.

Mr. Deputy Speaker, given that we have an equal situation which is in place, I would like the Minister to give a policy statement which will guide the school administration on this. He should not tell us that each school will set up its own rules internally. We need a clear policy guideline from the Ministry.

Prof. Ongeru: Mr. Deputy Speaker, Sir, there is no need for a policy from the Ministry because the Education Act, 1968, is very explicit.

Section 26(1) says:-

“If a parent of a pupil at a public school requests that the pupil be wholly or partly excused from attending religious worship and religious instruction in the school, the pupil shall be excused such attendance until the request is withdrawn.”

Section 26(2) says:

“Whereas the parent of a pupil at a public school wishes the pupil to attend religious worship, or religious instruction of a kind, which is not provided in the school, the school shall provide such facilities as maybe practicable for the pupil to receive religious instruction and attend religious worship of the kind desired by the parent.”

Therefore, everybody is not exempt from this rule. This Education Act, 1968 is still in force until we amend it.

Mr. Affey: Mr. Deputy Speaker, Sir, the Minister is reading before the House an Act which clearly has been violated by his own principals and school administrators. For the case of Muslim children, particularly Muslim girls who have been denied an opportunity to wear *hijab*, which is a religious obligation in the schools where they are

currently studying, for example, The Kenya High School. He has not taken any measure to monitor what these children go through. The fact that his own education officials have violated the law as he has just read, what measures will he put in place to deal with those head teachers who violate the law that you have just read?

Prof. Ogeri: Mr. Deputy Speaker, Sir, we have to distinguish between an apparel and a religious service. These two are categorically different. What you wear does not indicate your religion. However, what you are and what you profess is already provided for. If a Muslim requests that they be there, it is provided.

Mr. Yakub: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to mislead the House after being informed that for us, Muslims, the head gear or *hijab* has been mentioned in the Quran, the holy book? So, it is not a matter of wearing it that a lady becomes a Muslim. It is part of a woman's dressing, and she must wear it according to the Quran.

Prof. Ogeri: Mr. Deputy Speaker, Sir, I do not know the converse what it will be if she does not wear it. However, that is not the details I want to go to.

Both hon. Sheikh Dor and hon. Affey have been to my office. We have already discussed about the *hijab* story and we have found a way out. I do not think it is such a very formidable religious impediment that we should now be discussing it here. I am sure there are better ways of dealing with the individual schools that may not have given comfort.

Mr. Deputy Speaker: Order! Hon. Minister, you cannot choose to read the Act selectively. The Act itself is very categorical. It says there is freedom of worship in schools.

The Chair has an obligation when you want to say something that is against the law or the Constitution of the land. So, could you explain yourself?

Prof. Ogeri: Mr. Deputy Speaker, Sir, the Act refers to religious instruction in public schools. The Act does not refer to the dressing in public schools.

Mr. Bahari: Mr. Deputy Speaker, Sir, the instruction according to the Quran is that you must wear as it is instructed there in. Why is the Minister misleading the House that that is not an instruction?

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

Mr. Deputy Speaker: What is your point, hon. Odhiambo- Mabona? Are you on a point of order?

Mrs. Odhiambo- Mabona: No, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: Then let the Minister respond to the point of order first.

Prof. Ogeri: Mr. Deputy Speaker, Sir, I do not know really what I am responding to. This is a non-issue. The hon. Members who have had such problems have been to my office. We have resolved this problem together in the respective schools. So, I do not see it as an issue at this stage.

Mrs. Noor: On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to tell us that this is a non-issue to be discussed when we know it is a very important issue? *Hijab* is an important issue. Girls have been chased away from schools left, right and centre. Is he in order?

Prof. Ongeri: Mr. Deputy Speaker, Sir, for the avoidance of doubt, when I say it is a non-issue, it is because from a case to case, we have been able to resolve the issue of wearing of *hijab*. That is why I am saying it is non-issue at this point in time. Unless they give me specific cases where these problem exists.

Mr. Affey: On a point of order, Mr. Deputy Speaker, Sir. I want the Minister to listen. He has read an Act of Parliament which clearly states that the wish of parents will be taken into account. The wish of Muslim parents is that their girl-child wears the *hijab*. Today, we want the Minister to solve it administratively. However, if he will not be the Minister tomorrow, what will happen to them? We want a policy implication so that in future, Ministers who will come after him know it as a policy. It is the wish of Muslim parents that their girls wear *hijab*. Could he grant them that wish? It is not a favour we are asking. It is their right.

Prof. Ongeri: Mr. Deputy Speaker, Sir, I have always granted them that right. So, I have no specific complainants.

Mr. Deputy Speaker: Fair enough! The Minister is very categorical that there is no problem with Muslim girls wearing *hijab* in Government schools. They are allowed to wear *hijab* because it is their right.

Mrs. Odhiambo-Mabona: Mr. Deputy Speaker, Sir, I need a clarification. I sat in the Bill of Rights Committee in Bomas of Kenya. So, I know where Article 32(2) came from, especially the part that gives a right, including the observance of a day of worship. This was actually brought by the Seventh Day Adventist.

Mr. Deputy Speaker, Sir, I want to declare my interest because my mother worships in Milimani SDA in Mbita. My husband worships in Ongogo SDA Church in Lambwe in Mbita Constituency.

Mr. Deputy Speaker: Your husband?

Mrs. Odhiambo-Mabona: Yes, Mr. Deputy Speaker, Sir. The Minister has referred us to an Act of Parliament, but the Constitution is very clear. I know he is also a member of the SDA Church and he worships in Maxwell Church. This is not an option. It is clear that SDA adherents must be allowed to worship without conditions. He cannot use it on a school by school basis. It is a policy that if his officers do not know about, he must go and inform them that with immediate effect that SDA adherents must worship from 6.00 p.m., on Friday to 6.00 p.m. in the evening because they do not even cook. Could he respond?

Prof. Ongeri: Mr. Deputy Speaker, Sir, the worship is from sunrise to sunset, and not necessarily up to the time the hon. Member has specified. The Seventh Day Adventist Church members need not worry, just like the Muslims and Christians need not worry. Any other persons observing any legal religious worship, they are not barred from observing their day of worship. Rest assured that anybody who goes outside this Act is in breach of the Act. If it is Maseno High, which the hon. Member mentioned, I will bring it to the attention of the principal that he is in breach of this Act. He is a very competent principal.

Mr. Chanzu: Mr. Deputy Speaker, Sir, in view of the fact that now the new Constitution supersedes this Act the Minister has referred to, when will he bring this Act up to date, so that it is in line with the new Constitution?

Prof. Ongeri: Mr. Deputy Speaker, Sir, I am referring to the Education Act of 1968. Mr. Chanzu is fully aware that I have appointed a taskforce and they are due to

bring in their reports on aligning the Ministry of Education with the new Constitution *vis-a-vis* the Education Act of 1968, the Kenya National Examination Act and the Kenya Institute of Education Act and other services that are being rendered including the Teachers Service Commission in order to domesticate the enabling Acts of Parliament to operate as entities. Once the task force's report is ready, my responsibility as a Minister would be to transmit and prepare a Sessional Paper which will then be cleared by Cabinet and then tabled before this House through the relevant constitutional bodies for debate and adoption.

Mr. Oyongo Nyamweya: Mr. Deputy Speaker, Sir, the Minister referred to Education Act, 1968. Does he want me to tell him the names of principals and schools which are prohibiting SDA adherents from worshipping on Saturday? Will he send a reminder to the principals of these schools reminding them of the provisions of the new Constitution, so that they can allow the students to worship in accordance with their faith?

Prof. Onger: Mr. Deputy Speaker, Sir, it has been my assumption that the schools are observing the Act itself and more so, Article 32 of the new Constitution. Anybody who is operating outside this parameter is obviously out of date. If need be, I will remind them again in a fresh circular through my Permanent Secretary that this is the requirement and they need to conform to it.

ORAL ANSWERS TO QUESTIONS

Question No.763

LEVEL OF GIRL-CHILD ENROLMENT IN MARSABIT/ISIOLO COUNTIES

Mr. Bahari asked the Minister for Education:-

- (a) what the level of the girl-child enrolment and transition rate is in Marsabit and Isiolo counties at all levels; and,
- (b) what Government schemes exist to encourage and promote girl-child education in the two counties.

Mr. Deputy Speaker: Mr. Assistant Minister, you had covered quite a bit in your answer last time.

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, I beg the indulgence of the House that I be given two weeks to compile all the necessary information that the House ordered me to bring, so that I can answer this Question appropriately.

Mr. Deputy Speaker: Mr. Bahari, are you comfortable with that?

Mr. Bahari: Mr. Deputy Speaker, Sir, I want to thank the Assistant Minister for now agreeing that we need to go into the depths of this matter. Since this Ministry is very important in terms of being the driving force and we cannot accept generalities, I am ready to cede the ground as per his request.

Mr. Deputy Speaker: Fair enough! The Chair directs that this Question be listed on the Order Paper two weeks from today.

(Question deferred)

Question No.851

LEVEL OF SUCCESS OF TREE PLANTING EXERCISE
IN EMUHAYA CONSTITUENCY

Dr. Ottichilo asked the Minister for Education:-

(a) how successful the programme to establish tree nurseries in 20 primary schools in each constituency, particularly in Emuhaya Constituency, was considering that Kshs60,000 was allocated to each school through the Economic Stimulus Programme (ESP) in 2009/2010; and,

(b) how successful the programme to purchase and plant seedlings in 50 schools in every constituency was, particularly in Emuhaya Constituency, considering that Kshs30,000 was allocated for this purpose.

The Assistant Minister for Education (Prof. Olweny): Mr. Deputy Speaker, Sir, once again, I beg the indulgence of the House to allow me another two weeks for this Question also because it needs data from the whole country. Within two weeks, I think I shall have compiled all the data and developed an appropriate answer to present before the House.

Mr. Deputy Speaker: Dr. Otichilo, are you comfortable with giving the Assistant Minister ample time?

Dr. Otichilo: Mr. Deputy Speaker, Sir, this Question has been on the Order Paper for the last two months. The Assistant Minister was given two weeks. He is again asking for another period of two weeks. We have discussed and I have consented. This is the last time I am consenting. I wish after two weeks, he should bring the results to this House.

Mr. Deputy Speaker: Mr. Assistant Minister, this is the last chance you have to bring an answer. The Chair directs that this Question be listed on the Order Paper two weeks from today.

(Question deferred)

Question No.995

Mr. Gaichuhie asked the Minister for Education:-

(a) why the Ministry has not paid all the invigilators who supervised the 2010 KCPE Examinations; and,

(b) when the invigilators will be paid.

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

(a) The Ministry has not paid 689 personnel including invigilators due to technical challenges faced by the Airtel Mobile Subscriber in wiring the money to the personnel. Some personnel did not provide their registered mobile phone numbers. Some invigilators provided mobile phone numbers which were not their own. Some personnel provided incomplete numbers while others failed to provide mobile numbers.

(b) The pending payments shall be effected as soon as the missing information is provided through the respective District Education Officers (DEOs). We are also currently processing returns from the DEOs for payments.

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, most invigilators are normally teachers and personnel from the Ministry and the Minister already knows their contacts. Did he, in the first place, inform them that they will be paid through their cell phones or was it an afterthought? If he did, why did he not tell them to give the correct numbers?

Prof. Ongeri: Mr. Deputy Speaker, Sir, the Kenya National Examination Council (KNEC) employed 67,448 personnel for the supervision and invigilation of the 2010 Kenya Certificate of Primary Education (KCPE) Examinations as follows:-

There were 20,198 supervisors and 47,250 invigilators who were all teachers. Out of that number, 66,799 have been paid as follows:-

Out of the 20,198 supervisors who had applied, 20,079 were paid. Out of 47,250 invigilators, 46,702 were paid.

The method of payment was through the mobile phone system. You will appreciate that almost 99 per cent have been paid through an efficient system. They have received the money and this is the normal way of paying them on a timely basis. I do not see any problem.

Mr. Pesa: On a point of order, Mr. Deputy Speaker, Sir. I do not want to dispute what the Minister is saying. He is a good friend of mine, but I think he is not answering the question that was raised by hon. Gaichuhie. Hon. Gaichuhie asked whether this idea of paying the invigilators through the mobile phones was an afterthought or whether these teachers were told during the exercise that they would be paid through the mobile phone.

Prof. Ongeri: Mr. Deputy Speaker, Sir, it was made very clear to them that they would be paid through the normal means and one of such quick means is through the mobile telephone. To tell you how this was arrived at, if I may jog your memory; there was a time when they wanted to down their tools that they do not want to mark the scripts until they had been paid. One of the quick ways that we could have paid them was not through the banks, but through the mobile phone system. Indeed, if only 649 out of 67,000 have not been paid, then I think the answer is very clear.

Mr. Letimalo: Mr. Deputy Speaker, Sir, the Ministry of Education has structures up to and including educational zones. Why could the Ministry not use the education officials in the zones to identify invigilators and pay them without causing unnecessary delay?

Prof. Ongeri: Mr. Deputy Speaker, Sir, there is delay. In fact, the figure may be far less than the 649. In my answer, I have already said that I have instructed the DEOs to provide the necessary information of the very few who have not been paid.

Mr. Ethuro: Mr. Deputy Speaker, Sir, this seems to be a problem that affects most Government departments. You will also recall that as I speak, some officials who took part in the census exercise have not been paid. Why did the threats by invigilators to down their tools make him to use that quick means? What action is the Minister taking to ensure that, in future, invigilators are paid immediately they finish their job?

Prof. Ongeri: Mr. Deputy Speaker, Sir, it did not take me long. In fact, they said that they wanted to down their tools at the time when they were marking the scripts in December. They were paid promptly even before they started marking the scripts.

Therefore, there was no delay whatsoever on our part. The KNEC had suggested payments through the banks, but they insisted that they wanted to be paid through the quickest mobile phone system. We accepted it and said that there was no harm except for these few who have not complied. I suspect the number is much lower than this figure.

Mr. Muturi: Mr. Deputy Speaker, Sir, if you listen to the answer given by the Minister, these invigilators did their job in November/December last year. We are now in August 2011. Before they are recruited, there is a structure that goes through the office that shows who comes from where. Is it fair for the Ministry to delay payment to these teachers who worked in November/December last year? The Minister has said that they are few whereas they did the job. What is the rationale of delaying the payment for eight months?

Prof. Ogeri: Mr. Deputy Speaker, Sir, if you give us a different mobile phone number, we send the money, but your name does not pop up as the person who invigilated, we will have no obligation to pay the individual whose mobile phone number does not appear in our records. It is as clear as that. That is why when they give us somebody's mobile phone number and we want to send the money through M-Pesa and a different name pops up, you will be the first ones to ask me why I did not take care in paying the person who invigilated. The onus is on the part of the teacher to give us the correct information and part of that correct information is their own mobile phone number.

Mr. Gaichuhie: Mr. Deputy Speaker, Sir, I am sure every Kenyan wants money. I am very sure that these Kenyans have been looking for this money. Could the Minister assure us that these people are going to be paid soon? I know they have given all that is required.

Prof. Ogeri: Mr. Deputy Speaker, Sir, it was my expectation that I will get updated information---

Mr. Wambugu: On a point of order, Mr. Deputy Speaker, Sir. I have listened to the Minister carefully. Is he in order to insist that he will not pay the teachers because they do not have mobile phones? I think these teachers do not have mobile phones and that is why they cannot give their mobile phone numbers. Will the Minister make sure that those teachers are given mobile phones so that he can pay them through that?

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. We cannot allow the Minister to get away with this one. The mobile phone system was to expedite the payment. The invigilators are people who are already in Public Service. This Government sends salaries every month to those teachers. Why can the Minister not use the same system to deliver the money if the phones are not working?

Prof. Ogeri: Mr. Deputy Speaker, Sir, the salaries are processed through the Teachers Service Commission (TSC), but the examination fees is paid through the KNEC. In part "b" of my answer, I said that the pending payment shall be effected as soon as the missing information is provided through our respective DEOs. We have received this information and we are currently processing returns from the DEOs for payment. Nobody will be left out. If I had said that there is no money to pay them, that would have been a different story. I am saying that there is money to pay them, but we have to pay the money to the correct invigilator or the correct account.

Mr. Deputy Speaker: Question No.1006 by hon. K. Kilonzo.

Question No.1006

CONSTRUCTION OF BRIDGE IN NGUNGI SUB-LOCATION

Is hon. Kiema Kilonzo out of the House on official parliamentary business?

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Deputy Speaker, Sir, this Question appeared on the Order yesterday morning and the hon. Member requested to be given time to scrutinise the answer I had given. So, if he is not here, I would suggest that you take a very serious action against him, because it is not in the interest of this House that Questions keep on being deferred for no good reason.

Mr. Deputy Seeker: The Chair would like to know exactly why Mr. Kiema Kilonzo is not in the House today. If there are no unavoidable circumstances that did not allow him to be here, the Chair, as promised yesterday, will take stern action against him. For now the Question is dropped.

(Question dropped)

Next Question, hon. Sheikh Mohamed Dor!

Question No.734

DISPOSAL OF SCRAP METAL FROM OLD NYALI BRIDGE

Mr. Yakub asked the Minister for Roads:-

(a) how the scrap material from the Old Nyali Bridge, which was removed in 1984 to allow the use of the new bridge, was disposed of, who purchased the scrap material and at what price; and,

(b) whether he could consider using the Old Nyali route to establish a link between Mombasa Island and Nyali/Mkomani area to ease traffic congestion.

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

(a) My Ministry is not able to get information on how the old Nyali Bridge scrap metal was disposed of. This is because the bridge was a concessional private project owned by M/s Nyali Bridge and Development and, therefore, its disposal was not subject to Government sale rules.

(b) The Ministry of Roads, through the Kenya Urban Roads Authority, is working on various solutions to address traffic congestion in the City of Mombasa. The site of the old bridge is considered the most appropriate for providing the second crossing. In this connection, my Ministry, through the Kenya Urban Roads Authority (KURA), has advertised a request for consultancy services for preliminary and detailed engineering design of Abdel Nasser Road in the island to link the island to the mainland on the northern side, which is Nyali area.

Mr. Yakub: Mr. Deputy Speaker, Sir, in response to part (b) of the Question, the Assistant Minister has said that there is a plan to link Abdel Nasser Road to the mainland. I would like to inform him that between these two roads, some road reserve land has been

grabbed while part of it has been encroached on. What steps will the Ministry take to ensure that all the encroached on land, or grabbed plots, will revert to the Government?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, what the hon. Member has said is true. As per Approved Survey Plan FR36/34, which was authenticated on 31st January, 1931, a road corridor on Mombasa Island existed. Since then, it has been hived off to private individuals and structures built thereon as per Approved Survey Plan FR No.271/36 of 30th May, 1997. The parcels within the corridor include Parcel Nos.173, 176, 177, 178 and 181. Through the Ministry of Lands, we are looking for ways in which we can degazette these plots, so that we can use this as the second crossing and reduce congestion in Mombasa City.

Mr. Joho: Waziri Msaidizi, sijui kama umewahi kupata nafasi ya kutembea Mombasa hivi karibuni. Ikiwa imepita kwenye Daraja la Nyali, utakubaliana na mimi kwamba mtu anachukua zaidi ya masaa manne kuvuka daraja hilo lenye urefu wa kama mita 100 hivi, kwa sababu ya magari mengi na binadamu wengi wanaotumia daraja hilo. Sisi tunajua kwamba upande wa Nyali wa daraja umeangukia jengo la Tamarin Village, na upande wa mjini wa daraja umeangukia nyumba ya kibinafsi. Utachukua hatua gani, kwanza, kwa sababu ya usalama wa watu wanaoishi upande wa Nyali, kurudisha mali ya umma kwa Serikali? Pili, utachukua hatua gani kuhakisha kwamba tuna mipango kabambe ya kujenga daraja mpya mahali ilipokuwa daraja ya zamani?

Mr. Kinyanjui: Bw. Naibu wa Spika, ningetana kukubaliana na mheshimiwa. Kama alivyosema, msongamo wa magari, haswa katika sehemu ya Nyali, umezidi kiwango. Hata hivyo, nilisema hapo awali kwamba Wizara, kupitia halmashauri ya KURA, imetangaza mpango wa kujenga daraja ya pili, ambayo itaunganisha sehemu ya kisiwani na bara ya mji wa Mombasa. Hata hivyo, ningependa kumhakikishia mhe Joho kwamba tumetoa ombi letu kwa Wizara ya Ardhi ihakikishe kwamba ile ardhi ambayo imenyakuliwa na watu binafsi, vikiwemo vile vipande nilivyovitajwa na vinginevyo, imerudishwa kwa umma ili tuweze kujenga hilo daraja ya pili, na tuweze kupunguza msongamano wa watu na magari.

Ms. S. Abdala: Mr. Deputy Speaker, Sir, the Assistant Minister has said that the old bridge was a private bridge, and that it was manned by private people. Could he tell the House what caused the Government to remove the old bridge, which was serving the people well, and which was privately owned?

Mr. Kinyanjui: Mr. Deputy Speaker, Sir, as I indicated, in 1980, the old bridge was superseded by the new Nyali Bridge, which was located approximately 0.89 kilometres to the north and, therefore, left the steel bridge to be dismantled. As I also indicated that the old bridge was a private concession. Therefore, it became extremely difficult for the owners to maintain it given that it had actually been constructed in 1931. The remnants of this particular bridge can be seen in Tamarin Restaurant. Hon. Members will agree with me that after all those years, it would have been extremely expensive to maintain that bridge.

Mr. Gunda: Bw. Naibu Spika, Wizara inamipango gani kuhakikisha kwamba msongamano mkubwa kwenye barabara inayoelekea Uwanja wa Ndege wa Kimataifa wa Moi, Mombasa, pia umeshughulikiwa?

Mr. Kinyanjui: Bw. Naibu Spika, nimekubaliana na mhe Mbunge kwamba barabara ya kuelekea uwanja wa ndege wa Mombasa ina msongamano mkubwa wa magari, na mara kwa mara, inabidi watalii na watu wengine wanaotumia uwanja huo

kupoteza masaa mengi sana barabarani. Ningependa kusema kwamba sehemu kubwa ya ardhi iliyotengewa upanuzi wa barabara katika eneo hilo pia imenyakuliwa. Kama nilivyosema hapo awali, tutafanya jitihada kuhakikisha kwamba ardhi iliyonyakuliwa imerudishwa katika Wizara na kutumiwa kwa upanuzi wa barabara hiyo.

Mr. Joho: Jambo la nidhamu, Bw. Naibu Spika. Nimemnukuu Waziri Msaidizi akinena kwamba wao, kama Wizara, wanatambua kwamba vipande vya ardhi ambavyo vilikuwa vya Serikali vilinyakuliwa na sasa wanapanga kuvirudisha kwenye milki ya Serikali. Ninatarajia atueleze mikakati kabambe. Ni hatua gani ambayo tayari wamechukua, kama Wizara, na wamefika wapi, ili kuirudisha ardhi hiyo kwenye milki ya Serikali ndio barabara ipanuliwe?

Mr. Kinyanjui: Bw. Naibu Spika, tumeiandikia barua Wizara ya Ardhi. Kama wanavyofahamu wabunge, kuna utaratibu unaopaswa kufuatwa kuchukua ardhi ambayo tayari imenyakuliwa, kama kupitia gazeti rasmi la Serikali. Kwa hivyo, Wizara ya Barabara imeiandikia barua Wizara ya Ardhi. Umilki wa ardhi hiyo utakapobatilishwa kupitia gazeti rasmi la Serikali, tutaweza kuichukua, kulingana na sheria.

Mr. Mbuvi: Bwana Naibu Spika, je Waziri Msaidizi anajua Wakenya wengi hupoteza maisha yao kwa sababu ya Wizara kukosa kujenga daraja za kuvukia? Kwa mfano, katika barabara ya Mombasa, kivukio kati ya South B na South C, kila siku lazima raia mmoja wa Kenya aage dunia kutokana na kugongwa na gari.

Mr. Kinyanjui: Bwana Naibu Spika, ninatambua jambo hilo kuwa shida, haswa katika barabara ya kuenda Mombasa. Hapo awali barabara hiyo lilikuwa na leni tatu, lakini, kwa sababu leni zingine zimeongezwa kumekuwa na ajali nyingi. Hata hivyo, ningetaka kusema kwamba hata pahali ambapo tumejenga daraja, wananchi wengi huwa hawatumii daraja hizo kuvuka barabara. Kule ambako tumetengeneza vivukio, tumeona kwamba wananchi bado hawavitumii. Kwa hivyo, hata kama tungeongeza daraja, tungehimiza wananchi kutumia daraja hizo ili tuweze kupunguza ajali za barabara. Asante.

Mr. Ochieng': Bwana Naibu Spika, mji wa Mombasa una umarufu kwa mambo ya utalii. Ninafikiri Serikali inajua kwamba hapo ndipo wanapata pesa nyingi sana kutoka kwa watalii. Jambo la usalama wa barabara ni lazima lizingatiwe. Waziri Msaidizi amesema kwamba wanasubiri kusikia kutoka kwa Wizara ya Ardhi ili warudishiwe yale mashamba yaliyonyakuliwa. Ninajua kwamba wamekuwa wakibomoa nyumba za wale watu waliojenga mahali ambapo panastahili barabara kupitia. Ni mbinu gani walitumia kubomoa nyumba za watu hao, ilhali kule Mombasa wameshindwa?

Mr. Kinyanjui: Bwana Naibu Spika, kama vile nimetaja, hapo awali, utaratibu ulikuwa ni kwamba lile shamba lote ambalo Serikali ingetaka kuchukuwa kwa matumizi ya barabara ama shughuli zingine, ilikuwa ni lazima iwekwe katika Gazeti rasmi la Serikali; the Kenya Gazette. Kwa hivyo, barabara zote ambazo tumekuwa tukijenga ikiwemo Thika Road, tumetumia kanuni hiyo. Kwa hivyo, sikusema kwamba tunangojea Wizara ya Ardhi itupatie majibu. Tunafuatilia, na nina imani kwamba tutaweza kupata majibu hivi karibuni.

Asante.

Mr. Kabogo: Jambo la nidhamu, Bwana Naibu Spika!

Mr. Deputy Speaker: Jambo la nidhamu lako ni lipi, Bw. Kabogo?

Mr. Kabogo: Bwana Naibu Spika, nimesikia Waziri Msaidizi, akisema kwamba wananchi hawapendi kutumia daraja zilizojongwa ila wanapenda kuvuka barabara

kiholela. Je, amechukua hatua gani kuwajulisha Wakenya? Si jukumu letu kama Wabunge kuenda tukitangaza barabarani kwamba: “Msivuke barabara” Ni hatua gani Serikali imechukua ili kujulisha wananchi ni wapi wanafaa kuvukia?

Mr. Kinyanjui: Bwana Naibu Spika, hilo si jambo la nidhamu. Hata hivyo, ningependa kujibu. Kwanza, tunawahamasisha wanaotumia barabara umuhimu wa kutumia daraja ili kupunguza ajali.

Pili ni kuhusu mambo ya usalama. Wakati mwingi daraja zinapotengenezwa, kuna wakora na wahalifu wanaokaa kule chini mwa daraja na kuwapokonya wananchi wanapopita. Kwa hivyo, hali ya usalama ikiweza kuimarishwa, watu wengi wataweza kutumia daraja hizo.

Mr. Deputy Speaker: Swali la mwisho, mheshimiwa Yakub!

Mr. Yakub: Bwana Naibu Spika, je, hawa watu waliokuwa wanaendeleza mpangilio wa daraja walipewa muda gani kumaliza ripoti yao?

Mr. Kinyanjui: Bwana Naibu Spika, tulipatiana kazi hiyo; *the preliminary designs*, mwezi wa nne mwaka huu na tunatararajia kufikia mwisho wa mwaka huu, tutakuwa na ripoti kamili na tutaweze kutafuta pesa za kutengeneza barabara hiyo ya pili. Asante.

Mr. Deputy Speaker: Hon. Members, the following Questions will be deferred to next week on Tuesday and Wednesday; Question Nos. 922, 974, 1085 and 1051.

Question No.922

PROFILES OF GOVERNMENT WORKERS IN TURKANA

(Question deferred)

Question No.974

ACHIEVEMENTS OF PERFORMANCE CONTRACTING IN PUBLIC SERVICE

(Question deferred)

Question No.1085

POSTING OF MEDICAL PERSONNEL TO NORTH EASTERN PROVINCE

(Question deferred)

Question No.1051

DEATH OF ARMY OFFICERS

(Question deferred)

Next order!

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

Mr. Deputy Speaker: What is your point of order?

DISMISSAL OF THIKA MUNICIPAL COUNCIL EMPLOYEES

Mr. Kabogo: Mr. Deputy Speaker, Sir, I just want to seek your indulgence on a Question that was deferred to a Departmental Committee. That is Question No.266 regarding the plight of 250 workers in Thika Municipality. I realize that a Report was tabled by the Chair of the Committee on 16th June, yet it has not come to the House.

It seems like the House Business Committee (HBC) is the one now left to decide when this will come to the House. I seek the indulgence of the Chair to request that this Report be discussed forthwith.

Mr. Deputy Speaker: Fair enough! Definitely, some of the Members of the HBC are here in the House and that matter will be noted in the next meeting of the HBC.

Next order!

POINTS OF ORDER

NON-ISSUANCE OF IDENTITY CARDS

Mr. Mbuvi: Mr. Deputy Speaker, Sir, I rise to seek a Ministerial Statement from the Prime Minister on the matter regarding non-issuance of identity cards for applicants and its effects on voter registration. In the Statement the Prime Minister should clarify the following:-

(a) The reasons behind the lack of ID cards.

(b) The status of voter registration in view of lack of ID cards.

(c) Why the Government is applying double standards by providing foreigners with work permits and yet our youth do not have ID cards and are consequently unemployed.

Mr. Deputy Speaker: Relevant Minister, when will the Ministerial Statement be given? This is a question directed at the Prime Minister. So any Minister can give an undertaking for the Prime Minister in the absence of the Leader of Government Business or Deputy Leader of Government Business in the House.

The Minister of State for Public Service (Mr. Otieno): Mr. Deputy Speaker, Sir, this is specific to immigration and the Statement will come from the Minister of State for Immigration and Registration of Persons and not the Prime Minister.

Mr. Deputy Speaker: Fair enough! When shall we have that Ministerial Statement?

The Minister of State for Public Service (Mr. Otieno): Can we give the Statement Thursday next week?

Mr. Deputy Speaker: Fair enough. It is so directed!

Yes, the Minister for Information and Communications, please, proceed!

TERMINATION OF CONTRACTUAL AGREEMENT FOR AUTHORIZED SAFARICOM DEALERS

The Minister for Information and Communications (Mr. Poghio): Mr. Deputy Speaker, Sir, on the 3rd of August 2011, Mr. Mohammed Affey sought a Ministerial Statement from my Ministry on the undue termination of contractual agreements for 27 authorized dealers of Safaricom, given some names there including Winsop Agencies, Laiser Communications, Ayun Communications and Tarak Limited among others, by Safaricom Limited.

He requested that I should explain a number of things. After consulting with the Member and showing that the matter is of serious concern to the dealers whose contracts had been terminated and also understanding that these are contractual agreements with Safaricom, I would request a further two weeks to prepare a more comprehensive Statement so that the Member can have a satisfactory answer and the House can be given a proper Statement concerning this matter.

I have a Statement but I feel it is not adequately done. If the hon. Member is comfortable with that, I will ask for an extension of two weeks to get another Statement.

Mr. Affey: Mr. Deputy Speaker, Sir, I consulted with the Minister and we agreed that he requires to go to the depth of this matter. I think the two weeks that he has requested will be sufficient enough, but I want to plead with him to ensure that proper investigations are done, so that these Kenyans who are unnecessarily suffering do not suffer for long. So, two weeks is sufficient enough for the Minister to investigate this matter. I thank him for that statement.

Mr. Deputy Speaker: Fair enough! The Chair directs that the Ministerial Statement be available two weeks from today.

EXTRAJUDICIAL KILLINGS

Mr. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. I recall in April, 2011, I asked a Question on extrajudicial killings of John Kamuri, Peter Irungu and---

Mr. Deputy Speaker: Was it a Question or a Ministerial Statement?

Mr. Mwangi: Mr. Deputy Speaker, Sir, the Minister promised to give a Statement this week after he had delayed for four months. I cannot see the Minister in the House to give the Statement on the killing of the three Kenyans. There he is!

Mr. Deputy Speaker: The Assistant Minister of State for Provincial Administration and Internal Security, you have to be on the Front Bench. There was a Ministerial Statement sought by the Member for Kiharu regarding extrajudicial killings of a number of Kenyans and an undertaking was given as far back as almost four months ago. When can you give that Ministerial Statement?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I would like to be given time to check because it looks like I was not aware of that Statement.

Mr. Mwangi: Mr. Deputy Speaker, Sir, last week the Speaker---

Mr. Deputy Speaker: Order! Order, hon. Mwangi! Allow the Assistant Minister to say his piece!

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I was not aware of that Statement, but if there is any Statement which is pending within my docket, I will be able

to bring it by Wednesday next week in the morning, because we do not have any extrajudicial killings anymore.

Mr. Deputy Speaker: It is there!

Mr. Mwangi: On a point of order, Mr. Deputy Speaker, Sir. It is irritating for the Assistant Minister to stand up and say that he is not aware and yet the Minister, Prof. Saitoti, gave an undertaking to give the Statement in one month's time in April. Last week, the Speaker gave instructions that the Statement be read today.

(Mr. Deputy Speaker consulted with the Clerks-at-the-Table)

Mr. Deputy Speaker: Hon. Assistant Minister, I am informed by the institutional memory of the House, which is the Clerks-at-the-Table that, indeed, the substantive Minister of State for Provincial Administration and Internal Security issued the Ministerial Statement, but there was additional information that was sort and he promised to come back and report to the House again. The reporting back to the House essentially is not issuing a Ministerial Statement. But, nonetheless, because you made an undertaking on the Floor of the House, could the Minister report back to the House by Wednesday, next week?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, as I said, I was not aware of any pending Ministerial Statement from my docket. You have realized that there is no pending Ministerial Statement from my docket, but there are some questions which---

Mr. Deputy Speaker: Additional information was sought on the ongoing investigations.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Deputy Speaker, Sir, I will give the message to my substantive Minister to come with that additional information which was required by the Questioner by Wednesday.

Mr. Deputy Speaker: It is so directed!

STATUS OF INVESTIGATIONS ON PYRAMID SCHEMES

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. If you do recall, before the House went on recess, the Chair ruled that the names which were being investigated by the Government regarding pyramid schemes be brought to the House. I believe that you have given the Government enough time to bring the names of all the pyramid schemes and owners who are being investigated by the Government, for tabling in the House. So, I would like to know when the Deputy Prime Minister and Minister for Finance will bring those names.

Mr. Deputy Speaker: The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance, you heard the concerns raised by Mr. C. Kilonzo regarding the pyramid schemes.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, this issue was transferred to the Ministry of Co-operative Development and Marketing. We wrote a letter and copied it to the Clerk and the Question was re-directed.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I think the Office of the Deputy Prime Minister and Ministry of Finance is trying to run away from this matter of pyramid schemes. What the Minister promised the House was that he would table the names of the pyramid schemes and directors who were being investigated by the Government.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, indeed, we promised that we were going to take action within the Government. If you recall, the issues were about collective responsibility and I was being asked to answer some questions which were not in our docket. We, therefore, re-directed them not to the Ministry of Co-operative Development and Marketing, but to the Attorney-General because it concerns investigations. The Attorney-General was supposed to come and table them, because what we tabled were the names which were within our knowledge and which were investigated by officers working at the Central Bank of Kenya.

Mr. Deputy Speaker: The Deputy Leader of Government Business, hon. Kimunya, issues were raised regarding the pyramid schemes and the Assistant Minister, Office of the Deputy Prime Minister and Ministry for Finance is saying that they do not belong to his docket. No person other than you can give a way forward, as the Deputy Leader of Government Business in the House.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I concur with the Assistant Minister, Office of the Deputy Prime Minister and Ministry for Finance that this matter rests within the Ministry of Co-operative Development and Marketing. They commissioned the study and pronounced themselves on the matter. We need to give them time to respond conclusively on this matter.

Mr. Deputy Speaker: You have not heard it! What is your point of order, Dr. Khalwale?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. In fact, this matter involved fraud and banks have raised as much alarm. To wish it away to the Ministry of Co-operative Development--- Since some of the pyramid schemes are rumoured to have been the property of powerful politicians in this country, we do not believe that the Minister for Co-operative Development can handle it. I beg the Chair to direct that the Prime Minister comes here and responds to the issue of pyramid schemes once and for all.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. The biggest problem with pyramid schemes is that the Government never investigated the issue. The Government failed to implement the Nyenze Report and never investigated the people who stole money from Kenyans. The Anti Banking Fraud Unit did make some recommendations, but the irony is that the Government never followed the owners of those schemes; the people who looted billions of money. So, the last time the Minister responded he said that he was going to tell us the status of the investigations by the Government. If there is no investigation by the Government, then he should tell us so, so that we know that the Government has conspired with the people who are defrauding Kenyans money.

The Assistant Minister, Office of the Deputy Prime Minister and Ministry for Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, it is not true that these issues were not investigated. I tabled in this House the cases which were investigated and were within our

knowledge. Some of them were even prosecuted and some fined. At that time, there was no proper law to deal with pyramid schemes. The investigations fall under the Attorney-General. We, therefore, re-directed this Question to the Attorney-General. We tabled in this House the cases which were within our knowledge, including the names.

Dr. Khalwale: On a point of order, Mr. Deputy Speaker. I do not want to argue with the Assistant Minister. It is true that he reported to this House. However, when he did, he talked about very few pyramid schemes. In fact, they were only three and yet, we know that all the companies, including the ones in Western Province, run into hundreds. When will he table that list?

The Assistant Minister, Office of the Deputy Prime Minister and Ministry for Finance (Dr. Oburu): Mr. Deputy Speaker, Sir, we do not carry out investigations as a Ministry. That is why we directed this Question to the Attorney-General, so that he can give proper information as to how far he has gone with the investigations. So, we re-directed the matter to the Attorney-General. I cannot undertake to give what I do not have.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. Indeed, there is collective responsibility. All I want to know is: If, indeed, the matter has been taken to the Attorney General's Office, when will he table the list of the pyramid schemes which are under investigation by the Government?

Mr. Deputy Speaker: Hon. Deputy Leader of Government Business, you clearly cannot run away from this. Could you proceed and give a direction on the matter? It is cross-cutting and involves a number of Ministries. It involves the Ministry of State for Provincial Administration and Internal Security where the Criminal Investigations Department falls under. It involves the Office of the Deputy Prime Minister and Ministry of Finance and the Ministry of Co-operative Development and Marketing. Could you give a proper direction on this?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, as you have so rightly rounded it, this is very cross-cutting. I will consult the Prime Minister to include it in his weekly Statements.

Mr. Deputy Speaker: Fair enough! It is so directed.

DEATHS OF WOMEN/CHILDREN IN PUMWANI MATERNITY HOSPITAL

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. Fourteen days ago, I requested for a Ministerial Statement from the Minister for Medical Services about the deaths of women and children at Pumwani Maternity Hospital. The Minister indicated that he would respond today. I notice that he is not around. However, what is more disturbing is that, this is a matter of life and death. Even as late as yesterday, a patient by the name of Mary Wanjiru, hospitalization No.10301 died at Pumwani Maternity Hospital. When will the Minister respond to my request?

The Assistant Minister for Medical Services (Mr. Kambi): Thank you, Mr. Deputy Speaker, Sir. I beg the indulgence of the Chair because the Statement is not ready. My people are still working on it and I did not want to put too much pressure on them so that they can do a good job.

Mr. Deputy Speaker: When will you have the Ministerial Statement?

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Deputy Speaker, Sir, next week, it will be ready.

Mr. Deputy Speaker: Which day of next week?

The Assistant Minister for Medical Services (Mr. Kambi): Mr. Deputy Speaker, Sir, next week on Tuesday.

Mr. Deputy Speaker: Fair enough! It is so directed.

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

Mr. Deputy Speaker: Is it on the same matter? There is no Parliamentary Sitting day between now and Tuesday. Today is on a Thursday and Parliament does not sit over the weekend or Friday.

Dr. Khalwale: Mr. Deputy Speaker, Sir, just for the record, I thought that Parliament should be seized of the fact that the highest institution of quality assurance in matters of health in Kenya has approached the Minister for Public Health, the Minister for Medical Services, the Deputy Prime Minister and Minister for Local Government in respect of this issue, and the three Ministers do not seem to move. It is two months since they approached those people. I have with me, here, documents from that institution and documents of accounts from the City Council of Nairobi showing why those Ministers are not interested in pursuing the issue of Pumwani. That is just for the record.

Mr. Deputy Speaker: Clearly, you will definitely find the information you claim to have fairly important on Tuesday next week when the Statement will be read by the relevant Minister.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. I just want to support the need for that Statement to have come like yesterday. The Chair may wish to recall that last December, I requested for a similar Statement after the Minister had made a commitment to the Republic that no person should be detained in hospital. In essence, it meant that no person should die in hospital because of maternity case. This is a very serious issue. This Government is committed to the Millennium Development Goals (MDGs) and it is a requirement that we must realize that particular goal. I request that the Statement really comes on Tuesday and not later than that.

Mr. Deputy Speaker: Could the Deputy Leader of Government Business give the programme of the Government for next week in line with Standing Order No.30.

BUSINESS FOR THE WEEK COMMENCING
TUESDAY, 16TH AUGUST, 2011

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I wish to make this Statement pursuant to provisions of Standing Order No.36 (4). I wish to take this opportunity to state the following with regard to business for next week: Next week, the House will continue with debate on some Bills that are in their Second Reading Stage. That is the Public Service Superannuation Bill, Bill No.24, 2011. This Bill seeks to establish the contributory public service superannuation scheme for providing retirement benefits for persons in Public Service. We will also be looking at the Engineers Bill, Bill No.25, 2011. This Bill seeks to review and update the law relating to training, registration, licensing of engineers and the regulation of the practice of engineers. The House will also consider the Presidential Memorandum on Price Controls (Essential Goods) Bill, Bill No.9 of 2009. The House will also consider two Private Members'

Motions. One will be the Motion by hon. Ekwe Ethuro on the Ministry of Water and Irrigation, and the one by hon. Ababu Namwamba on the Ministry of Agriculture.

Mr. Deputy Speaker, allow me to, once more, assure Members and, indeed, all Kenyans that the House Business Committee will always give priority to all the constitutional implementation Bills as they mature for Debate. After all, there is a growing consensus, even among hon. Members that when called upon, we shall extent our sitting time and debate to conclude all the key Bills which are very critical for the implementation of the Constitution.

Finally, the House Business Committee will again be meeting on 16th August, 2011 to consider business for the rest of the week.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I have listened to the Minister and his order of prioritization. He has not allocated time to any constitutional Bills. If you look at the date when the first year will expire - we have a schedule of Bills that must be passed within the first year - the remaining working days are about ten. I do not think we are aware that the working days are about ten; after which; it will be over and we will be forced to undertake constitutional amendments.

As the Constitutional Implementation Oversight Committee (CIOC), we have indicated that we will publish all the Bills that are not ready and have not been brought by the Ministries, because we do not want Parliament to receive the flack for poor work from other institutions. Parliament has been sitting for long hours, our Committee has also been sitting for long hours and we have, in fact, divided ourselves into sub-committees. We have been over-stretching ourselves. Having done that, hon. Members do not want to hear of Bills other than constitutional Bills on the Order Paper this coming week and the next week, because we are tired to being blamed for the laxity of other people.

Mr. Deputy Speaker: Do I assume you are saying you want constitutional implementation Bills and not constitutional Bills?

Mrs. Odhiambo-Mabona: Yes, Mr. Deputy Speaker, Sir. I stand corrected. We want constitutional implementation Bills and they are, indeed, very many. I actually wanted to give the schedule but I will be giving it at an appropriate time. They are about 18.

Mr. C. Kilonzo: On a point of order, Mr. Deputy Speaker, Sir. I sit on the Constitutional Implementation Oversight Committee (CIOC) with hon. Odhiambo-Mabona and we have made it very clear that the Government should give priority to these very crucial Bills. For your information, we have also said we have no intention of extending sitting hours, because there is no reason why the Government cannot use the time it has. So, the Government should forget the business of extra sitting days or hours, because it has not been busy giving us Bills. They have been busy going out there to campaign.

Mr. Ethuro: Mr. Deputy Speaker, Sir, when we formulated these Standing Orders, and we gave the Prime Minister his time, it was for purpose of pronouncing Government policy, its intention and implementation. In our wisdom, we also allowed the Leader of Government Business to come and give us their weekly programme, including justifying why certain things should be the way they are. I would like to seek the following clarifications from the Deputy Leader of Government Business: In the light of the issues hon.Odhiambo-Mabona has mentioned in terms of constitutional

implementation Bills--- One thing is that the Attorney-General of the Republic is due to retire constitutionally on the 26th of August. The Government is sitting on the appointment of the Attorney-General in order to deliberately create a crisis, and then be able to tell Kenyans that Parliament is not ready to work, and they want us to work extra hours. We are not going to accept this. We want to make it abundantly clear to the Government that it is their business to bring business to the House in good time, so that Parliament passes it. The reason why Bills must be brought here after a publication period of 14 days is to allow public participation, which is now an enshrined constitutional obligation. So, when the publication and referral periods of Bills are reduced--- I have said that even the content is threatened by reduction of period. Is that upholding constitutional principles?

Dr. Khalwale: On a point of order, Mr. Deputy Speaker, Sir. My point of order is directed to the Leader of Government Business. Under the old Constitution, very many things were done by the Executive at the pleasure of the President. This time, the pleasure of the President does not count at all. Many Questions here go unanswered, because either Ministers are not here, they are late, are sick or have travelled. However, of greater concern to me are Questions directed to the Ministry of Foreign Affairs and the Ministry of Higher Education, Science and Technology. These are two Ministries which have remained vacant for so long, and the President and the Prime Minister think that they should fill those positions at their own pleasure. Could the Leader of Government Business tell us when the President and the Prime Minister are going to give Kenyans substantive Ministers in the Ministries of Foreign Affairs and Higher Education, Science and Technology?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, I believe the President made it very clear in his Address to Parliament at the beginning of this mini session that it would be his pleasure to have not just the Bills that are on the schedule of the first year, but also Bills beyond that coming to this House to be debated and passed. So, it is not the pleasure of the President to delay Bills. His pleasure is actually to accelerate the implementation of the Constitution, and that was made very clear on the Floor of this House.

In terms of the appointment to those offices, I believe there are acting Ministers who are doing a commendable job. One of the things that you may know if you refer to, I believe, Section 17 of the former Constitution, which is still in force in matters to do with the Executive, is that it bars Ministers from advising the President on the appointment of Ministers. So, I will not even contemplate advising the President because that will be unconstitutional.

Dr. Khalwale: Mr. Deputy Speaker, Sir, at no time did I request the Deputy Leader of Government Business to go and advise the President. We look at the Leader of Government Business as the nexus between this National Assembly and the Executive, particularly the Cabinet. So, we want that information conveyed as the position of this National Assembly and not his view; for all we know he might want to advise the President on the things he likes best, and Kenyans know them.

Mr. Ethuro: On a point of order, Mr. Deputy Speaker, Sir. The same Constitution he is referring to, which is protected in the new Constitution, actually states that the task of a Cabinet Minister is to advise and aid the President. That is his job. So, in my view, he is at liberty to advise.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, that is why I referred to a specific section which says that: “The function of the Cabinet is to advise and aid the Government of Kenya except for advice on appointment, leave and travel of a Minister or an Assistant Minister.” That is within the old Constitution. However, I believe there are Ministers who are acting, and are doing a commendable job; that is not impairing the work of Parliament.

Now, coming back to the programme - I think that is a more serious issue - the issue that was raised by hon. Odhiambo-Mabona is that we are very aware of the need to have all these Bills coming to the Floor of the House for full implementation of the Constitution. However, as I said in my statement, a Bill can only come here when it has been published and is ready for debate in the House. We cannot bring to the House a Bill that is not ready for debate. All the Bills that have gone to the Cabinet have been processed. As of this week, all the Bills on the police have been processed, they are going to be published and then they will come here at least for the First Reading and then the process takes off. The Bill on administrative of justice which should have been on the Order Paper on Tuesday, the Minister requires more consultation on it because of a request by stakeholders. Again, because of the manner of the stakeholder consultations, of which the House is aware, we cannot fast track them, because that will also be going against the process that hon. Ethuro has so ably argued here. We do not want to short change anyone; we know the importance of public participation. So, it is a situation that we are all very much alive to. Until a Bill has been published, gone to a committee and we have received a report from the committee, it will be futile to put it on the Order Paper; we will find that it cannot progress, because the public participation that is expected at the committees and on the Floor of the House will not have taken place. We will try to fast track them. I want to inform the hon. Members that there is no deliberate delay by anyone to frustrate the process. As the Bills mature, they will come to the Floor of this House, and I want to see hon. Members working extra time so as to fast track them.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Member in order to mislead this House? The three police bills have already received Cabinet approval, to the best of our knowledge. Why the Bills are not being published we have no clue. Last week, we were told the Bill on the Commission on Revenue Allocation was supposed to be published. Nobody seems to know where that Bill.

Mr. Deputy Speaker, Sir, is the hon. Member in order, because we, as a Committee of Parliament, want to tell the Executive we are taking over this process because we do not want to be blamed for its own laxity and inefficiency.

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, indeed, there is no inefficiency. There is concurrence across both sides that we need together all these Bills. So, even if the Committee was to take them over, they will still need to go through publishing and notice. So, that is in hand. Even on the ones that have been published, you may recall that the reason we could not even discuss the Bill that we are discussing today and the one that was completed yesterday, was because of the stakeholders wanting further debate, consolidation and all those issues, which is what the Members are also agitating for in terms public participation.

Mr. Deputy Speaker: Hon. Deputy Leader of Government business, Members of Parliament cannot debate Bills outside Parliament once they are published. The

assumption of inclusivity and involvement of the public in conjunction with the Members of Parliament has to be anticipated. It has been done before it is published. There are clear rules that bar us from debating something outside once it is published. So, how do you intend to go forward on this, because you said that you need to carry the public along? You have to debate these things in a draft form if, indeed, you want to carry the public along. Maybe that is what you should be doing now!

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, indeed, a lot of the public participation has taken place within the framework of the Committees. Once they are published, we are basically getting into the process of debating within the House, then committing them to the Committees. The Committees are asking for public participation. Until we get a report from the Committees, it will then be difficult to proceed to Committee Stage. For example, the Political Parties Bill would have proceeded today, but we cannot move on to the Committee Stage.

Dr. Nuh: Mr. Deputy Speaker, Sir, you will realize that Parliament for the last so many days has got the worst bashing from the public outside. This is because of the perception out there, that Parliament has slept on the job and has not been able to beat the timelines within which the constitutional implementation bills are supposed to be enacted.

Mr. Deputy Speaker, Sir, the public out there is not in a position to know where the rain started beating us. That is why Members of Parliament are apprehensive. To add insult to injury, here is the Deputy Leader of Government Business who is trying to prioritize other Bills when we know that the pressure is mounting so much on Parliament.

Mr. Deputy Speaker, Sir, would I be in order to request that the Executive arm of the Government puts up in two daily newspapers; *Daily Nation* and *The Standard* a full page advertisement stating clearly that the reason why the constitutional implementation bills have not been in place is because the Executive side of the Government has been asleep. If they are not asleep, let them give reasons to Kenyans as to why these Bills have not been brought to Parliament for enactment. If they do that, for once, as Parliament, we will get a rest from public bashing.

(Several hon. Members stood up their places)

Mr. Deputy Speaker: I will allow the last point of order, from hon. Shebesh because we have substantive business, including Constitutional Implementation Bill, Bill No.23 of 2011. The hon. Minister is here rearing to move. So, could you have the last point of order on this and then we go to substantive business?

Mrs. Shebesh: On a point of order, Mr. Deputy Speaker, Sir. I am a member of the Constitutional Implementation Oversight Committee whose work is to oversee the implementation of this Constitution. Let me say that we have asked for soft copies of these Bills from the Government, so that we are able to execute our mandate which is also in line with the Constitution, but we have not got them. Is it in order for the Deputy Leader of Government Business to sabotage the President by refusing to give us soft copies?

Mr. Deputy Speaker: Your Committee, under the Standing orders, has the powers to summon the Minister. Could you have your last point of order, hon. Ethuro?

Mr. Ethuro: Mr. Deputy Speaker, Sir, in fact, I want to assist the House. The Constitution recognizes only two institutions; the Attorney- General and CIC in terms of bringing these Bills to this House. So, is it in order for the Deputy Leader of Government Business to persistently mislead this House and Kenyans that we should be working overtime when they are not even working normally and when he is buying time for what he considers consultations that are actually unnecessary?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, for the record, nobody is sabotaging the process of bringing Bills to do with the implementation of the Constitution to the House. Also, for the record, in prioritizing the work for next week, the House Business Committee has not left out any Bills to do with the implementation of the Constitution, if they were due for debate in this House and brought Bills that are ordinary Bills.

Mr. Deputy Speaker, Sir, let us be guided by the need to get Bills right and not the politics that we can get here on the Floor of this House. It may be good politics, but it is not good for this House. Kenyans are watching and they will be very clear in terms of the progress made by Parliament.

Mr. Deputy Speaker: Hon. Minister, you are clearly out of order. The hon. Members are asking the Government side to have the Bills in place. What is politics about that? Clearly, it is not lost to everybody, including Kenyans, that we have less than 20 days to get all these things right. So, the best you can do, under the circumstance, is to say “yes, it is our pressure” and give an undertaking to the House. That essentially does give an assurance to the House and Kenyans also.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Deputy Speaker, Sir. I just want to draw out attention to today’s Order Paper. In today’s Order Paper, we have the Political Parties Bill and then the National Construction Authority Bill. We have also the National Gender and Equality Commission Bill. Despite the fact that the National Construction Authority Bill is not part of the Constitutional Implementation Bill, it is prioritized above the National Gender and Equality Commission Bill. The Minister is misleading that he is not prioritizing any other Bills. Is he in order to mislead the House?

Mr. Deputy Speaker: Clearly, much as you are a fresh woman in Parliament, when you have a Committee, you cannot go to another Bill and then go to Committee. The two that you have mentioned right now is Order No.9 are in Committee Stage. So, they have to be disposed off.

Nonetheless, your sentiments are well appreciated by the Chair, and all that the Minister needs is to give an undertaking on the need for these Constitutional Implementation Bills to appear on the Order Paper.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. As the Minister is giving the undertaking that you have required of him, could he also confirm to this House that the reason why they are withholding these Bills is to shorten the time, so that Kenyans do not get an opportunity to see the contents and, therefore, get away with Bills that do not meet the expectations of the Kenyan people?

The Minister for Transport (Mr. Kimunya): Mr. Deputy Speaker, Sir, once a Bill has been published it is in public domain. Any Bill that has been published, there is nobody who can withhold any information from getting to Kenyans. The Bills on police reforms were approved on Tuesday. There were some amendments that need to be

worked on and then they will be published by the Minister. Publishing of those Bills will take place immediately because we are keen to have them enacted.

Mr. Deputy Speaker, Sir, if we did not have all these discussions on this matter, by now the Minister would have moved the Bill and it would have been seconded. We would have had more time to debate the Bills that are on the Order Paper. I want to give the undertaking of the Government that we are very serious on the implementation of the Constitution. We will do everything possible to ensure that all the Bills that are ready are brought to this House and debated. I want to thank the Members of the House who are keen to see this implementation going on because they are also prepared to stay on here as we did the last time to ensure that we get the Bills passed before the deadline.

Mr. Imanyara: On a point of order, Mr. Deputy Speaker, Sir. Could the Minister give us a specific timeline when these Bills will be published and when we can expect them in the House rather than just talking about the future? We have been doing this for the last three months.

Mr. Deputy Speaker: Order! Maybe the hon. Deputy Leader of Government Business, you should ask the Minister, Mr. M. Kilonzo to help you on this. Mr. M. Kilonzo, will you be willing to help your friend?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I am afraid I go through the same frustrations. I have demanded in writing that the Bills be approved by Cabinet. I have demanded that they be published yesterday on 10th august, 2011. I am still waiting to see whether they have been published. However, you do realize I have no control over the Government Printer.

Mr. Deputy Speaker: Is there a problem in publishing? Is it at the Government Printer or where is it?

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, the problem would be in the office of the Attorney-General, the CIC because on their request they are required to have post Cabinet consultations. I have sent the amendments. I sent them within half an hour of Cabinet's approval. It is fair that you know and the House knows that I requested His Excellency to release me immediately upon the approval of these Bills, so that I could do the letters to the CIC and the Attorney-General so that they could have the Bills published.

As of yesterday, I am informed that the Attorney-General's office was waiting for a letter from the Office of the President and I do not know whether they have got it today. So, therefore, all that I can assure you is that I have released all the Bills, raw or otherwise, to the CIC. I have this afternoon requested for soft copies from the CIC and the Office of the Attorney-General so that I can supply them. Personally, I cannot offer an explanation as to why these Bills have not been published.

Let me conclude because this is important, I have got to be frank, there is a Bill that was approved three weeks ago by the Cabinet and that is the Revenue Allocation Commission Bill. Yesterday, I spent countless hours on telephone. I could not trace the Permanent Secretary, Treasury or the Minister himself. I ended up talking to Dr. Oburu who assured me that the Bill would be published. However, I have not seen it. That is all I can tell you.

(Mr. Imanyara stood up in his place)

Mr. Deputy Speaker: Mr. Imanyara, you realize that we have business to cover.

Mr. Imanyara: I do realize, Mr. Deputy Speaker, Sir.

Mr. Deputy Speaker: That is the last point of order.

Mr. Imanyara: Mr. Deputy Speaker, Sir, I do realize that; I appreciate. But on account of the very serious admission on the part of the Minister who is constitutionally mandated to bring these Bills to the House and have them published, that he is not in the picture, may I ask you to utilize the substantive provisions in the Standing Orders and we go into adjournment in order to discuss this matter, so that Kenyans can know that the people withholding the publication of these Bills are the very same people who are opposed to the new Constitution and are using these delaying tactics in order for us not to meet the deadline set in the Constitution. Would you allow us to do that?

Mr. Deputy Speaker: Order, hon. Members! Indeed, the Chair is also seized on the gravity of the matter and the need for the House to take definitive action on this. I want to read to you the Standing Order and its provisions and leave it to you to apply it accordingly.

Standing Order No. 23 says:-

“(1) Any Member may at any time rise in his or her place and seek leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent national importance.

(2) A member who wishes to seek leave to move the adjournment of the House shall, at least two hours before the commencement of the sitting, hand to the Speaker a written notification of the matter but the Speaker shall refuse to allow the claim, unless the Speaker is satisfied that the matter is definite, urgent and of national importance and may properly be raised on a Motion for Adjournment of the House.

(3) If the Speaker is satisfied in terms of paragraph (2) and not less than fifteen other Members rise in their places in support, the Speaker shall nominate a time on the same day at which such Motion may be moved.”

Under the circumstances, you realize this Motion cannot be moved today. However, you clearly have the provisions, you can apply them. Have it with the Speaker at least two hours before then; which you can do today, tomorrow, even Tuesday morning. Then on Tuesday afternoon you can apply the provision of Standing Order accordingly.

Mr. Imanyara: On a point of Order, Mr. Deputy Speaker, Sir. The Standing Orders also permit you and any Member of the House, and they do it all the time when they are reducing the period of publication, to shorten the time. May I ask that you do away with the two hours notice, so that we can go straightaway to debate?

Mr. Deputy Speaker: On a matter which is definitive like this one, clearly the time and wisdom of all Members here and the Chair does inform that we can only move this on Tuesday. Under the circumstances, whereas the Chair appreciates all the matters that were raised by the hon. Members; Mr. Imanyara, Mrs. Odhiambo-Mabona and Mr. Ethuro, it is thoroughly saddened with the lack of coherence within the Government. But the Chair will then give you this opportunity on Tuesday, if you follow the provisions of the Standing Orders.

Next Order!

BILLS

First Reading

THE LABOUR INSTITUTIONS (AMENDMENT) BILL

(Order for the First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

Mr. Deputy Speaker: Hon. Members, Order No.9 which is the Committee of the whole House of two Bills, the Political Parties Bill (Bill No.20 of 2011) and the National Construction Authority Bill (Bill No.4 of 2011) in both cases, the Ministers have intimated to the Chair that they will not be able to move on to the Committee of the whole House. So, they are both effectively deferred to Wednesday next week.

(Committee of the whole House deferred)

Second Reading

THE NATIONAL GENDER AND EQUALITY COMMISSION BILL

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Deputy Speaker, Sir, I rise to move that the National Gender and Equality Commission Bill be now read a Second Time.

Mr. Deputy Speaker, Sir, the main purpose of this Bill is to provide for a legislative framework for promoting the principle of gender parity and equity while also ensuring that all Kenyans enjoy the fundamental rights to equality and freedom from discrimination.

In establishing this framework, the Bill seeks to restructure the Kenya National Human Rights and Equality Commission, so as to establish a gender and equality Commission with the later being the successor to the former for this purpose. Issues of social justice and exclusion are basic to affirmative action and constitute some of the major concerns raised by Kenyans in their struggle for a new constitutional dispensation. In fact, social justice suggests a notion of a positive effort to achieve an equitable system of governance and society that affords everyone access to basic goods and services necessary for essential livelihoods.

Mr. Deputy Speaker, Sir, the word “justice” in itself suggests that the objective must be the removal or reduction of inequality in the society. Over the years, the governance and economic systems have excluded a large proportion of the people of Kenya. This is reflected in the high levels of poverty, now estimated at over 60 per cent of the total population. The worst hit has been women, people with disabilities and minority communities. It is these concerns that the Constitution of Kenya, 2010 seeks to address through affirmative action and other interventions including the rationalization of the power and decision making structure of the Kenyan society to be as inclusive as possible.

There is little dispute that women issues have continued to occupy a prominent place in the fight for gender parity. The issues range from the fact that women hold less than 10 per cent of the seats in Parliament due to discrimination. They face discrimination in inheritance, domestic and general sexual violence and low enrolment in schools. With this state of affairs, the provisions in the Constitution clearly setting out women's rights could not have come at a better time. Women's clamour for fair treatment has been so clearly expressed and the sense of past injustice is so great that it is inconceivable for anyone with a sense of justice to just make any attempt to negate the same.

Mr. Deputy Speaker, Sir, the principle of equality of men and women was insisted on as a basic requirement for the enjoyment of rights. Women rightly and with sufficient justification, insisted on the entrenchment of women's rights in the Bill of Rights. In entrenching these rights, we were speaking to the abolition of discrimination with regard to marriage, divorce, burial, inheritance, personal laws, among others, including the right to participate in political and social life.

[Mr. Deputy Speaker left the Chair]

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

Mr. Temporary Deputy Speaker, Sir, we were agitating for the elimination of customary and religious laws that violate women's rights and are in conflict with the rights and duties protected under the international laws that Kenya has ratified. We were speaking against retrogressive socio-cultural practices that impede on women's rights to participate, access and control resources. We were saying, no, to violence against women while also outlawing traditional harmful practices such as the outrageous practice of female genital mutilation and the outrageous practice of forced marriages of minors.

It is for the purpose of safeguarding these gains and many others that I will not bore the House with, because we all know what I am talking about. We must establish a gender commission for equality and as a constitutional and autonomous statutory body with a framework that will provide for clear mandate without having to report to anyone else.

Mr. Temporary Deputy Speaker, Sir, the Gender and Equality Commission Bill seeks to establish a commission with specific functions as provided in Clause 8 of the Bill; to safeguard the gains made towards securing gender parity. Membership of the Commission is limited to five members subject to the wisdom of this House and four other members. The idea is to ensure that the Commission is not unnecessarily large.

The process of appointment is extremely transparent and competitive while also taking into account the principle of regional and ethnic balance and you will find that in Clause 11 of the Bill. We are also proposing, with absolute confidence, that the Commission be given special powers to enable it to summon persons to appear before it to produce any relevant documents or other material and to assist the Commission in its investigations. You will find that in Clause 11.

Mr. Temporary Deputy Speaker, Sir, in a nutshell, allow me to thank this House for the retreat that occurred last weekend in Mombasa. I will always remember the

quality debate. Although I was unable to attend, I received the reports as well as the presentations made. I want to salute this House without fear for accepting the policy that this Ministry, together with my sister hon. Shaban has developed, to restructure this very important Commission to allow our women to have a Gender and Equality Commission, specifically dealing with their issues.

Allow me to remind this House, as I will continue doing in the remaining few weeks on this Bill, that the retired Constitution in Article 16 had empowered Parliament to pass a law to determine the number of Ministers. Over 48 years, it was never done. You notice that the country is always complaining about a bloated Government; a bloated Cabinet. In the retired Constitution, Article 109 had given Parliament the discretion to enact a law to determine the retirement age of the Attorney-General of the country. As I speak, it had to be the new Constitution that has now provided for that. Parliament never enacted that law, notwithstanding having the discretion.

Again, Article 109 of the retired Constitution, Parliament had been given---

Mr. Mututho: On a point of order, Mr. Temporary Deputy Speaker, Sir. I would hate to interrupt, of all the people, my lawyer. Through my limited reading, I am aware that the Chair brought a Bill in the last Parliament. The Minister has just said that, that has never happened. So, perhaps he may need to again look at his notes to see that actually there was a Bill, under Section 46, which was introduced by the person of the Chair today, on the subject matter.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I am glad. I do not know what became of it.

The Temporary Deputy Speaker (Mr. Ethuro): Indeed, hon. Minister, of all the people, you ought to know. It is actually part of your laws because it was assented to by the President.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I am always learning and I am very grateful for that illustration. I want to thank you and, therefore, I will remove that particular part, Section 110, from my presentation and say that Parliament, otherwise, failed in the other discretion given.

The Temporary Deputy Speaker (Mr. Ethuro): It is actually Section 16.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I am glad to hear that. While thanking you for that wonderful law, may I also, with your permission, mention that it took 47 years to bring forth that law.

This country gained Independence in 1963. We were in our own hands until you brought forward that law. I would hate to think that there are people in this country who will wait for another 47 years in order to empower our women through an independent Gender and Equality Commission. I was raising those particular issues just to highlight the fact, as I will continue doing, that anything that deals with discretion of Parliament for legislation, my Ministry is going to bring those laws for this House to determine. Therefore, we are urging the House to safeguard the principle of gender parity and equality by supporting this Bill. But should Members find the need to propose amendments to enrich the Bill, as I have demonstrated in the past, they are most

welcome. We will discuss them, negotiate them and ultimately, we can move the issue of gender parity and gender equality forward.

Allow me to quote from a book written by a professor of Psychology, Prof. Fulham, on the issue of decision making because I will be raising these things after we have done sector consultations on the issue of the Administrative Justice Bill that we have also published.

He writes, and I quote: “Prospect theory explains both why we act when we shouldn’t and why we don’t act when we should. Curiously, the more choices that people have in life, the more likely they are to do nothing; and the more attractive options they have, the worse the delay and paralysis, for freedom of choice can cause serious problems. The longer you defer making a decision, the less likely you are to get over a situation”.

Mr. Temporary Deputy Speaker, Sir, I would like you to observe that even the majority of hon. Members, who were so agitated by the presentation of Bills, walked out as soon as you made your ruling. They are not even here to listen to me. They are not even here to contribute to this very important part of national policy, gender and equality. With utmost respect to the House, it seems to me that we sometimes take positions for the pleasure of the gallery as opposed to taking positions for the welfare of this country.

Therefore, it is my pride and privilege to present this Bill. I am also privileged this afternoon to have my hardworking beautiful sister, hon. (Dr.) Naomi Shaban, to second this Bill.

I beg to move.

The Minister for Gender, Children and Social Development (Dr. Shaban): Mr. Temporary Deputy Speaker, Sir, I must start by congratulating my colleague, hon. Mutula Kilonzo, for having thought that it is prudent and important to split the Kenya National Human Rights and Equality Commission, which has been in place since 27th August, 2010. From the outset, I would like to say that I second this Bill. I just want to point out a few issues.

There is so much that is related to gender and equality in this policy and legislation under the new Constitution. I just want to mention a few of those aspects, as captured under the Chapter on citizenship and the Bill of Rights; Articles 20 and 22 are on reproductive health issues whereas Article 27 is on equal opportunities and affirmative action; domestic violence legislation is addressed under Article 29; matrimonial property rights are captured under Article 40; economic and social rights are provided for under Article 43; traditional harmful practices are captured under Article 44; family issues are captured under Article 45; matters related to children, persons with disabilities, youth, minorities and marginalised groups and other members of society are addressed under Articles 52-57.

Mr. Temporary Deputy Speaker, Sir, all these areas need to be worked on. Basically, the body which is going to work on these areas will be the National Gender and Equality Commission. In 2003, the Ninth Parliament felt that there was need of putting in place the National Gender and Development Commission. This was done after women felt that their issues were being swept under the carpet. When the new Constitution came into being, the National Gender and Development Commission had been able to even help the Government to prepare a gender policy. They were able to do a

lot of advocacy. In fact, most of the gains contained in the new Constitution were spearheaded by the Gender, Equality and Development Commission.

The functions of the Commission, as proposed under Clause 8, are to monitor, facilitate and advise on the integration of the principles of equality and freedom from discrimination in all national and county policies, laws and administrative regulations in all public and private institutions. The Commission will also act as the principal organ of the State in ensuring compliance with all the treaties and conventions ratified by Kenya, and relating to issues of equality and freedom.

Mr. Temporary Deputy Speaker, Sir, Kenya is a signatory to a series of international commitments, commencing from 1975 to date. Some of these include, but are not limited to the following: the Convention on the Elimination of Discrimination Against Women of 1984; the Beijing Platform for Action of 1995; the United Nations Declaration on Violence Against Women of 1993; the International Conference on Population and Development of 1995 and, to cap it all, the Nairobi Forward Looking Strategies for the Advancement of Women of 1985.

All this work cannot be done if we do not have a body to make sure that these things are accomplished. As we implement the new Constitution, it is important for us to note that women have played a very important role in this country. The new Commission is also going to handle the equality issue, especially where issues of disabled persons will be concerned. The Ninth Parliament found it very important to enact a law for disabled persons. However, it is the Commission which will make sure that the National Council for Persons with Disabilities is able to do what it ought to do. In order to track what the Council can do to change the lives of disabled persons in our country for betterment of their lives, the Gender and Equality Commission should be able to help and do that kind of work.

Mr. Temporary Deputy Speaker, Sir, after the next general election, we realise that we are going to have fewer Ministries. Even if the Ministry of Gender, Children and Social Development will continue to be there, most likely its mandate will be increased, and it will be too huge to cover gender and equality issues conclusively. When people talk about gender, there is the problem of us thinking that gender is only about women. I want to state today that gender is about men and women. It is about boys and girls. This is a very important Commission because it can make sure that most of the things which have been put in the new Constitution, especially in the Bill of Rights, are realised.

Equality is an important value and principle in the Kenyan context, which needs to be given focus and dedication. So, we need to institutionalise it. We have been talking and talking. From the time the Gender and Equality Commission came into being, prior to the promulgation of the new Constitution, we know that it has been able to do quite a bit of work, despite the fact that an Act of Parliament then did not give it a substantive mandate.

Mr. Temporary Deputy Speaker, Sir, I also want to take this opportunity to thank all Members of Parliament for standing with us for us to share and consult, and to be able to stand here and talk about the National Gender and Equality Commission today. I do not have a lot to say; to me all the men and women in this country, including the disabled persons and the marginalised communities, this is the instrument they really need in order for them to be able to move on and realise the fruits of the new Constitution.

With those remarks, I beg to second.

(Question proposed)

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I rise to support this very important Bill. I think the publication of this Bill makes a lot of things clear. This is particularly when you look at the definition of gender. For many of us, we kept thinking that gender only meant women. I like this because it talks mainly about the social definition of women and men among different communities, cultures, classes, ages and during different periods in history.

The mainstreaming also talks about many things like budgeting and so on. I want to commend the new Constitution which has now been able to address this issue by allowing at least one-third of either gender in whatever we do; Government appointments and so on. I want to thank the two Ministers for the effort they have put in this. The first thing that has been lacking is motivation even to the womenfolk to come up to compete. Sometimes it would make no sense for the women to come up and find that they are not getting equitable share of whatever they require.

Mr. Temporary Deputy Speaker, Sir, I think with the new Constitution and this Bill, it is going to make us realize the potential in women. At school level, we have said many times, particularly those of us who still have children who go to school; the girls are performing very well. It is not out of any favour. It is just because of their commitment to hard work. I think this is a good motivator. This country has a lot of potential. Even as we talk about drought stricken areas, I think we only need to do something slightly more in order for us to generate enough for the country. We can only do that if we have enough people to do it. That is going to include having women among the men participating.

The only thing I would like to give to the ladies or women is that they must do a lot of sensitization. I think some women are still like *kukus* or the chicken as somebody said one time. When you cover them in a cage and then remove them, some cannot even move. You have to kick them in order for them to realize that they are free. I think we must sensitize the women now to take the challenge. We even have a challenge in the Constitution---

Mrs. Odhiambo-Mabona: Do you have to kick us?

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, we need to sensitize them and tell them these opportunities are there. We are already talking about the challenges that we are going to have during the next elections. We want these positions to be filled. They need to be sensitized. The meeting we held in Mombasa was very useful. I saw some old *mamas* who said that they rolled their sleeves in bringing this matter to where it is. The only thing they forgot is that the general population was willing for this to get to this level because the voting was not done by those who stay in town and these ones who talk about the civil society and so on, it is the *mamas* from the villages who voted for the new Constitution. Therefore, they must be commended for this and they must get their rightful share of the role they played.

Mr. Temporary Deputy Speaker, Sir, the need for balance must also be taken care of. I hope the Minister is also taking note of the fact that the boy child is also endangered, as we are talking about this gender business. This is why I was saying that the definition

is very important and we must stick to it. There must be some kind of balance. We do not want in another 30, 40 or 50 years to bring Bills here to protect the boy child.

Inheritance is something I think this takes care of. I have four children; those are the ones I know of. They are two boys and two girls. Sometime when people die you see crazy things happening. You see funny things happening; the boys want to chase away the small girls from the homes. I do not think that is fair. I think this should be addressed through this. *Waziri* we pray for you to stay around long so that you can operationalize all these things. It has been difficult to implement this. The former President resisted this. However, there was a revolution or something that happened in the Rift Valley. I commend the people of Rift Valley for having brought in the largest number of women. They are highly educated women whom we would not have had were it not for the electorate. I appreciate that and hope they can be able to bring more of them. One of them is Dr. Joyce Laboso. They should bring her back because she has served us very well.

With those few remarks, I beg to support.

Mrs. Odhiambo-Mabona: Mr. Temporary Deputy Speaker, Sir, thank for you giving me this opportunity. I want to support. I want to indicate, even as I am supporting, that women's rights is a human rights issue. I know that there are many people asking that if it is a human rights issue, why we have not included it in the Human Rights Bill. This is because of the many years of marginalization and many years of historical injustices against one gender which is women. I know that nowadays, when you stand, I heard Mr. Duale saying, "Consider gender". I am glad that you mentioned yourself as gender. Many men erroneously presume that gender means women. It is not women. Gender includes both men and women. We have moved away from an approach in the development sector of the women in development approach, to gender and development.

Mr. Temporary Deputy Speaker, Sir, the reason we moved away from that is because the people who started working where they thought you could promote women alone, noticed very quickly that it does not work. A society that works is the society that God intended where men work together with women.

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

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

I am happy that even as I am moving this Gender Bill, I have the pleasure of also addressing Madam Temporary Deputy Speaker. I recognize that gender has moved from male gender to female gender.

Madam Temporary Deputy Speaker, one of the reasons that we have had to support a separate Gender Commission as opposed to the Human Rights Commission is because--- I had occasion as part of the Departmental Committee on Justice and Legal Affairs, the Constitutional Implementation Oversight Committee (CIOC) and the Committee on Equal Opportunities to see examples in many countries. Even before I came to this House, I had examples from many countries; the UK, Sweden, Denmark and many Scandinavian countries. The trend is to move towards one big sommission or one big ombudsman office. However, even before I can make my decision because I know

that there was a lot of lobbying whether to have one commission or both, one of the things you can see is that those countries have had a long history of testing with issues of human rights and other specific rights of children, women and persons with disabilities. For many years they had specific Commissions or Ombudspersons that were dealing specifically with those issues. After their countries have reached fairly comfortable levels, they have said that they can now put it together. Indeed, in one country – I think in Denmark – the Gender Ministry at one point was even situated in the Ministry of Roads, because they have realized their gender. We were in Denmark with my Chair who is here. They have even put it in very many Ministries including the Ministry of Agriculture. This is because it has to just get a parent Ministry to make sure it does not disappear, but largely, the issues that are of concern are being addressed. I am not saying that they do not have problems. They are there but they are not of the magnitude we have.

Madam Temporary Deputy Speaker, in Kenya we are dealing with both overt and covert issues of gender discrimination. Sometimes I get amazed, like when we talk in this House. I notice that sometimes we make major assumptions about the level we are at understanding of gender and related issues. I get amazed sometimes when we start discussions on affirmative action, especially on gender issues. I hear hon. Members saying that the Constitution talks about equality and, therefore, the Article that deals with affirmative action is a contradiction. It cannot be a contradiction. First, it is contained within the same Constitution and so, the framers who included me intended it to be that. The Speaker keeps reminding us that we keep forgetting that we are the ones who framed this Constitution. So, unlike Americans who framed theirs several centuries ago, we do not need to look too far back. We can interrogate ourselves, and we know the reasons that we brought affirmative action for. We were alive to the fact that there is need for equality, but we wanted affirmative action to bring people at par. I would want to equate it to a race. Kenyans are very good at races. If you have a person who is going to run 200 metres or 400 metres and the other one starts at 100 metres and has nothing hindering him, and you have another one starting at the beginning line, carrying a sack, a baby and a pregnancy, do we expect these people to run and compete fairly? Yes, she can carry the baby at the back and the pregnancy in front. That is the story of most women and yet you expect us to compete at the same level with you. It is not possible. Unfortunately, in the past, it was even worse. Now, the situation has changed and that is why we need affirmative action. It is because women are disadvantaged at many levels.

Madam Temporary Deputy Speaker, we know that when women want political offices, you will hear the worst things that you have ever imagined that you can be told. For those of us who may not have brave skins, you may not go forward. However, those of us who do not mind will be told many things. You will be told that you are childless or that you have come from a different country, but if we have identified constituencies that we want to go to, we will go for them. We will not be deterred, childless or not childless; from Zimbabwe or not from Zimbabwe. If the people of a constituency say that I can represent them, I will represent them. They have said and Madam Millie Odhiambo-Mabona will go for the constituency that she can.

(Applause)

Madam Temporary Deputy Speaker, if you look at issues of inter-sectionality, you will find that it is even worse when you are a woman and you are disabled. We suffer multiple discrimination, and if you are a woman who is disabled and from a minority community, it is even worse. If you are a woman from Northern Kenya and you are disabled and want to compete with other women, it is even worse. You will not even begin. I want to say that where hon. Kimunya could run for two miles, I am expected to run for 1,000 miles in order to prove myself. For a man, all you need to do is stand up and speak in a loud voice and people say “*tosha*.” But for me, I need to stand and not only speak in my shrill voice, but dance, do the jig and smile before they say “*tosha*.” But we do not mind smiling and doing the jig because we are *tosha*.

Ms. Karua: Your voice is not shrill!

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, Ms. Karua is telling me that my voice is not shrill. What I would like to say in relation to the Bill is the same experience that we had with the National Cohesion and Integration Act which basically set a Commission, but it did not have the flesh. I would like to urge the Committee that will be looking both at this Bill and the one on human rights, to borrow from the Human Rights Bill of the United Kingdom and other countries. It does not just set a Commission; it also provides the flesh of the issues that I am talking about; of the issues that have to do with discrimination from a gender perspective; of the issues that have to do with discrimination because of your disability and of the issues that have to do with discrimination from the areas that you come from. I have worked for many years on issues of discrimination. Sometimes when I defend my party, people think that I do it with an ethnic eye. I do not! I want to say that I almost got married in a place where people do not imagine I would get married. Why? This is because in my eyes, I do not look at “ethnic”. That is why I moved even to further places.

(Laughter)

The ones who want to know can see me later on. Even where I have worked, my staff used to get surprised that I would sometimes say that people from my own community were too many and I was the one who was employing. You can even attest to that fact from the organization I left.

Ms. Karua: I can attest to that fact!

Mrs. Odhiambo-Mabona: Madam Temporary Deputy Speaker, this is because my mother and father did not bring me up to look at ethnicity. I was brought up to look at human beings and as a Christian, I see human beings. That is why I defend consistently. When I see Kikuyus wrong, I will tell them: “You are wrong.” When I see Luos wrong, I will tell them that they are wrong. So, hon. Karua, sometimes when you see me telling you that Kikuyus are wrong, it is not because I do not like them. It is because at that time I think you are wrong just the same way I tell Luos when they are wrong.

I would like to encourage that in our language even in Parliament, when we are speaking, let us be gender sensitive in our talk. I heard Mr. Chanzu, when he was contributing, say that the women who passed this are the elite women. I am not admonishing him because he is my good friend. I never hear people talking about elite men. Why is it that it is the women who must be elite? When I speak as Millie, I am

“elite women” speaking from Nairobi, but when Mr. Kimunya speaks, he speaks for the men. So, when I speak the women’s language, I speak as a woman.

Madam Temporary Deputy Speaker, as the women’s sector we have moved from far; that is from Mexico in 1975, when we held the first international conference of women - I doubt if I had gone to school by then, but I will check - to Nairobi Forward Looking Strategies - I remember I danced in Nairobi as a student – to Beijing in 1995 and to New York in 2000. Ms. Karua is convincing me that she went on and the journey continues. It is not easy. It is not enough that it is in the Constitution and that is why we are challenged that we are like chicken which have been set free and they cannot move. If you have been put in darkness for long--- I was in the National Youth Service – the pre-university thing - and the day we were released we started running and screaming because we thought people were chasing us. This is because we had been locked up for three months, such that when we were released, it looked odd and we did not believe it. In the same manner, this is not an instantaneous thing for women. So, we must be patient with women because the Constitution has given us these rights. But it is difficult. Not only is it difficult but--- I will give you an example of an advert that was run today by the Panel that is recruiting staff for the Independent Electoral and Boundaries Commission. When you look at the qualifications that they set out from a gender perspective, very few women will be able to apply. That is because one--- I have worked with the police even on issues of victim protection. Many of the police centers are very unfriendly to women. You are now telling them to apply and get clearance. Why can you not ask them to give certificates of the people who have been shortlisted? We are setting standards where gender discrimination is very subtle. It is not about telling women that they are excluded. It is about telling women--- For instance, you are advertising and you say: “You will be expected to work until 6.00 a.m. in the morning. You know that there are very few husbands who will let their wives to work until that time.

I want to support and, in concluding, I want to say that I support two Commissions. I am supporting the Gender Commission and the Human Rights Commission only. In future, when we get to a level where we are comfortable, as a country, with issues of gender inclusion, we will need to restructure the Commission back to one, so that we can save the resources of this country. We should not create big entities that the country cannot afford.

With those few remarks, I beg to support.

(Mr. Duale stood up in his place)

Mr. Affey: Madam Temporary Deputy Speaker, I stand here to---

The Temporary Deputy Speaker (Dr. Laboso): Hon. Duale, we are just about to get to you. We know that you are fasting.

(Mr. Duale withdrew from the Chamber)

Mr. Njuguna: On a point of order, Madam Temporary Deputy Speaker. Is it in order for Madam Temporary Deputy Speaker to persuade a Member to come back and make a contribution in the House, when he has made a decision to move out of the House?

Ms. Karua: On a point of order, Madam Temporary Deputy Speaker. Is it in order for my colleague to try and dictate to the Chair? In this House, we have all entrusted the authority to the Chair. Is my colleague in order?

The Temporary Deputy Speaker (Dr. Laboso): Hon. Njuguna, I was aware of where Mr. Duale was coming from. That persuasion did not convince him. He has left. So, could we continue?

Mr. Affey: Thank you Madam Temporary Deputy Speaker. I intend to take the least minimum time because this is a very obvious Bill. It is an important Bill. The Minister was very right in insisting that the Commission must, truly, be independent. I know that the Minister was under considerable pressure not to allow the establishment of this Commission. But I want to salute him for that wisdom and foresight. The reason why, for the last several years that there has been a struggle to change our Constitution as a country, is basically on account of two things. One was on account of human rights, while the other was on gender and equality.

This country has been so unequal in all facets of life that every time we have an election as a country, we have gone to war. We have been fighting over who should become President. In the past, if you became the President, you were synonymous with all the resources that would go to your home area, your clansmen and to your region. But the Constitution that we have now is so focused that, for the first time, we shall have an independent strong commission that will take care of both gender and equality issues. I just want to request the Minister that, when we will reach the stage of carrying out amendments to this one, we will look at equality issues. This Bill is very strong on gender, but very weak on issues regarding equality. I think that if we empower issues regarding equality, particularly discrimination based on the region that one comes from, the religion that we profess--- It is not highly strengthened in this Bill. If we do that, we can go a long way in creating a country that we can truly be proud of.

On the issue of gender, I want to salute women Parliamentarians; Ms. Martha Karua and Mrs. Sophia Noor are here. I salute all women Parliamentarians for struggling to establish, even in this Parliament, a Committee on Equal Opportunity. That Committee, which I have the rare privilege of Chairing, is as a result of the struggle of the women Members of Parliament. They felt that issues regarding women and general discrimination were so pronounced that they required a committee to deal with them. Therefore, the Standing Orders that we have, word for word, which established the Committee, are what the Minister has put in this Bill.

I want to strongly support and say that is country will be better off with that Commission. Right now, we have a problem in monitoring the two-thirds percentage of appointments in the Governments. In every appointment made by the State, two-thirds must not be of one gender. The women of Kenya are suffering. If you look at the appointments that have been made recently by the Government, the President and the Prime Minister, they do not meet the two-thirds threshold to support the women of this country.

Madam Temporary Deputy Speaker, recently, the military announced some promotions. I was surprised because, in my mind, I was wondering whether we do not have female officers in the military. The CGS, Deputy CGS, Chief Airforce Commander and Deputy Airforce Commander are all men. It is important that in future--- It does not happen anywhere else in the world. But it can happen in Kenya.

(Loud consultations)

Madam Temporary Deputy Speaker, could you protect me from hon. Kioni?

The Temporary Deputy Speaker (Dr. Laboso): Hon. Kioni, allow the Member to contribute.

Mr. Affey: If the jobs are so serious that women cannot occupy them, then they should not be employed in the first place. A Commission like this one is important. It must be equipped and those who will serve in it must be truly qualified. They must understand what it is supposed to achieve.

With those few remarks, I beg to support.

The Assistant Minister for Roads (Mr. Kinyanjui): Thank you Madam Temporary Deputy Speaker, for giving me this opportunity. From the onset, I will require to be protected from hon. Kioni, whose position is, clearly, not in tandem with the House. I would like to take this opportunity to thank the Minister for taking the opportunity to bring this Bill. I would like to say that we have come a long way as a nation. I remember the few times that I have had an opportunity to interact with other Members of Parliament from other countries. They have come to acknowledge that the strides we have made, as a Parliament are, indeed, commendable. The inclusion of the one-thirds in all jobs in the Government is the first in Africa and, if implemented to the letter, will bring far-reaching transformation in our society and, therefore, give opportunity to our sisters and mothers to participate in nation building.

It will be remembered that our African traditions did not have very kind positions for women in the society. It will be remembered that even in the African proverbs and in the African culture, any mention of a woman, especially from where I come from, is normally in the negative. Some of the practices and cultures that we find in our African societies are completely repugnant. I hope that, as we set up that Commission, we will try and address some of the traditions that have, over time, impacted negatively on our children through oral literature, stories and passing from one generation to another. As children grow, especially girls, they have always known that they are inferior to the boys or their counterparts for that matter.

It will also be remembered that, when you talk about the girl-child, and especially when you think about them when they are in school, they face many challenges. Some of the challenges include girls getting pregnant while in schools. One of the biggest challenges facing us is when they get pregnant in schools, and some of the people responsible are teachers.

The most that we can do is to transfer the teachers concerned from one school to another. Sometimes, we may interdict them for a short while and then return them to the service and, therefore, the problem continues; we know this is happening in many places. When this happens, the girls often drop out and their lives change forever, and for the worst. So, I hope that these are some of the issues that we will be able to address. Also we should remember that this issue of children, or ladies, getting children, especially when they are in school, and the men not taking responsibility is a matter that probably needs to be looked into. I remember when we were at the university that matter came up. The issues of these pregnancies really came down by more than half because the students were now forced, through the Dean of Students, to cater for the expenses of the ladies.

Without such structures, the men really do not care. The issue of children out there without proper care will continue to escalate.

Madam Temporary Deputy Speaker, also allow me to say that the role of men in parenting--- Gender is not just about women; I think we have said that from the day children are born and during their upbringing, men are expected to play a critical role. There was a suggestion at some other time that when women go for their maternity leave, we should also consider giving men some little time to also be able to give support to their spouses, so that they can feel appreciated and part of the family. This and many others are very important.

I also want to add that the issue of inheritance is, indeed, one of the biggest challenges that we continue to face in our society. Most of the cases in the High Court and in other lower courts are about inheritance. In our society, girls are not supposed to inherit anything. When they die most of our parents have no will and, therefore, you find that there is a long and protracted struggle for women to get recognition, and for them to be able to get their due share of their inheritance from their parents. I hope that through this Commission, we will be able to address some of these issues.

Madam Temporary Deputy Speaker, allow me also to say that as much as I would want to support this Bill, and I truly do support it, I am also asking myself how much money we have as a nation. I know in the last six months we have set up many commissions. Every time we look at the newspapers and see the remunerations that we will be giving to these commissions, at some point we may also want to ask whether we will be able to afford it as a nation. This is because it is good to say that the commissions are there and they will play a noble role, but at the end of the day, it is a question of affordability. We should also remember that there are many other competing services that we also require as a nation, and we need to ensure that we move ahead together.

With those few remarks, I support.

Mrs. Noor: Thank you Madam Temporary Deputy Speaker, for giving me this chance to contribute to this very important Bill. It is very clear in my mind that when we talk about a gender commission, it is a commission that will serve the women and men of this country.

Having said that, on behalf of the women of this country, I want to take this opportunity to thank the Minister for Justice, National Cohesion and Constitutional Affairs for hearing the cries of the women of this nation. Mr. Minister, this is a very important issue not only to the women of this country but also to everyone. Whenever the word “gender” is mentioned, everybody says that, that is a woman’s issue, but honestly, it is not so. It is about the development of this country based on gender.

Madam Temporary Deputy Speaker, there were references made when this issue was raised in the public domain that South Africa has combined the commissions and it has its own commission. When South Africa established the gender commission, it did not have other organs that were addressing issues of gender then; later on they established a whole Ministry that dealt with gender. They also have an office in the office of the President as we speak. So, those two institutions in South Africa are the ones that monitor, oversee and look into achievements and development of gender issues in South Africa.

Madam Temporary Deputy Speaker, whenever the issue of gender comes on board, particularly the two-thirds principle, it generates a lot of debate in the society, and

among lawyers in this country. Personally I had a lot of respect for--- Just the other day some lawyers told me in a public forum that the two-thirds principle is progressive. They said it is aspirational. I want to disagree totally with those lawyers. I am a lay woman but I understand. I have stayed long enough in the constitution-making process to understand what it means for something to be either progressive or mandatory. I can read for you Article 54(2) of the Constitution. It says: "The State shall ensure the progressive implementation of the principle that at least five per cent of the members of the public in elective and appointive bodies are persons with disabilities". That is progressive. The framers of this Constitution have indicated where they wanted progressive issues. The issue of the two-thirds principle is compulsory and something that should be achieved. Our eyes are open. We will watch and monitor and any office that is going to violate the two-thirds principle, we will challenge it, because the Constitution demands that. Let me tell the women of this Parliament and the very good friends, the men who have supported women on issues in this House; thank you so much.

We are talking about women because of historical injustices that have taken place. Women have been discriminated against for a long time. We have the capacity and the knowledge. We can do what a man can do, but the issue is we have a society that has given different roles to the women, men, boys and the girls. These different roles are reflected in our national representation, be it in Parliament, or in any office, because that is how the society dictates to us to behave. Since the society dictates it that way and it was wrong for the society to do that, this Constitution has corrected that. Thanks be to God. I do not want to take too long on this Bill, because it has already been communicated to my committee. We are looking at it. We had some few amendments that were brought by men and women of this country. We are looking at them; if they are viable and very important, we will forward them to this House and debate them.

Madam Temporary Deputy Speaker, I want to conclude by saying, "*Hongera Minister*". Thank you so much.

Mr. Njuguna: Madam Temporary Deputy Speaker, thank you for the opportunity to contribute to this very important Bill. Let me start by thanking the Minister for Justice, National Cohesion and Constitutional Affairs for the very candid manner in which he has handled constitutional Bills in this House. This Bill is overdue, because women of Kenya have been neglected, ignored and looked down upon for many years. This Bill will liberate the women of Kenya from this discrimination that they have experienced for so many years. Women of Kenya have suffered for the last 48 years without bitterness and, therefore, this Bill will really liberate them from stigmatization.

Women have played a critical role in this nation. They have educated sons and daughters. They have fed our children. Women have also provided fruitful leadership in our homes. We all acknowledge the leadership provided by the female leader at Makini Primary School; the good leadership provided at Alliance Girls High School, the good leadership provided at Kagwe Girls in my constituency, and the fruitful leadership provided by Professor Mugenda of Kenyatta University.

Madam Temporary Deputy Speaker, you will also realize that in the Provincial Administration, Ms. Clare Omollo has outstandingly rendered very fruitful leadership, and even Stella Kilonzo at the Nairobi Stock Exchange. She has expanded and stabilized a sector that was already in ruins. Women have excelled in other areas. In games, Ruth Waithera of the 400 metres and Jelimo of the 800 metres have excelled. They have really

marketed the name of our country. Many tourists have visited this country, thus increasing the per capita income in our country as a result of the exemplary performance by these two athletes. These two have been very good role models and good ambassadors for this nation.

Madam Temporary Deputy Speaker, I recall that during the Mau Mau struggle of 1952, women were left with children. Women became leaders of families. Women were beaten by loyalist, but they never gave up. At times, they were forced into second marriages. Other times, women have suffered unnecessary rapes. Women of Kenya supplied freedom fighters with food in the forest and nobody cares to recognize that critical role played by them. I recall that in 1922, I was not born then, but the first uprising in this country was led by a gallant woman of this country.

Madam Temporary Deputy Speaker, there has been a lot of historical injustice done to women. When men were detained, women were left with children. Those women suffered as a result of their husbands being detained. Land was taken. Women have continued to suffer in this country. I recall that this House passed a Motion to recognize the Mau Mau freedom fighters, and up to now, it has not been implemented. We request the Government to make sure that it is implemented, so that these people can really taste the fruits of Independence.

This Commission will be headquartered in Nairobi as per the recommendation in this Commission. Other offices should be located in other areas in the country. I would recommend that the intended branches be station at the County headquarters, so that services will be closer to people.

One major mandate of this Commission is to investigate complaints on atrocities, domestic violence, and even other wrongs that have been inflicted on women. Therefore, once it is passed, it will address some of the issues that have really denied women participation in the social and economic affairs of this nation.

Madam Temporary Deputy Speaker, I recall teenage girls being defiled at times by older men in the society. This has affected the learning of these innocent children. This barbaric action has really traumatised these innocent children. This Commission will not, therefore, allow some of these happenings in the society.

Women play a critical role in improving the economy of this nation. A women's fund that is already in place has not been given adequate funding. This must be enhanced so that women can continue to play a part in the economic life of this nation.

Madam Temporary Deputy Speaker, it is important to very strongly support this Bill. I, therefore, support the intention of this Bill.

Ms. Karua: Madam Temporary Deputy Speaker, I rise in support of the Motion. I must first begin by saying that the philosophy behind our agreement in Naivasha to form one Commission was the philosophy of a lean government; the same philosophy that advised the reducing of Cabinet Ministries to a specific number in the Constitution.

I do not think that we intended to have a lean Government, but have bloated Commissions. It would defeat the purpose of lessening the burden on the taxpayer. I, however, note that the Minister has proposed a maximum of five members for this Commission, which is commendable. However, I would urge that Section 9 of this Bill be enhanced by indicating that one of those five people must be a person living with disability. This is so, because people living with disability are likely to feel left out. Because we want to curb the number of Commissions, how about including them in this

Commission, so that the matters of equality for people living with disabilities are carried on Board.

I note in the nomination panel they are included, but we ought to amend to include one person living with disability. We ought to go a notch higher in line with a lean government by making sure that in the Commissions we are making this one and the earlier one included, only a maximum of three Commissioners become full time. The rest should be part time in order to achieve the objective of a lean government. That is one way of reducing the cost, although the Commissions have been split. I want to propose if that is done, then we can, as a Parliament and we should be persuaded, to accommodate the third Commission; the Administration of Justice Commission. The same arguments were given for the Gender and Equality Commission; that we are a country on the reform path. There are very many administrative wrongs committed by people in authority. We need a Commission dedicated to addressing justice. For that reason, I would propose that we accept three Commissions and cap the expense on expenditure by putting a limit to the number of commissioners and also indicating only a maximum in any Commission shall be full time.

Madam Temporary Deputy Speaker, my colleagues have already indicated “gender” is not the other name for “women”, because a lot of people think “gender” means “woman”. Gender refers to the sex differentiated roles of both genders, male and female. This Commission will not be doing women a favour, but will be doing both men and women a favour. This Commission is about inclusivity; making sure that all genders are included in nation building. When we do that, we do the nation a favour. We achieve development faster when we include both men and women in all spheres of public life. I am appealing to those who think, both men and women, because it is not only men who think the other name for women is gender, there are some women who also think the same. So, maybe, they should be sensitized to know that this is about our sex differentiated roles. It is about ensuring the inclusivity of both men and women.

This Commission is needed. I have seen even Members of Parliament, and sometimes, Ministers, who do not seem to understand issues of equality; equality of opportunity in competitive politics, equality of opportunity in jobs, and public life. This Commission is, indeed, very important to sensitize everyone including those in leadership, so that their utterances become responsible. This Commission is needed to sensitize policy makers so that their every action is informed by the guidelines given by our Constitution.

However, we must ensure that each of the commissions, including this one, deliver value for money to Kenyans. It is not enough to have a commission by name. We want to see the Commission working seven days a week, 365 days a year, living and breathing issues of gender inclusivity and equality.

Madam Temporary Deputy Speaker, I want to commend the Minister, but to ask him to apply the same reasoning when it comes to the Election Bill which must have a specific clause on how to achieve one-third representation of women in the National Assembly - the Senate is already provided for - and also in the County Assemblies. Let us not start talking of impossibilities. How impossible is it when we are commanded by the Constitution?

We have an obligation; we have to find a way of making this a reality. Where there is a will, there is a way. For those who seem to think that when you make

provisions for affirmative action, you are breaching the Clause on competition, I would refer them to Article 27(4) of the Constitution which clearly says that measures for affirmative action will not be taken to be breaching the clause on equality which is Clause 27(1).

We are asking for the same principles that guide us to have an equalization fund which gives additional funds to the areas marginalized in development to apply the same reasoning to measures to increase the numbers in Parliament of the gender that is excluded and that is the female gender, so that we can achieve not merely one-third. The move the world over is 50-50. Affirmative action will help us achieve one third. Our initiative will help us achieve 50-50, together with gender responsive qualities.

Madam Temporary Deputy Speaker, a lot has been said. I have seen the mandate of the Commission and I think the mandate is wide enough and we can include anything else that we feel is excluded. Because I do not want to be repetitive and other hon. Members have contributed, Section 11 is clearly just talking of the bodies that are nominating. I have no quarrel with it, it is quite inclusive. As I have said, Section 9 should be amended to read that those who are nominated as commissioners should include a person living with disability.

I have no intention of being repetitive and I beg to support.

Mr. Ogindo: Madam Temporary Deputy Speaker, I rise to support with a very heavy heart, bordering on opposing. The reason I want to nearly oppose this Motion is because---

The Temporary Deputy Speaker (Dr. Laboso): Could you decide whether you are opposing or supporting?

Mr. Ogindo: Madam Temporary Deputy Speaker, I rise to oppose.

We have just had a new Constitution. We want to seriously change the way things are run in this country. We have proposed a number of commissions, but my feeling is that the effectiveness of commissions must not be in their numbers, but in their commitment to their mandate.

I was looking at Article 59 of the Constitution which creates the Kenya Human Rights and Equality Commission. Under this, the functions are outlined. The last function outlined there is to perform any other function prescribed by legislation. In operationalizing the Kenya Human Rights and Equality Commission, I believe the Gender and Equality Commission issues could be mainstreamed there.

There is a risk when we create so many commissions for them to become too many and then they will disappear in our national radar. There is also the issue of funding. The leaner they are, the more effective they will be. As a matter of fact, if we were to think of the gender commission as being seriously designed to mainstream the female gender, the human rights commission has done well. We have seen it both under the leadership of either gender. It would even be better if we could ensure that we tilt the leadership and the numbers of commissioners in the Kenya Human Rights and Equality Commission in favour of the females, so as to mainstream the issues of gender and equality, particularly at the preliminary stages of our mainstreaming.

Madam Temporary Deputy Speaker, if we create so many commissions, we run a risk. It is on this account that I rise to oppose the creation of this Commission.

I beg to oppose.

Ms. Chepchumba: Thank you, Madam Temporary Deputy Speaker, for giving me an opportunity to thank the Minister for coming up with this Bill.

For a long time, issues of gender, particularly women and children issues have taken a back seat, especially in politics, the economic and social spectrum. Laws have discriminated against women and children. Even leaders in the past have taken this class for granted, both in homes and on the political front.

For those of us who have excelled in elective positions, it has taken us a lot of effort, persuasion and energy to go through these unimaginable levels to reach where we are. Thanks to the new Constitution, the National Gender and Equality Commission Bill will provide a window for the women in this country. Because they have been disadvantaged in the past, this Commission will provide them with space where their voice will be heard.

I want to say time has come for women to realize that they have space in this country. The one-third principle should give women in this country a chance to take up their space and to compete equally in all spheres, be it politics, in social places, even in parastatals; be it in any field. It has given an equal space for women. This Bill is timely and I want to thank the Minister for bringing it. This Commission should be independent. We should have separation of power. I know it is going to raise the status of women and the disadvantaged in this country and they will have a voice or a platform to realize their equal opportunity to compete in all spheres.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, as there seems to be no more interest, I ask the Minister to respond.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Speaker, what a privilege it is for a man like myself to stand here, two days running since yesterday, and meet unanimity in this House on such special situations like the creation and the restructuring of the Kenya National Human Rights and Equality Commission.

I am totally humbled by the perception and the perspectives that the Members have brought to bear. Even my good friend, hon. Ogindo, I want to assure you that I will seek him out and sit down with him because this conversation is not over. I hear you when you say that the effectiveness of commissions is not in numbers. I hear you when you say that these commissions might overlap. I hear you when you say that there will be challenges of funding, but please, also, kindly, listen to me. If I listened to you, listen to me when I say that the experiences of this country when it comes to gender - and when I talk about gender, I am not talking about just women, but I am talking about men and women. These issues cannot be buried again in the face of the new Constitution of 2010.

Madam Temporary Deputy Speaker, even in the face of these challenges which we are addressing, although the Constitution allows us to have nine members in the Commission, we have recommended five. In fact, in the course of next week when I bring other Bills that are set to come before this House, you will begin to see that the Cabinet is now moving away from full-time commissioners. In order to address this issue, the Cabinet will be recommending that as we continue forming these commissions, we utilize Article 252 which says clearly that some commissioners can even be part-time, so that Kenyans will not be frightened by the element of cost only, but will be encouraged and above all, promoted by realizing that these are issues that we cannot afford to wait.

There are those who are saying that South Africa, UK and America have one commission and are drifting towards one commission. Tell me, do they have female genital mutilation in America? Do they have the forced marriages of teenage girls in the UK? Will a South African man sit down to negotiate bride price for a female child, so that he can marry her off in support of culture, religion or in support of some of the issues that they have to go with such traditions? Indeed, if a person calling themselves a circumciser were to touch an American child to seek to circumcise that girl, they would go all the way to the Supreme Court and probably to Guantanamo Bay because it is a serious abuse.

Madam Temporary Deputy Speaker, luckily, you are presiding over this and I am encouraged in saying that the time for this Commission has come. In formulating this policy, we ended up with many meetings and, in fact, although this Commission is now under my Ministry, hon. Shaban was the Chair of all the policy development meetings that we held. We met with women, men, people with disability and all characters that comprise our beautiful country. The conclusion was that, at this point in time, our Kenyans should learn that Article 27 of the Constitution has now equalized men and women before, during and after marriage; it has equalized men and women, before, during and after life. This means that even after death, they are equal.

Until that culture is completely embraced and acknowledged in our psyche, thinking and in our daily lives, I will not be able to look my two granddaughters in the eye as the Minister for Justice, National Cohesion and Constitutional Affairs, if I were to let this opportunity slip away when I am facilitating the implementation of the Constitution. If I were to leave the issue of gender parity and balance unresolved, I am afraid, I do not think I will even be able to face my Lord Jesus Christ when the time comes. He would say: "I was a girl; you did not fight for my equality. I was a girl; you did not fight for my protection against female genital mutilation. I was a girl; you did not protect me when I was forced into marriage when I was a teenager". Never would I, Mutula Kilonzo, accept such a challenge when I go to Heaven because I know that that is where I am headed. I was saying these things to my good friend, hon. Ogindo, and suggesting that when the time comes, we need to meet.

Hon. Karua, I hear you very well. At some point, I am going to seek to have discussions regarding how best we can accommodate this proposal in the Administrative Justice Bill because His Excellency the President, when he was here on 22nd March this year during the continuation of this Session, said that this is one law that will be advanced by his administration. I have every responsibility to seek to engage the Members of Parliament, to continue debate, to seek meetings, so that we can understand that, even if the resolution reached in Mombasa is that we merge it with the Human Rights Commission, they should be merged in a manner that protects the interests of our Kenyans. But I do not want to say that at this point because I am still looking at the matter and discussing it.

Madam Temporary Deputy Speaker, on the issue of no more than two-thirds of any gender being in legislative bodies, I want to tell hon. Sophia Noor that when you look at Mutula, trust me, my position is that it should be fifty-fifty. I ceded ground in all these negotiations to accept the principle of one-third or two-thirds depending on whether you look at the cup as half empty or half full. My party stands for fifty-fifty. My party nominated a Kenyan woman as a running-mate for our Presidential candidate, but the

Kenyan women did not vote for her. We probably are going to do the same when we come to next year's elections. Therefore, I do not want anybody wasting time coming to the Ministry of Justice, National Cohesion and Constitutional Affairs to convince us on the principle of two-thirds gender because the Minister is led by ODM-Kenya which stands for fifty-fifty in all these systems. Therefore, I accept the historical injustices that hon. Sophia Noor has mentioned. We must correct that.

Hon. Njuguna has spoken extremely well and we will develop this law bearing in mind the issues he raised. So did hon. Affey when he said that we should emphasize equality, and I will be bringing amendments to emphasize equality, so that this is not just dealing with gender.

Allow me to ask Kenyan men and some women also who are in doubt about this Commission; what will happen when at some point the Kenyan population will vote, out of the 290 Members, 280 women? Who will fight for the men at that point? It can happen if Kenya continues to produce women of this caliber; the ones I am looking at like hon. Odhiambo-Mabona, who can even attract men all the way from the South and the men accept to come and live and settle here. We also have hon. Wavinya attracting men all the way from the western part of the continent. What will stop Kenyan women from controlling 90 per cent of the House? Who will defend Mutula at that point? Therefore, when we talk about National Gender and Equality Commission, we are going beyond the sex. We are actually looking at the equality of our human beings.

Madam Temporary Deputy Speaker, Sir, I have spoken for far too long on a subject which is self explanatory. Therefore, allow me to beg to move.

Thank you.

(Question put and agreed to)

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

Second Reading

THE UNCLAIMED FINANCIAL ASSETS BILL

(Mr. Lekuton on 4.8.2011)

(Resumption of Debate interrupted on 4.8.2011)

The Temporary Deputy Speaker (Dr. Laboso): Hon. Midiwo was contributing when this debate was interrupted last time, and he is not here. So, I will give the Floor to any other hon. Members who is interested in contributing to this Bill.

Yes, Dr. Oburu!

The Assistant Minister, Office of the Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Madam Temporary Deputy Speaker, I stand to support the Bill.

Just to give a little background to this particular Bill, during the National Economic and Social Council (NESC) meeting held on 27th and 28th July, 2007, the Macro Economic Committee of the NESC presented a report prepared by a company

known as “Unclaimed Property Assets Registrar (Kenya) Limited”, which estimated unclaimed assets held by many institutions in Kenya to be around Kshs200 billion.

The report further indicated that there was no legal requirement for the institutions to declare the unclaimed assets that they held, and that unclaimed assets needed to be reunited with their rightful owners, or beneficiaries. Where they are untraceable, the assets should be transferred and held by the Government Exchequer or an independent agency of Government.

Mr. Temporary Deputy Speaker, the report went on to say that unclaimed assets can provide a huge non-tax revenue base for the Government, such monies can be used for long-term investments in projects such as the infrastructure development envisaged under Vision 2030. The report suggests that a comprehensive legal and regulatory framework should be developed urgently to address the issue of unclaimed assets.

This was the background which led the Ministry of Finance to establish a task force on 19th March, 2008. The aim of the task force was to ascertain the nature, extent and value of unclaimed financial assets in Kenya. The task force members were drawn from the key sectors of the Kenyan financial system. It comprised representatives of key regulatory bodies, including the Central Bank of Kenya (CBK), the Insurance Regulatory Authority, the Capital Markets Authority and the Retirement Benefits Authority.

Madam Temporary Deputy Speaker, the task force came up with recommendations. Before the recommendations were made, a very detailed analysis of unclaimed financial assets in Kenya revealed the following: Surveyed institutions in the banking, capital markets and insurance sectors reported total unclaimed assets of Kshs9.1 billion. Of this total, banks reported Kshs7.4 billion; listed companies, Kshs1.5 billion; insurance companies, Kshs283 million; the National Social Security Fund (NSSF), Kshs243 million; and Kenya Power and Lighting Company (KPLC), Kshs66.8 million.

The reported unclaimed assets were far below the originally estimated Kshs200 billion. However, this could be attributed to a number of factors, the main ones being exclusion of non-financial assets like land and other property, significant under-reporting by holding institutions surveyed, particularly in the pension and insurance sectors, and non-reporting of unclaimed assets by Government agencies such as the Public Trustee.

Madam Temporary Deputy Speaker, the analysis revealed that actually the extent of reporting was completely inadequate and, therefore, after making the detailed analysis, the task force came up with four options.

The first option was to either maintain the current legal and regulatory framework largely unchanged. The current legal and regulatory framework continues unchanged with a relative approach to a policy making and regulation.

The second was to introduce a voluntary legal and regulatory framework. This option requires that all participating institutions holding unclaimed financial assets volunteer to participate in a self regulatory regime. This option would imply that institutions holding unclaimed financial assets exercise their discretion either to participate or not as they are not compelled to do so either by law or principle.

Option three is to introduce a mandatory legal and regulatory framework within the regulators. This option entails the use of existing systems and infrastructure of regulators to domicile the unclaimed financial assets agency.

Given the Government policy stance of not creating new agencies but rather consolidating agencies---

The Temporary Deputy Speaker (Dr. Laboso): Assistant Minister, we are getting a little bit confused with your contribution. Can you not summarize this with the results of ---

The Assistant Minister, Office of Deputy Prime Minister and Ministry of Finance (Dr. Oburu): Madam Temporary Deputy Speaker, I was just giving the background. I want to conclude by saying that the Ministry even drafted a Bill. We support Hon. Lekuton's Bill because most of the things which were contained in the Bill by the Ministry are now contained in the Bill by the hon. Member.

With those few remarks---

The Temporary Deputy Speaker (Dr. Laboso): Are you going to support the Member's Bill or you are going to take it over as a Government?

The Assistant Minister, Office of Deputy Prime Minister and Ministry of Finance (Dr. Oburu): We are supporting the Bill.

The Temporary Deputy Speaker (Dr. Laboso): Unfortunately, the mover is not here.

Mr. Ogindo, please, proceed!

Mr. Ogindo: Madam Temporary Deputy Speaker, I rise to support the Bill.

It is very clear that there are so many assets that are unclaimed. The reason for this is that, in Kenya, most people die intestate and there is no regulatory framework of reuniting these unclaimed assets with the potential inheritors. This Bill seeks to create a regulatory framework.

Madam Temporary Deputy Speaker, it is clear that most of the benefiting entities would oppose this Bill. Amongst those are the insurance companies, banks and even some trusts. There are a number of people whose lives get ruined not because there is nothing to take care of them but because there is no mechanism of uniting them with what would have been ordinarily bequeathed to them. We would be failing in our duties as legislators if we do not provide a framework through which we re-unite members of the society and what ordinarily should belong to them.

Madam Temporary Deputy Speaker, there are people who have left this country and gone out. It is important that a framework is put in place. I want to agree with the Assistant Minister in his suggestion that some of these unclaimed assets may not eventually find their owners or inheritors at all. It is important that in the event that that is the situation, there is a framework through which these assets are utilized for the benefit of the larger Kenyan population, instead of benefitting a few individual members who did not even sweat for them.

With those remarks, I want to support.

Mr. Njuguna: Thank you, Madam Temporary Deputy Speaker, for giving me an opportunity to contribute to this very important Bill.

Madam Temporary Deputy Speaker, this Bill is very timely and, particularly, during this era of accountability and transparency. We realize that the Mover of this Bill really worked very hard to direct his thoughts to those huge assets that are held by many players in the society, and benefiting those people who hold these assets, disregarding the asset owners. These assets are being held by the commercial banks, like the Kenya Commercial Bank, SACCOs, insurance companies and even church welfare groups. We realize that about Kshs20 billion is already held by these sectors. This money could be put into good use and improve the economy of this country. These funds could be

channeled to the education sector and improve, particularly, the new National Schools that we intend to open in the 47 counties, by way of constructing them and equipping them well. The same funds could also be directed to irrigation schemes and hence, fighting hunger in this country.

Madam Temporary Deputy Speaker, this is a well intended Authority, which I feel bound to support. It should be established as fast as possible. The people to be appointed to manage this Authority must be vetted properly, so that the intended goals will be realized.

Madam Temporary Deputy Speaker, with those few remarks, I fully support the Bill.

Ms. Chepchumba: Madam Temporary Deputy Speaker, I want to thank hon. Lekuton for coming up with this Bill.

Madam Temporary Deputy Speaker, there are people who have huge assets that they cannot have access to probably because they have passed away. These unclaimed assets are with banking institutions, insurance companies, SACCOs, like the teacher's Saccos, farmers' Saccos, including the fallen farmers' institutions like the Kenya Farmers Association (KFA) and the then Kenya Co-operative Creameries (KCC). These unclaimed assets are benefiting a few individuals who are making huge profits. We have orphaned children and widows, who for one reason or another, because their husbands probably were working in the cities and may not have disclosed some of the accounts that they held. Such miserable children who are orphaned do not deserve to be in the state they are. The widows, too, are living in abject poverty because they cannot access these unclaimed assets.

Madam Temporary Deputy Speaker, this Bill has come at the right time. This institution should be set up so that it can disclose these assets. If the owners of these assets cannot be traced, they can be put into good use to develop our country, be it in terms of roads, schools or hospitals. I want to thank hon. Lekuton for this Bill which is timely. We will move this country forward by making use of these unclaimed assets.

Madam Temporary Deputy Speaker, I beg to support this Bill.

Mr. M'Mithiaru: Thank you, Madam Temporary Deputy Speaker. I rise to support this Bill---

The Temporary Deputy Speaker (Dr. Laboso): Hon. M'Mithiaru, you will have 20 minutes to continue contributing in our next Sitting.

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Laboso): Hon. Members, it is now time to adjourn the House. The House is, therefore, adjourned until Tuesday, 16th August, 2011, at 2.30 p.m.

The House rose at 6.30 p.m.