

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 22<sup>nd</sup> February, 2012

The House met at 9.00 a.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### PASSING ON OF THE HON. JOHN NJOROGI MICHUKI

**Mr. Deputy Speaker:** Hon. Members, it is with very deep shock that we have learnt of the passing on of the hon. John Njoroge Michuki, EGH, MP, the Minister for Environment and Mineral Resources last night at the Aga Khan Hospital Nairobi following an illness.

The hon. John Njoroge Michuki has had an illustrious and chequered career having served both in public and private sector for most of his life.

The late hon. Member was born in 1932 at Muguru Village, Iyego Location, Kangema Division, Murang'a County. He went to Kiangunyi and Muguru Primary schools. Later on, he proceeded to Nyeri Intermediate School and Mangu High School for his Secondary Education.

In 1961, he joined Worcester College, a constituent college of the University of Oxford, United Kingdom, where he studied Economics, Finance and Public Administration. He served as a District Assistant, District Officer and was appointed the first African District Commissioner in Nyeri District. He was later appointed Permanent Secretary, Treasury, in 1965 up to 1970. He later served as the Executive Chairman of the Kenya Commercial Bank (KCB) from 1970 to 1979, when he left public service to plunge into the world of politics and concentrate on business.

*(Several hon. Members stood at the Bar)*

Hon. Members at the Bar may walk in, please.

*(Members standing at the Bar entered the Chamber)*

Mr. Michuki made his debut in the House in 1983 when he was first elected to Parliament as a Member of Parliament for Kangema Constituency. He was re-elected as Member for Kangema Constituency in 1992, and has served the people of Kangema in his capacity until this untimely death yesterday, 21<sup>st</sup> February, 2012.

In his political career, he served in various positions, including being an Assistant Minister for Finance (1983 to 1988); Minister for Transport and Communications (2003

to 2005); Minister for State for Provincial Administration and Internal Security (2005 to 2007); Minister for Roads and Public Works in 2008, and subsequently, Minister for Environment and Mineral Resources in the Grand Coalition Government.

As a Public servant, the late hon. John Njoroge Michuki leaves a legacy of hard work and firmness in his discharge of duty. He will be remembered for restoring sanity in the public transport, culminating in what has been popularly referred to as “ Michuki Rules” of February, 2004.

He is also remembered in the restoration of the Nairobi River where many pessimists believed it would never be realized and a no nonsense approach to security issues which was the hallmark of Mr. Michuki.

He pioneered in the world of entrepreneurship and has been a leading light in this venture.

In Parliament, he will be remembered as a stickler to Parliamentary rules and procedures. He would always rise on a point of order to seek the Chair’s intervention and clarification whenever he believed that the provisions of the Standing Orders were being breached.

To most of his friends and admirers, the late Michuki was a beacon of hope, a level headed personality who never shied from speaking his mind and whose performance in whatever public positions bestowed upon him was beyond reproach and frankly startling.

The late hon. Michuki was a family man and he leaves behind his wife and children. During this time of sorrow and grief, on behalf of all Members of Parliament and on my own behalf , I send our heartfelt condolences to the family, relatives, friends and the nation for the tragic loss of a gallant and illustrious son of Kenya, the late hon. John Njoroge Michuki.

The void left behind will be difficult to fill. May the good Almighty God rest his soul in eternal peace.

Amen.

In our usual tradition I request all Members to rise up in their places and observe a minute of silence in honour of our departed colleague.

*(Hon. Members observed a moment of silence)*

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. I want to thank you for that. But as I do so, I want to remember that this is the first Minister to die in office from the time we lost hon. Kijana Wamalwa. Could you kindly allow ten minutes, so that any hon. Member who wants to pass condolences using the Dispatch Box may do so?

**Mr. Deputy Speaker:** Fair enough! It is granted!

**Dr. Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I was rising so that you could allow me to make that---

**Mr. Deputy Speaker:** You have not caught the Chair’s eye yet!

Yes, hon. Midiwo!

**Mr. Midiwo:** Thank you, Mr. Deputy Speaker, Sir. Let me take this first and earliest opportunity to pass my condolences to the family of the late hon. *Waziri*.

Mr. Deputy Speaker, Sir, I happened to think that it will be such a loss to this country because hon. Michuki was a rare human being. We hope and wish that many

Kenyans, particularly Members of the Executive, will emulate his life when he worked as a public servant.

Thank you, Mr. Deputy Speaker, Sir.

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I am joining the family in sending my heartfelt condolences. But, we the villagers of Malinya in Ikolomani, knew hon. Michuki in a very special way, because a son of that village, Zachariah Bukhala Shimechero, was a classmate of hon. Michuki at Mang'u High School. After they left Mang'u High School they served the colonial government. Bukhala Shimechero went on and became a Deputy Commissioner of Police. But more importantly, hon. Michuki then went on to be a District Officer in Kakamega. In fact, it was him who welcomed Mboya and hon. Kibaki, when they wanted to popularize the KANU party, so that they could overthrow the colonial government. We will miss him for this.

Mr. Deputy Speaker, Sir, as the Chairman of the Public Accounts Committee (PAC) – and I can speak with an element of authority because I have been there for almost five years now – we have looked at the accounts of many Ministries and never found fault with a Ministry that had been superintended upon by hon. Michuki.

*(Applause)*

Mr. Deputy Speaker, Sir, hon. Michuki has left an indelible mark in all the dockets that he has served. We hope that the children of this country will live to replicate the spirit of hon. Michuki. For the sake of this country, we want to call upon current Ministers, and future Cabinet Secretaries, to emulate hon. Michuki and accept that it is possible to make it in life and assemble wealth without having to do so through corrupt means.

**The Minister for Lands (Mr. Orengo):** Mr. Deputy Speaker, Sir, I also wish to express my condolence to the family, country, President and Prime Minister for the passing away of a great Kenyan.

Mr. Deputy Speaker, Sir, I remember in 1993 hon. Michuki, together with His Excellency the President, visited my constituency. For a period of three days we were in Ugenya and parts of Western Province. It did not occur to me at that time that he had worked in that area and knew Busia District and Siaya District very well. He could remember very many people in the area, the challenges in the area and what obtained at the time when he was an administrator in that part of the world.

Mr. Deputy Speaker, Sir, but more importantly, it is rare that you have somebody who speaks his mind. It is better to do business with somebody you know and what he stands for at anytime. You may not agree but, at least, with hon. Michuki, at all times in this Parliament, Cabinet and any other fora, you could not second-guess him. This is something that is rare in us, as human beings and individuals.

Mr. Deputy Speaker, Sir, I must also express my gratitude to the late hon. Michuki in the struggle to bring about change in this country. Some people may not know but many times we were beaten at Kamukunji and other places, where he stood up against the system at that time; always carrying his *mkwaju* ready for battle. I think we have lost a great Kenyan. May the good Lord rest his soul in eternal peace.

**The Minister of State for Special Programmes (Ms. Mathenge):** Mr. Deputy Speaker, Sir, I also want to join my colleagues in giving my condolences to the family of

hon. Michuki. I think he was a hero in his own way and a principled man. Having gone to school and been a District Officer (DO) in Nyeri, he actually has a family in Nyeri. I remember everytime we met in Cabinet he would ask me: "Are you taking care of my family in Nyeri?"

Mr. Deputy Speaker, Sir, we shall miss him in the Cabinet and also his strength. He did not care whether or not you believed in what he said. He stood by what he believed in. We shall truly miss him. I hope that we can all emulate a little bit of what he had. If we could only borrow 10 per cent of what hon. Michuki was, I think Kenya can be a great country.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, I also want to join Kenyans in giving my condolences to the family of the late hon. Michuki. That is one of the people I respected in this country, because he stood firm in what he believed. It did not matter whether or not you agreed with him. I respect that in a person.

Mr. Deputy Speaker, Sir, I also respected his strength of character. Even when the going was tough, he stood firm in what he believed. I also respected the fact that he delivered. If half of us worked as hard as him, this country would be very different.

Mr. Deputy Speaker, Sir, finally, one of the memorable things that I remember about hon. Michuki is in 1997 when there was a reform wave in the country. The civil society together with Opposition met in Ufungamano. The youth then decided that they wanted a violent revolution. He did not know who I was, but he held my hand and told me: "Young lady, go and talk to your colleagues. If this is the way you are going, then Parliamentarians are leaving this process." Indeed, the Parliamentarians left. I think we need to remember him for promoting peace, that saw us move forward during difficult times.

**Ms. A. Abdalla:** Mr. Deputy Speaker, Sir, I wish to join Kenyans and my colleagues in sending our condolences to the family of hon. Michuki and the people of Kangema.

Mr. Deputy Speaker, Sir, in the last Parliament, those of us who would not dare call hon. Michuki on his face called him "Uncle Mich" because he kept saying: "You young people, do not look for shortcuts." Anytime you praised him for a good thing he did, he would say: "If you did not want to do it, do not do it at all, if you do not plan to do it as well."

The other thing that we really admired him for is that if he gave you a 10.00a.m. appointment and you went to his office at 1.15 a.m., he would tell you: "I should not see you. This is why Kenya is lagging behind. Time is a resource."

With those few remarks, I send my *pole*.

**Dr. Nuh:** Mr. Deputy Speaker, Sir, I also want to join my colleagues in passing my condolences to hon. Michuki's family and the entire nation. I want to say with humility that when I was still a student, and when the Ministry of Transport was handed over to hon. Michuki, I had a stereotype that any old guard should not serve in any capacity in the public service in this nation. I was of the view that they should go home and retire.

I think he was one man who changed my stereotype. I now know that there are old men who sometimes can serve better than us. It was just a week ago when I wrote a letter to hon. Michuki, asking him to convene a meeting on issues of environment in my

constituency. I knew that he would do it if he lived to the date. It is only that I did not know that this fate was awaiting him.

How I wish that both the young and the old in this country, who are entrusted with duty to serve in any capacity, could perform and be diligent in serving this country as did hon. Michuki; I give my condolences.

**The Minister for Higher Education, Science and Technology (Prof. Kamar):** Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to join my colleagues in passing my condolences to the family of hon. John Michuki. I have worked under hon. Michuki as his Assistant Minister. He was a very intelligent man. He was very courageous. He was a man who was extremely thorough in everything that he did. This country is going to miss him.

I think I happen to be the last person to have been in an official function with him. We were in a meeting in Durban, South Africa, in December, 2011, preparing for the meeting that is coming in June. At that time, in fact, he did mention to me that he was going to the United Kingdom for an eye clinic – something we knew previously at the Ministry. I want to say *pole* to the family.

Mr. Deputy Speaker, Sir, hon. Michuki has left us at a very interesting time. Hon. Michuki was supposed to be hosting the Governing Council as the host Minister of the United Nations Environment Programme (UNEP). As hon. Members are aware, on Wednesday, our President went to open the UNEP Governing Council, where we had all the world's Ministers of Environment converging at the UNEP Headquarters. I am sure that they are going to be devastated by news of his passing on. He was not able to read his own statement on that Monday.

We really owe hon. Michuki a lot in the Ministry of Environment and Mineral Resources. He has been the one who has been carrying the banner of UNEP confirmed as a UN organisation that is headquartered in Kenya. It is the only UN organisation that is based in Kenya.

Mr. Deputy Speaker, Sir, we can never complete describing the work that this man has done. I believe that we will have other opportunities to do so. For now, I just want to say that the man we have lost is a man who has done a lot for this country. Switching Ministries for hon. Michuki did not matter, because whenever he moved to a new Ministry, he learned very fast and he was very thorough.

May God rest his soul in eternal peace.

**Dr. Laboso:** Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to also send my sincere condolences to the family, friends and relatives of the late hon. John Michuki. This is a man we would all want to emulate. He is a man who has left a legacy. This is a man who--- We would all want the same things to be said about us when we are no longer here. The best that we can do is to really remember the good work that hon. John Michuki has done for this country – the legacy of hard work, the legacy of never saying die, the legacy of making sure that once you are given an opportunity to serve you do your very best and make a difference.

I want to say, on my own behalf and on behalf of the people of Sotik whom I represent, that we are truly going to miss hon. John Michuki.

**The Minister for Agriculture (Dr. Kosgei):** Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to express my condolences to the family of hon. John Michuki and all his friends.

Hon. John Michuki was a candid person. If you wanted a candid opinion, you spoke to hon. Michuki. I have worked with him, as most hon. Members here have done. When I ran to him as a District Officer a long time ago I thought “this is what I would like to be”. Working and sitting next to him in the last four years has enriched my own experiences, because hon. Michuki brought all his experiences to the work that he did.

Mr. Deputy Speaker, Sir, I would like to say how much I respected hon. Michuki for his hard work, and for never shying away from giving you his own advice on what was really the problem. Last year, I went to him for support. He gave that support willingly and candidly, and I left his office feeling that I had learnt more than I expected when I went there.

All we can say is, May God rest his soul in eternal peace!

Thank you.

**The Assistant Minister, Ministry of State for Provincial Administration and Internal Security** (Mr. Ojode): Mr. Deputy Speaker, Sir, let me also join my colleagues in sending my condolences to the family of hon. John Michuki.

On behalf of my constituents and on behalf of the entire Ministry of State for Provincial Administration and Internal Security staff, I would like to say that we have lost an honest person. We had a courageous and respected person. Hon. Michuki was a man who said “no” for a “no”. He was not a sycophant of anybody. This was the man. We will never see hon. Michuki again. He would tell the truth and nothing but the truth. He is gone!

Mr. Deputy Speaker, Sir, I would like to appeal to my colleagues to emulate what hon. Michuki stood for, and not to be sycophants of somebody, or say a “no” for a “yes” and a “yes” for a “no”. That was hon. Michuki.

May God rest his soul in eternal peace.

**Mr. James Maina Kamau:** Mr. Deputy Speaker, Sir, I thank you for giving the chance to send my condolences to the family and Kenyans for the loss of hon. John Michuki.

Hon. John Michuki was a very admirable person; he a very admirable character. He was a very courageous politician. He was a gentleman you would love all the way. The last time I talked to him was sometime last year. That was before he fell sick. I asked him: “Brother Martin” – that is what I used to call him – what is the secret behind your success as a politician?” He told me: “Whatever job you are given, do it to perfection. Whatever job you are given, do not complain. Give it the best in your life.”

We had that conversation over a cup of tea in our restaurant. Those who come from the same county with him will remember him as a gentleman who did not actually do what you told him. If you asked him a question, he would pause and tell you: “That is not possible.” As some of us have said, if you needed some help from him, he was not the type of person who would tell you to come tomorrow. He would pick up a phone and do exactly what you wanted him to do at that particular time and finish with you.

We will miss him a lot in Murang’a County. He was a good leader. So, I join all Kenyans in sending my condolences to his family and the people of Kangema.

Thank you very much.

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, allow me to join my colleagues in passing my condolences to the family and the constituents of the late hon. Michuki. A few people are praised when they are alive. This Parliament in many debates did

recognize the role Michuki played. I do remember many Backbench Members have always accused the Parliament and told the Government if this Government had 10 Michuki's this country would go far.

A question was brought to Parliament, not to query why something was being done in the wrong way, but how the Minister has managed to clean Nairobi River. The same House did recognize the role he played as the Minister for Transport. He is among the very few Ministers when he was transferred from the Ministry of Transport there was outcry in the country. This tells you the kind of person we are talking about. This House will miss him; Kenyans will miss him and we do pray that the Lord rests his soul in eternal peace.

**The Minister for Public Works (Mr. Obure):** Thank you, Mr. Deputy Speaker, Sir, for giving me the opportunity to join hon. Members and the Kenyans in conveying our condolences to the family of a very prominent Kenyan.

I have known Mr. Michuki from the 1970s when he was an Under-Secretary at the Ministry of Finance. I know that he performed his assignments with commitment. He was very effective in that capacity.

Mr. Michuki was a no-nonsense person. He did not mince his words and he did not know how to pretend. He was a very focused and disciplined person. He believed in personal discipline, order and efficiency even in the delivery of public service. This is exemplified most when he tried to bring order in the *Matatu* industry. He has left a very good example for all of us to emulate. That is the best we can do for a person as prominent as Mr. Michuki who has left a very good example for all of us.

We all join together in wishing his family every success and encouragement at this particular moment.

**The Assistant Minister, Ministry of State for Defence (Maj.-Gen. Nkaisserry):** Mr. Deputy Speaker, I would also like to take this opportunity on behalf of myself and the people of Kajiado Central to pass our condolences to the family, friends and constituents of the late hon. John Michuki.

Mr. Michuki was a very courageous man. He was a very honest man. He was a very forward-speaking man. He was a man who can be an example to all the leaders of this country. We miss a great leader of this nation.

On behalf of myself, my family and my constituents, I wish to send my condolences to the friends and constituents of the late John Michuki.

**Mr. Njuguna:** Thank you, Mr. Deputy Speaker, Sir. I also take the opportunity to join my colleagues to convey my condolences to the bereaved family. I have no words to describe the character of the deceased. I vividly recall the very nationalistic and patriotic advice the late Michuki gave political leaders at Ihura Stadium when we went there for a prayer meeting.

The late John Michuki was a very eloquent and dependable leader. The Kenyan nation has lost a true friend. The gap that he has left is immense. The agony that we will feel for the loss of this person will take long to leave our memories. He was a great leader.

**Mr. Kathuri:** Mr. Deputy Speaker, Sir, I also want to send my condolences to the family. On behalf of Manyatta people, we feel that we have lost a great Kenyan. There was a day when we were saying in Embu that if only Michuki could be taken back to the Ministry of State for Defence despite his advanced age, the *Al Shabaab* would be a thing

of the past. If there was a bold man in Kenya, it was Mr. Michuki. At one time, I happened to be in the *matatu* industry and he invited us for a workshop in Mbagathi. Instead of even saying *jambo* to us he started bashing us on issues which were genuine. He was bold enough to confront us despite the fact that the *matatu* industry is concentrated more in Murang'a.

If we even remember how he handled the Mungiki issue, despite the fact that it is in his backyard. This shows that we had a determined Kenyan. It was immaterial how others would look at it, but he was focused to ensure that he got rid of all the problems that Kenyans were facing.

With those many words, may the Lord rest his soul in eternal peace.

**Mr. Cheruiyot:** Mr. Speaker, Sir, mine is also to join the rest of Kenya in passing my condolences to the family of Mr. Michuki on my own behalf, on behalf of the people of Kuresoi and those who have served in the Provincial Administration. Mr. Michuki was a man who believed in efficient organization. He was firm, but fair. So, we will miss him. Thank you.

**Mr. Keynan:** Mr. Deputy Speaker, Sir, on my behalf and on behalf of my constituents, I would like to join other Kenyans in sending condolences to the family of the Minister, his constituents and Kenyans. I have had an opportunity to work with Mr. Michuki in the Eight Parliament in the Finance, Planning and Trade Committee. If there is one man who truly believed in hard work, honesty and determination in handling national issues, it was Mr. Michuki. I want to say that this is by the grace of God. Truly we pray for his soul in the hereafter.

Thank you.

**Mr. Deputy Speaker:** Mr. Bahari and then we will have the final word from the Deputy Leader of Government Business.

**Mr. Bahari:** Mr. Deputy Speaker, Sir, I want to join my colleagues in conveying my condolences on my own behalf and on behalf of Isiolo County to Mr. Michuki's family.

Listening to FM radio stations and to this House, Kenyans are unanimous about the competency of the late hon. Michuki in his public career. My own personal engagement with the late Mr. Michuki is that the age did not matter. He always had a word of advice for everybody.

With those few remarks, I want to, once again, say *pole* to the family.

**Mr. Deputy Speaker:** Hon. Members, it is clear that given the history of Mr. Michuki and the dear place he enjoyed in our hearts, all of us, every hon. Member would want to give an opinion, but we will take the last one now from Mr. Amos Kimunya and then proceed to the next business.

**The Minister for Transport** (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir, for this opportunity. On behalf of the Government, the people of Kipipiri and my own family, I want to take this opportunity to send heartfelt condolences to the family and the people of Kangema and all the friends of the late John Njoroge Michuki who we all met and who has been described very honestly in this House for the work that he has done for this country in the 81 years that he has been around.

Mr. Deputy Speaker, Sir, the hon. Michuki was a personal friend of mine. Indeed, in April of 2002 not known to many people, it was hon. Michuki and the current President Mwai Kibaki, we sat together the three of us and Mr. George Muhoho and they



persuaded me to join politics. So my political life has a bearing in that discussion that we had together in a round table and he has always been a source of personal inspiration to me. I will remember the moments that we spent together and the wise counsel he has always given me. I will be missing a friend and a personal inspirer.

In 2008, during those very difficult times, I do remember we worked tirelessly together with hon. Michuki and, indeed, one of the major achievements we did which was not known to people until he actually announced it during the referendum was working on the first coalition bringing together ODM-(K). We negotiated that with hon. Michuki, myself and the team.

Mr. Deputy Speaker, Sir, hon. Michuki has always told us it does not matter whether you are taking the right or the wrong decision but make sure you make a decision. Do not leave until tomorrow what you must do today. Those are the words I will take away from the times we spent with him. I do believe most of us will be inspired in the remaining time that we have in this Parliament to do what we must do for the benefit of this country regardless of whether people appreciate it or not. Whether people like it or not, we should do it so long as we believe it is the truth.

With those words, I beg once again to console the family. Let them know that we are together with them in prayers. I would also like to ask this House to dedicate our minds and prayers to all those other people who are ailing at this point.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. I am just seeking your guidance and really pleading with you to let a few more of us give our condolences. It is a unique thing; the passing of a Member. I really want to plead with you. I know you had given your ruling but it is within your discretion to extend a little.

**Mr. Deputy Speaker:** Fair enough! The Chair is clearly inclined also to grant that and the Chair has granted that.

Do you wish to be one of the first ones on this?

Ms. Martha Karua, please, proceed!

**Ms. Karua:** Thank you Mr. Deputy Speaker, Sir.

I want to give my condolences to the family and friends of the late John Michuki. I want to recognize him as a Kenyan who was hard working and when he put his mind on an issue, he would exhaust it to the end. I want to admit that although we started as allies, towards the end we were not political friends. Nevertheless, I want to recognize him as a great Kenyan who made his contribution to this country.

May his soul rest in peace.

**Mr. K. Kilonzo:** Mr. Deputy Speaker, Sir, as I rise to give my condolence to the family of the late Minister Michuki, I also just want to tell my colleagues and the country at large that I am also bereaved; I lost my mother in-law Joy Karangua just the same time we lost the Minister. Therefore, I rise with a heavy heart because I know what it means to lose a loved one. The family of Michuki is now feeling the pain of a departed one. Many things have been said about Mr. Michuki. He was a great son of this country. He was a dedicated servant of the people of Kenya.

May the good Lord rest his soul in eternal peace as He does the same to my mother in-law; the late Joy Karangua.

**Mr. Deputy Speaker:** The Chair has just realized that one region that has not been considered is the Coast.

Let us have Mr. Duale then Mr. Mwadeghu and that should be the last one!

**Mr. Duale:** Mr. Deputy Speaker, Sir, I want to join my colleagues and the nation in sending my condolences and that of the people of Dujis to the people of Kangema, Mr. Michuki's family and friends.

Mr. Michuki has left a legacy both in the private sector and the public sector. Those of us young leaders of this country and many generations have something to borrow from the life of the late Michuki. I remember as a good friend of the Minister, when he bought you lunch at Parliament or a cup of tea, he could tell you the condition was that you do not use your phone when sitting with him. I remember him expelling Mr. Keynan one day for sitting with us and still wanting to use his phone.

Mr. Deputy Speaker, Sir, the private sector is going to miss him because he was a very successful private sector practitioner. The public sector is also going to miss him. The Cabinet, the nation and this House is also going to miss him.

May his soul rest in peace.

**Mr. Mwadeghu:** Mhe. Naibu Spika, ninaomba kuchukua nafasi hii kuunga wenzangu mkono kwa kutuma rambirambi kwa familia ya mwendazake John Michuki, Mbunge wa Kangema.

Ninakumbuka mwaka jana tulikuwa na mhe. Michuki Mombasa tukishughulika na Mswada wa Madini ambao tunautarajia uje hapa ili tupate kuona utaweza kutusaidia namna gani.

Mhe. Naibu Spika, ni ombi langu kuwa wale ambao watabaki wakichukua wadhifa huo watashughulikia Mswada huu wa Madini maana ulikuwa umefika mbali sana na mhe. John Michuki alikuwa ameuweka maanani.

Ninaomba Mola aiweke roho yake pahali pema peponi.

**Mr. Deputy Speaker:** Next order!

## **PAPERS LAID**

The following Papers were laid on the Table:-

Report of the Departmental Committee on Local Authorities on the County Government Bill (2012).

Report of the Department Committee on Local Authorities on a Transition to Devolved Government Bill (2012).

Report of the Departmental Committee Local Authorities on the Inter-Governmental Relations Bill (2011).

*(By Mr. Sirat)*

**Mr. Deputy Speaker:** Next Order!

## **NOTICE OF MOTION**

### **EXTENSION OF PRESCRIBED PERIOD FOR ENACTMENT BILLS**

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

THAT, aware that pursuant to Article 261 (1) and the Fifth Schedule thereof, the following Bills now pending before this House namely; the Land Bill (2012), the Land Registration Bill (2012) and the National Land Commission Bill (2012), are required to be enacted by this House not later than 27<sup>th</sup> February 2012; further aware that these Bills seek to implement critical and fundamental aspects of the Constitution, noting that owing to delays in the drafting, publication and presentation of these Bills to the House, the time left before the 27<sup>th</sup> of February 2012 is not appropriate for this House to effectively study and scrutinize the Bills and engage with the public as required by the Constitution and debate and pass the Bills into law; noting further that the hon. Speaker of the National Assembly has certified that there exists exceptional circumstances in accordance with Article 261(3)(b) of the Constitution; this House resolves to extend the period prescribed in respect of the enactment of these Bills for a period of 60 days commencing 27<sup>th</sup> February 2012.

**Mr. Deputy Speaker:** Next Order!

## **POINT OF ORDER**

### **HANDLING OF IEBC REPORT BY COMMITTEE ON JUSTICE AND LEGAL AFFAIRS**

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

**Mr. Deputy Speaker:** What is your point of Order, hon. Midiwo?

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, I wish to ask for your indulgence to seek a clarification over an issue which is concerning very many hon. Members of this House. I would like the Chair to give some directions. This is about the boundaries report which is about to make its way to this House.

Mr. Deputy Speaker, Sir, I have an issue because as a Whip, many hon. Members have been calling me. Especially last night, I received about 20 calls from hon. Members asking me which way to go.

We are all aware that a report has come from the Independent Electoral and Boundaries Commission (IEBC) which is being considered by the Departmental Committee on Justice and Legal Affairs which is concerned with the implementation of the Constitution. But the issue being raised by hon. Members is whether this Parliamentary Committee has any powers in any law to change the recommendations of the IEBC.

*(Applause)*

Mr. Deputy Speaker, Sir, I want to refer you to Article 89(2) of the Constitution. It says:-

*(Mr. Ruto stood up in his place)*

I am on a point of order!

**Mr. Ruto:** It is a matter of procedure, Mr. Speaker, Sir.

**Mr. Deputy Speaker:** Order! What is it, Mr. Ruto?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, Standing Order No.46 prohibits--- The gist of the point of order which the hon. Member is raising anticipates debate---

**Hon. Members:** Yes! Yes!

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I think it is not in order! Unless that matter is before the House, it is against the rules of the House for the hon. Member to anticipate debate!

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

**Mr. Deputy Speaker:** Order! Can you allow hon. Midiwo to conclude?

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, I am not debating any report! I want to say that I have not seen the report. However, I just wanted to bring to the attention of the Chair the fact that as a Whip, many hon. Members are calling me and I think it is good to put the record straight.

Mr. Deputy Speaker, Sir, I wanted to refer you to Article 88(4)(c) of the Constitution of Kenya which says that the delimitation of constituencies and wards is a function of the IEBC. It also says that people who cannot sit on the IEBC, one of them is a Member of Parliament; which Members of this Committee are Members of Parliament.

Mr. Deputy Speaker, Sir, Article 89(2) says:-

“The Independent Electoral and Boundaries Commission shall review the names and boundaries of constituencies at intervals of not less than eight years---”

The point I am trying to raise here is that hon. Members are at war, that the Committee whose role should just to look and table “yes” or “no”, the report from the IEBC, are already changing the boundaries as we speak!

*(Applause)*

We need your direction.

Mr. Deputy Speaker, Sir, I also want to seek your direction further. What would be the role of the IEBC? Would that power be delegated to a Parliamentary Committee? We want that direction so that hon. Members do not quarrel with the Committee! I just want you to protect the Committee!

I thank you, Mr. Deputy Speaker, Sir.

*(Mr. Ruto stood up again in his place)*

**Mr. Deputy Speaker:** Order, Mr. Ruto! You have raised an issue about anticipation of debate. The hon. Midiwo is not debating the anticipated debate.

*(Mr. Ruto stood up in his place)*

**Mr. Deputy Speaker:** Order! Can you sit down when the Chair is speaking?

*(Mr. Abdikadir stood up in his place)*

Order, hon. Abdikadir!

Hon. Midiwo, if I get it right, is actually questioning the principle, the logic and the constitutionality of a matter which is basically supposed to be in the docket of the IEBC on whether a Parliamentary Committee has that responsibility to either change or whatever.

*(Applause)*

Yes, Dr. Khalwale?

**Dr. Khalwale:** Thank you, Mr. Deputy Speaker, Sir. I want to agree with the hon. Member that we must be extremely clear on what it is that the Committee attempts to do. However, we also have to answer the following. What was the intention of the report going to the Committee? As the Chair makes that judgment, my understanding is as follows. The reason why this matter goes to the Committee is for the Committee to accompany that report as they table it with recommendations.

Mr. Deputy Speaker, Sir, there are those recommendations upon which we will debate and either agree with those recommendations or reject them. Having finally, as a House, agreed on the kind of recommendations we want to give to that report, those agreed positions by this House will then be taken to the IEBC and the Commission will treat those recommendations by this House in the same manner that they treated the views when they collected views from the public.

*(Applause)*

I, therefore, would like to request the Chair that you allow the Committee to do what they are doing, they bring the report here, we look at their recommendations and we either agree with them or adjust them. When we are finally agreed, we hand those recommendations to the IEBC and allow the Commission to enjoy its independence under the Constitution by deciding whatever it wants to decide about the recommendations of this House.

**The Assistant Minister for Energy** (Eng. M.M. Mahamud): Mr. Deputy Speaker, Sir, I do agree with hon. Midiwo that, in fact, what we are hearing is that the Committee is doing its own review process. It is very unfortunate because hon. Members are all interested parties and we would have wished that the Committee would have looked at the merits and demerits of the report and just brought it to this House for debate and not for them to change it and become another Commission.

I thank you.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, first of all, I think it is important for this House to know exactly what the Departmental Committee on Justice and Legal Affairs' mandate is in this process. The Act talks about resolution and it does not talk about changing the report from the Commission. We need to be very clear as we proceed forward. What is the Departmental Committee on Justice and Legal affairs supposed to do? This is because when the people of Kenya decided, by passing the Constitution, to set up the IEBC and even stated that hon. Members are not supposed to be members of that Commission, they wanted to protect this Commission from the shenanigans and manipulation of the political class.

Mr. Deputy Speaker, Sir, the Commissions – both the “Ligale” and the current Commission held meetings across the country and hon. Members were party to those meetings many times. We are supposed to make presentations and recommendations of what we feel just like other Kenyans. I am one of those Members of Parliament who have complained. When you hear that a part of your constituency is being hived off by a Committee of Parliament to another constituency then you are supposed to be worried and ask who has given this Committee those unnecessary powers! The mandate of the Committee is to present the report of the Commission to this House and we either reject or pass it.

**Mrs. Odhiambo-Mabona:** Mr. Deputy Speaker, Sir, while making your decision, I would want to urge that you consider what the import of the law that we passed is. There are Members who are very furiously opposed to that law and as Members of Parliament we unanimously passed a law saying that we pass the Report here. When we pass a report to Parliament, does it go to a committee or does it come to the whole House. You need to make that decision.

The other issue I would want you to decide on is even though we are saying that we are not anticipating debate, I would like you to rule as to how Members know what is in the Report. This is because they did not sit in the Committee. I know as a fact that when we were adopting the Report the Members who are raising those issues were not in our Committee.

Thirdly, I am glad that hon. Mbadi has declared his interest of opposing this Report because he came to our Committee and he was opposing the inclusion of Ruma from Suba South to Suba North. That is the bone of contention!

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Order, hon. Members! We need to protect the dignity of the House. The issue is not a debate on the content of the Report itself. For all practical purposes we do not have the Report yet. The issue is of a much bigger magnitude whether, indeed, when you talk of the Independent Electoral and Boundaries Commission (IEBC) that independence is from the legislature, the executive or any other institution for that matter. So, can you confine your own contributions on this to the constitutionality of the process being undertaken by the Committee right now and the role of the Committee and the plenary in this matter?

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, I am of the opinion that we are anticipating debate. We are being told about a Report that the Chair has not seen and yet we expect the Chair to make a ruling on a matter that the Chair is not aware of. It is my understanding that---

**Mr. Deputy Speaker:** We are talking about the principle!

**Mr. Kabogo:** Mr. Deputy Speaker, Sir, may I have my chance to say this: It is my humble opinion that we should allow the process that is going on to continue. Let the Committee bring whatever it will bring to the House. If we have a feeling that what they are doing is unconstitutional, we shall deal with that matter at that point in time. It is my opinion that the Speaker does not have the capacity to gag that Committee on whatever they are doing. Let it come to the Floor so that we deal with it from here. If any Members have issues, let them raise those issues with the Committee.

**Mr. Deputy Speaker:** You have made your point, hon. Kabogo!

**Mr. Midiwo:** Thank you, again, Mr. Deputy Speaker, Sir, for giving me this small chance. Let me clarify to the House that the issue I am raising has nothing to do with the Report. I am only questioning how far the Committee can go being that the Constitution says that Members of Parliament cannot be involved in the review of constituencies. The Constitution is very explicit.

**Mr. Abdikadir:** On a point of order, Mr. Deputy Speaker, Sir. Is hon. Jakoyo Midiwo in order to mislead the House that Parliament does not have powers over these matters when the Constitution itself gives Parliament those powers? Under Article 82, the Constitution states that Parliament shall enact legislation to provide for the delimitation by the Independent Electoral and Boundaries Commission of electoral units for election of Members of the National Assembly and County Assemblies. Under Article 88(5) the Constitution states: "The Commission (the IEBC) shall exercise its powers and perform its functions in accordance with this Constitution and national legislation." We passed that national legislation. Under Schedule V of that Act, we said how the IEBC was going to undertake this process. It is very clear.

The IEBC had limited time and it was supposed to give that Report, not to Parliament, but to the Departmental Committee on Justice and Legal Affairs which would handle it for two weeks and then report to this House. The House would deal with the matter for one week and then it would go back to the IEBC. At that point, the IEBC is not bound. They are free to exercise its independence.

Commissions are not independent unto themselves. They are not a vacuum. The people of Kenya were giving their views. Where they independent of those views? No! On the issue of Parliament and the Commissions, it is important to note that the Commissions are State organs. They are not *raia*. They are State organs. They are paid out of the State coffers. They are appointed through a legal process. All State organs are subject to the oversight of Parliament. That is the Constitution. Every State organ is subject to the oversight of this House.

*(Applause)*

Finally, Mr. Deputy Speaker, Sir, unless we have the Act and we have this process, the IEBC has no role in the first review. The only way they come into the first review is by this process. Hon. Midiwo supported this Parliament regarding the Ligale Report for political purposes. Now he is opposed to Parliament dealing with this Report for political purposes. We cannot accept that!

*(Applause)*

**The Assistant Minister for Industrialization** (Mr. Muriithi): On a point of order, Mr. Deputy Speaker, Sir. For the third time, on a point of order!

**Mr. Deputy Speaker:** Order! If you are trying to force the Chair you might find yourself in trouble. So, you had better wait for your time.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, just so that Mr. Abdikadir can get to know, this is a political process. I am not opposed to the Report. I am opposed to the jerrymandering of the Report. It is selective for Mr. Abdikadir, who is a lawyer, to read

the Constitution up to the point where Parliament's role was to pass legislation. We did that and I supported that. However, the same Constitution under Article 88(2)(1) eliminates any Member of Parliament participating as a member of the IEBC. Whatever you are doing, you are doing work that is meant for the IEBC.

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Allow the hon. Member to conclude!

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, all I am saying is that we need your guidance over what this Committee can do and cannot do. Remember, the Committee has even gone out to seek views of Kenyans a duty which I believe does not belong to this Committee. You need to guide us on this matter. Why are they seeking opinion and yet that mandate is not given to them in this Constitution. Even in the Act they are not given that mandate.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. No matter how much the debate is heated, is the hon. Member in order to use words which not parliamentary like the word "jerrymandering."

Mr. Deputy Speaker, Sir, he is already imputing improper motives on the Committee. It is simple; you cannot say it is parliamentary.

**Mr. Deputy Speaker:** Fair enough! You made your point.

**The Assistant Minister for Industrialization** (Mr. Muriithi): On a point of order, Mr. Deputy Speaker, Sir. My name is Nderitu Muriithi, Member for Laikipia West.

Mr. Deputy Speaker, Sir, the import of the hon. Midiwo's argument is to suggest that the Act governing this process is itself unconstitutional. He asking the Chair to find that the schedule that laid out the role of Parliament and a Committee of Parliament in this process is itself unconstitutional. He says that a Member of Parliament is not expected to be a Member of the Commission itself.

Mr. Deputy Speaker, Sir, in my humble opinion, this is not correct. I agree with hon. Abdikadir that independence of a Commission is not to say it exists outside the universe. It is independent of control or direction. It is not independent to the extent that it will not listen to the Chair, or me, or the House or all Kenyans. The whole purpose of the process is to have a Commission that listens to every view and makes the most useful proper constitutional set of Counties, constituencies and wards, so that Kenya might move forward correctly.

Mr. Deputy Speaker, Sir, in my view, in fact, we should not really be having this debate. The Committee should finish its process and bring their recommendations to us. If the House does not agree with those recommendations, it will be at liberty to throw them out. If the House agrees with those recommendations, then those recommendations will be passed on to the IEBC. I agree that boundaries of wards and constituencies are political question. However, what really is the purpose of political leadership, if every single time, we have to reduce it to a zero something that I must win so that you lose. We have just spent an hour eulogizing the late John Michuki for courage to speak even when it may not be in his favour. All we need is to have the right constituencies---

**Mr. Deputy Speaker:** You have made your points!

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



The Constitution is very clear, and the national legislation is very clear. If you are entertaining this because of democracy, it is the high time you made a ruling to protect the dignity of this House.

Mr. Deputy Speaker, Sir, hon. Midiwo is on record having opposed even the question on process? I do recall he opposed that question from the word go. This is politics he is playing, and you should not allow.

**Mr. Deputy Speaker:** Order! With due respect, I will protect the dignity of the House by staying dignified. The matter here has to do with constitutionality. Could give your points on whether this is constitutional or not exactly like the way everybody else did. However, you cannot attack the character of somebody.

*(Mr. Bahari stood up in his place)*

Order, hon. Bahari!

**The Minister for Lands** (Mr. Orengo): On a point of order, Mr. Deputy Speaker, Sir. I think that it will be very difficult to determine how the House can move on this matter because we do not have any material before the Committee or before us. That put us in a very difficult position. But as far as I know, the relevant legislation requires the Committee to place two documents before this Parliament. The first document is the report of the Commission. That report must come before this House without any alteration. Accompanying that report would be the recommendations. Those recommendations are distinct and separate from the report of the Commission. So, I think it would be difficult to deal with this issue before we have the material from the Committee itself.

The only point, and again that is very difficult for me to say, at this moment, before I see the report and the recommendations, is that the authority as to delimitation is an authority that is vested on the Commission alone. The Constitution spells out very clearly in Article 89, how you can review the decision of that Commission and that is by filing a petition in the High Court. That is the only way we can review the decision of the Commission. So, I think what Parliament is doing is, probably, to give a little bit of information to the Commission, which they can take or leave out. But the most important thing is that the Committee or Parliament should not be seen to be undermining the authority of the Commission, because the Constitution says it is an independent Commission, and those words are very important.

**Ms. Karua:** On a point of order, Mr. Deputy Speaker, Sir. I want to say that my learned colleague has taken words from my mouth. Yes, the Commission is independent and is the only one vested with the authority to review boundaries. However, the Parliamentary Committee also has a role given to it by law, to look at that report. It is really a balancing act that while performing its duty the Committee does not go beyond or rather violates the constitutional mandate of the Commission. Since we can only get that when the report is laid, we ought to let it be laid before the House, and if anybody thinks that the Committee has exceeded its mandate that is the point at which this House can then tackle it.

**Mr. Olago:** On a point of order, Mr. Deputy Speaker, Sir. At the risk of belabouring the point, I wish to say that the relevant issues that have been canvassed before you this morning by hon. Abdikadir first, hon. Orengo and hon. Karua---

Parliament has got a process to undergo in this process. What Parliament is doing is simply consultative and within the law. I am afraid to say that hon. Midiwo used two words which I want to remind you about. He said he believes in the role of Parliament in the process. What he does not believe in is jerrymandering of the process. You cannot discuss jerrymandering unless you see the contents of the report. So, as much he may not be happy with certain ideas that we think are in the report, and which we have not seen yet, I think it will be in the interest of the House that we hold our peace, we wait for the report to be tabled. At the debating time, we can raise all objections, if we wish. In the meantime, I urge and plead with you that you should not make a ruling on this matter.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): On a point of order, Mr. Deputy Speaker, Sir. I think we are belittling the important role that the Act of Parliament gave to the Departmental Committee on Justice and Legal Affairs. The role of that Committee is to look at the Report of the IEBC and then look at the errors that the Commission may have committed. So, it is a very important exercise. They look at the issues, reasoning of the Commission, errors the Commission may have made. They look at the constituencies that may have been given constituencies, which they deserve. They look at the ones which deserved but did not get. So, this is a very important exercise. We should allow the Committee to look at the IEBC report, bring their recommendation here. We debate them and either approve or disapprove them. So, I think we should allow the process to proceed. It is only after we have seen the Report, then we can make our comments.

However, I would like to advise the Committee is that they need to seriously look at the Commission's report; look at all the errors the Committee has made because they have made some errors, look at all the constituencies that got constituencies, and did not deserve, and look at the ones who deserved and did not get. That is very important.

**Mr. Namwamba:** On a point of order, Mr. Deputy Speaker, Sir. I am rising on a point of order. I do not know whether I would be in order to draw the attention of the House as we grapple with this very weighty matter? A law enacted by this very House in July last year--- In that law, the Independent Electoral and Boundaries Commission (IEBC) Act, 2011, this House, in its own wisdom, provided a roadmap in the Fifth Schedule to that law. That schedule is titled: "*Provisions Relating to the First Review*".

Mr. Deputy Speaker, Sir, let me draw your attention particularly to Sections 3(3) and 3(4) of that Fifth Schedule. Allow me to put the same on record. Section 3(3) reads: "Upon the expiry of the period provided in Sub-paragraph (2), the Commission shall within 14 days review the proposed delimitation of boundaries considering the views received under that sub-paragraph and submit the revised preliminary report of proposed boundaries to the parliamentary committee."

Mr. Deputy Speaker, Sir, Section 3(4) then, which I believe is of critical significance to this debate, provides, and I quote:

"The parliamentary committee shall within 14 days of receipt of the revised preliminary report under Sub-paragraph (3), table the revised preliminary report in the National Assembly together with its recommendations."

Mr. Deputy Speaker, Sir, the law goes further to say: "The National Assembly shall within seven days of the tabling of the revised preliminary report consider the revised report and forward its resolutions to the Commission."

Mr. Deputy Speaker, Sir, therefore, the law is very clear and straightforward. The committee has a mandate to receive the report from the commission. The committee has a mandate to make recommendations to this House on that preliminary report; this House has the mandate to make resolutions. Those resolutions, in my humble interpretation of this law, will be based both on the preliminary report of the commission and the recommendations of the committee. That is the law enacted by this honourable House itself. So, I believe that it would be in order to allow the committee to proceed to table the revised preliminary report of the commission together with its recommendations.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I wish to particularly endorse the views expressed by my colleagues, hon. Namwamba and also hon. Abdikadir and those others who have spoken. The truth is that this committee has followed to the letter the spirit of the Constitution and also the IEBC Act, 2011. This is what we are trying to do.

Mr. Deputy Speaker, Sir, finally, what we are presenting to Parliament is a report with recommendations. It will still be the mandate of Parliament to adopt or reject these recommendations. Lastly, I wish to indicate that I have the IEBC report, the committee's recommendations and I am ready to table them, if I am given that opportunity. Thank you.

Mr. Deputy Speaker, Sir, I will request you to make an order as to whether I can table the report.

**Mr. Deputy Speaker:** You have already made your request! Parliament transacts its business in an orderly and traditional manner. You do not stand up, beckon forth and keep on making demands.

Under the circumstances, the Chair is of the opinion that, indeed, the matter, weighty as it is, can be handled in the second round after the committee tables the report. The Chair will still give a communication on the same this afternoon on all the matters that were raised. That will be this afternoon at the start of the business of the House. Thereafter, the committee can proceed and table its report on condition that you also follow the laid down procedure, which is that that report must find its way to the office of either the Speaker, or the Deputy Speaker, at least two hours before the resumption of Parliament this afternoon or tomorrow morning, and get approval; but the Chair is going to give a communication on the same this afternoon at the start of the business of the House.

Hon. Members, given the fact that the House has taken a lot of time on this matter, which clearly is weighty as is indicated by the amount of passion and the engagement of the Members of Parliament, the Chair directs that all the Questions appearing on the Order Paper today be deferred to tomorrow. We shall handle Questions tomorrow.

## QUESTIONS BY PRIVATE NOTICE

### ALLOCATION OF LAND TO ST. MICHAEL PRIMARY SCHOOL

(**Mr. Ruto**) to ask the Minister for Lands:-

(a) Is the Minister aware that the proprietor of Bomet Teachers' Training College has fenced off about 33 acres of public land, including 4 acres belonging to St. Michael's Primary School in Bomet County?

(b) What steps will the Minister take to ensure that the irregularly acquired land is restored to the public?

(c) Could the Minister direct that St. Michael's Primary School be formally allocated the land and given unfettered access for development?

*(Question deferred)*

#### MEASURES TO STOP BOYCOTT OF COURTS BY BUNGOMA ADVOCATES

**(Dr. Khalwale)** to ask the Minister for Justice, National Cohesion and Constitutional Affairs:-

(a) Is the Minister aware that Advocates at the Bungoma High Court have been boycotting court sessions since 2011 in protest of the shortage of judges at the court?

(b) What measures will the Minister take to arrest the situation, which is denying Kenyans access to justice?

*(Question deferred)*

#### PRODUCTION OF FOOD DELIVERY NOTES TO TUMAINI/NGETETI/WANARUONA IDP CAMPS

**(Mr. Mututho)** to ask the Minister of State for Special Programmes:-

(a) Could the Minister table copies of all delivery notes for food supplied to IDPs in Tumaini Vision IDP Camp in Maai Mahiu, Ngeteti and Wanaruona IDP Camps in Gilgil from August 2011 to date?

(b) Could the Minister also confirm how many IDPs are currently malnourished and are facing starvation within Nakuru County and when will the Ministry address the fate of the 6 families within Vumilia Eldoret IDP Camp in Maai Mahiu who have been consistently neglected?

(c) What urgent measures are in place to comply with Article 43(b) and (c) of the Constitution in order to stop more deaths and when will the victims be compensated as contemplated in Article 46(d) of the Constitution?

*(Question deferred)*

#### ORAL ANSWERS TO QUESTIONS

*Question No.987*

#### FUNDING OF SPECIAL/TECHNICAL INSTITUTIONS BY GOVERNMENT

*(Question deferred)*

*Question No.1004*

ACQUISITION OF PREMISES FOR KENYA'S HIGH COMMISSION IN UGANDA

*(Question deferred)*

*Question No.1019*

MEASURES TO IMPROVE SECURITY ALONG NAKURU/ELDORET HIGHWAY

*(Question deferred)*

*Question No.1177*

REVERTING OF PLOT L.R. 1246/1/3 TO GOVERNMENT

*(Question deferred)*

*Question No.1231*

DETAILS OF BOREHOLES DRILLED IN TANA RIVER COUNTY

*(Question deferred)*

*Question No.1270*

EMBEZZLEMENT OF MONEY AT MULTI-MEDIA UNIVERSITY COLLEGE

*(Question deferred)*

**Mr. Deputy Speaker:** We shall now proceed to the substantive business of the House, which is the Bills which are before us and the Procedural Motions. business Next Order!

### **PROCEDURAL MOTION**

EXEMPTION OF BUSINESS FROM PROVISIONS OF SO 38(2)

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I beg to move the following Motion:-

THAT, the business appearing in today's Order Paper be exempted from the provisions of Standing Order 38(2), being a Wednesday Morning, a day allocated for Private Members' business.

Mr. Deputy Speaker, as hon. Members will recall, this special Sitting was called at the request of hon. Members to discuss the pending business, which is mainly the Bills that are scheduled in the Constitution and need to be approved by this House before the 27<sup>th</sup> of February. Hon. Members informed the House Business Committee (HBC) that it would be in the interests of this House to dedicate all the time available to the discussion of these Bills, and pend all the other business until the conclusion of these very important constitutional Bills.

Mr. Deputy Speaker, Sir, I am aware that when we looked at this matter yesterday in the HBC, we were undecided as to whether we should list Private Members Motions; again most of the hon. Members who would have wanted to move their Motions this morning are also engaged in the committees. The better thing to do was to anticipate the support of the hon. Members in terms of the exemption rather than bring the whole list of Motions that would have to be discussed if this Motion is not carried. Again this is coming at the request of the hon. Members. So, for those hon. Members who might be wondering how come we do not have any Motions listed, it is a matter that we actually looked at and said that we should be very clear since hon. Members want to discuss the Bills. We decided not deal with the two types of business because there was really a request.

Mr. Deputy Speaker, Sir, again, this is a Procedural Motion. I do not wish to delve deeper into the merits or demerits of taking the Wednesday morning; after we complete all the Bills all the afternoons will be available for Private Members' business. I want to call upon hon. Orengo to second this Motion.

*(Mr. Deputy Speaker left the Chair)*

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

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to second and really I have nothing more to say.

*(Question proposed)*

*(Question put and agreed to)*

## **PROCEDURAL MOTION**

### **REDUCTION OF PUBLICATION PERIOD OF LAND BILL**

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.107, this House orders that the publication period of The Land Bill, Bill No.6 of 2012 be reduced from 14 to nine days.

Hon. Members will recall that The Land Bill has been extensively discussed and it would have come to the Floor of the House together with The Land Registration Bill and

the Land Commission Bill. However, because of the extensive consultations, its publication was delayed to take into account some of the inputs coming from the stakeholders. It is important, as we discuss these other Bills that Members also have access to The Land Bill and make the necessary cross references. In fact, the three Land Bills should be taken together in the House because they are inter-related. Indeed, The Land Bill is the mother of all the other Bills, like the Land Registration Bill and The Land Commission Bill. It would be desirable, accordingly, that we facilitate its coming to the Floor of the House for the First Reading so that it can be formally committed to the Committee, and as the Committee looks at it, we also look at the other Bills and continue with debate in tandem.

Again, this is also going to take the goodwill of the Members and their intention to facilitate the completion of Debate on these Bills. I will take the cue from the gesture that has been given to us by Members in forfeiting the business of Wednesday morning to facilitate this business to take place. Again, I wish to request hon. Orengo to second this Procedural Motion.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

## **BILLS**

### *First Reading*

#### THE LAND BILL

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

**The Temporary Deputy Speaker** (Mr. Imanyara): Before I call out the next Order, the Minister for Lands with the concurrence of the Leader of Government Business thought that Order No.12 comes before Order No.11. I do not see any reason why I should not permit that. So, I will rearrange the orders so that Order No.12 comes before Order No.11.

### *Second Reading*

#### THE NATIONAL LAND COMMISSION BILL

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to move that The National Land Commission Bill be now read a Second Time.

As you know, the issue of land has been emotive and it has attracted debate and attention. It is not only debate and attention, but it has also been identified as a source of conflict and disputes over the years. Under the new constitutional order, it was believed

that the entire land law regime should undergo a fundamental transformation so that the historical problems that we have suffered in the land sector are dealt with comprehensively and with some element of finality.

It is for this reason---

**The Temporary Deputy Speaker** (Mr. Imanyara): Please, guide me. What is the position because I am not certain that I am in the picture, there having been a request pending for a Debate tomorrow; arising out of the Speaker's Communication and whether that has any bearing to the business you are now transacting.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I think as long as that anticipated Motion has not been moved, it is not on the Floor of the House.

**The Temporary Deputy Speaker** (Mr. Imanyara): Has a notice not been given?

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, notice has been given but the House has not resolved either way whether to extend or not to extend.

**The Temporary Deputy Speaker** (Mr. Imanyara): Suppose the Debate ended today? Suppose we debated this and the Second Reading ended today? I just want to be clear that---

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I understand that the issues to do with The Land Bill are about content and those can be dealt with in the subsequent stages of the Bill. Indeed, I have seen a lot of literature regarding some criticisms relating to The Land Bills and they are more to do with content. In fact, the Chair, hon. Abdikadir, said that their focus is on The Land Bill more than anything else.

I was saying that the Constitution set up a new architecture and legal framework and jurisprudence relating to matters to do with land. It established a National Land Commission under Chapter 15. It is an independent Commission which has been given various powers and functions by the Constitution. The Constitution further provides that Parliament may give or donate further functions and powers to The National Land Commission.

Historically, there have been complaints, particularly, in the manner in which public land has been dealt with in the country and managed. This Bill, together with the subsequent Bills relating to land, is supposed to address some of the mischief and injustices that have arisen over the years on matters relating to land. That need not be stated time and again because it is clear. When we moved the National Land Policy, Sessional Paper No.3 of 2009 in this Parliament, some of the history surrounding matters to do with land from the period before the colonial days to the current days were well spelt out.

The National Land Commission Bill, if I may state, deals with four main areas that are critical. One is to provide or make further provisions as to the functions and powers of the National Land Commission. Understandably, you may know that the powers and functions of The National Land Commission are contained in the Constitution. However, the Constitution gives this Parliament the power and authority to confer any further functions and powers to The National Land Commission in addition to the powers donated by the Constitution. As required by Chapter 15 of the Constitution, the Independent Commissions or Chapter 15 Commissions are required by this



Constitution legislation to determine qualifications and procedures for the appointment of the members of the Commission and other matters related to appointment of members of Chapter 15 Commissions. You will also see from this Bill that we have placed it firmly as part of the objective of the Bill and part of the related legislation that will come before this House to give effect to the objects and principles of devolved governments in management and administration. That is a matter that is clearly spelt out in Article 6(3) of the Constitution.

At all times when we are talking about governance and access to services and issues of devolution, the Constitution requires that any state organ shall ensure reasonable access to its services to all parts of the Republic so far as it is appropriate to do so having regard to the nature of the service. In our view such services and operations of any state organ must be based on the principle of devolution. I will point out, as we discuss this Bill, areas that deal with issues to do with devolution.

There is also additional requirement and objective of this particular Bill that I recommend to the House, which is to provide for some kind of linkage between the Commission, the county government and other institutions that are dealing with land and land related resources. In a nutshell, those are four key areas that this Bill wants to deal with. You will find that there are additional functions and powers donated by this Bill to the Commission. I will discuss that when I come to them.

Mr. Temporary Deputy Speaker, Sir, the National Land Commission is established as an independent organ because we know that there was a time and that time has not expired because the institutional arrangement still exists where the management of public land was essentially in the hands of a department within the Executive which was not independent. When it came to matters to do with public land, the land that had not been alienated and was available for alienation, conferring any grants in relation to such public land was a power vested on the President and currently that power has been delegated to the Commissioner of Lands.

We have found over the years that there has been abuse and misuse of this power to the extent that land was being given as a gift or reward. For the three or four years that I have been in the Ministry of Lands, when you look at leases and grants, they have been a source of what I have over the years called as the basis of primitive accumulation of capital. Somebody would be able to get as a gift, a large piece of land or a very prime piece of land at no premium, at no cost at all or very minimal cost and go within the land market and within a matter of months he transforms that land by way of a deal or a transaction to make millions or billions of shillings. This Bill is now removing those powers that were donated to the Commissioner of Lands to the Commission. How the Commission deals with public land in terms of management and alienation can be found in the substantive Bill which is the Land Bill. The purpose of this Bill is to institutionalize the Land Commission within the framework of the Constitution. I would like to add that the manner in which this Commission is going to be established is supposed to secure public land and manage it within the guidelines that are provided in Article 60 of the Constitution; land which the Constitution in Kenya says belongs collectively to all Kenyans as a nation, as communities and as individuals. Therefore, the Commission has a very important role to play in ensuring that the values and principles which are set out in relation to governance of land in Article 60 of the Constitution is adhered to.

Mr. Temporary Deputy Speaker, Sir, part 2 of the Bill deals with the functions and powers of the Commission. That is found on page 259. We have more or less reproduced in its entirety Article 67(2) of the Constitution. This is to ensure that anybody dealing with the Commission or dealing with matters related to land, they do not have to go back to the Constitution to determine the powers and functions of the Commission. Although this is repetition and even some people have said it is superfluous but we think it is important to repeat those functions in the Bill so that they would be no doubt at all about the constitutional and statutory functions of the Commission in the Bill. In that same Article 5(1) which deals with functions of the Commission, there is Article 5(2) which also deals with additional powers of the National Land Commission. Those additional functions are to alienate public land, but we are saying that the Commission will only alienate public land with the consent of the national and county governments.

If I may pause there and go back to the Constitution, the Constitution itself says that public land, though stipulated in the Constitution in Article 62(2) (ii) it enumerates that category of public land that shall be held by county governments in trust for the people resident in the county. That is an important principle that public land which falls under the category of public and enumerated in that sub-Article shall vest in be held by the county government in trust for the people. There are two things there. That the owner of that category of public land shall be the county government and it is held under the condition that it is in trust for the people resident in the county.

The responsibility of the National Land Commission is to administer that category of public land on behalf of the National Land Commission. It would be important to state here that the Constitution provides that all unalienated public land in any given county shall vest and shall be held in trust by the county governments. So, the county governments are playing a critical role in public land ownership in the Republic. The National Land Commission in dealing and particularly in alienating public land can only do it on behalf of the two levels of government and with the consent of those two levels of government. This is both a check and balance to ensure that the National Land Commission does not change course and deal with land in a manner that is not stipulated in the Constitution. The other additional power of the National Land Commission is to monitor the registration of all rights and interests in land. There could be a conflict here but I think since we are collapsing the office of the Commissioner in its entirety, we will require a land commission that is going to manage public land.

We will require a Land Commission that is going to manage public lands and register rights and interests in lands, but at the same time, monitor the registration of all rights and interests in land. It shall monitor because below it, there will be registrars all over the Republic and in the counties who shall be doing the technical work, but the Commission will be required to monitor that process. The other function is to develop and maintain an effective land information system at national and county levels. We thought that it was important to have these provisions there because one of the problems we have been having in the Land Office is the information systems which are manual and without modern digital land information systems. We fall in the kind of problems that we have been having of double allocation and registration and also fraudulent acquisition of land. There are many cases and I am sure the Chairman of the Land and Natural Resources Committee, hon. Musyimi, in the few years that he has chaired that Committee could have a dictionary of the kind of land malpractices that have been seen in this sector.

Mr. Temporary Deputy Speaker, Sir, while still talking about the functions, what is being stated and enumerated is that the National Land Commission is like an estate agent, if I can put it in those words. The landlord, the owner of public land as stipulated in the Constitution is either the county government which holds it and has land vested on it for the benefit of the people resident in the county. Literally speaking, they are the landlords as it were, but on terms and conditions. The Commission under delegated constitutional mandate is the one to manage that public land. It would please many of our colleagues here to know that if you look at the categories of land that shall vest in the county governments, there are quite a number. For purposes of giving a clearer picture of the responsibility of the National Land Commission in relation to the counties and the land that they may possibly administer, I would want to look at Article 62(1) of the Constitution which vests the following categories of land under the county government. One, land which at the effective date was alienated Government land as defined by an Act of Parliament in force of the effective date. The law that is in force at the moment is the Government Lands Act and it clearly stipulates what the Commissioner or the President can give out. It cannot give an alienated Government land.

The other category of land which now will fall in the hands of the county governments is land transferred to the State by way of sale, reversion or surrender. Those of my colleagues who come from, for example, the tea growing areas in Kericho, if there was a sale to the State or a reversion or a surrender to the State, of let us say, one of those tea estates, automatically by dint of the Constitution, that category of land will fall under the land vested in the county governments. The other category is land in respect of which no individual or community ownership can be established by any legal process. Sometimes we think that it is hard to come by that category of land, but sometimes it arises when suddenly you find there was a settler who came here, he did not organize his affairs well and the title expires and if we were going by current practice, that land would revert back to the Commissioner of Lands. But now under the Constitution, that surrender, reversion or sale will go to the county governments.

Mr. Temporary Deputy Speaker, Sir, the other category is land in respect of which no heir can be identified by any legal process. That is land which shall be in the hands of the county governments. Then there is land that is lawfully held or used by any State organ except any such land that is occupied by State organ as lessee under a private lease. The Constitution spells out under what circumstances that category of land will revert back to the county governments. So, you can see we are having a starting point in history where large chunks of land which fell in the domain of the National Government will now be vested in the counties.

The other category of land which happily may have some bearing on how the county governments would operate is land which by dint of the Constitution will become community land but as we speak now, they will be under the edges of the county governments until the legislation that provides for community land, which has got a five year timeline is in place. I am saying this to show that county governments have a critical role to play, but also the National Land Commission is obligated to deal with the county governments so that if there was any doubt, that county government or devolution principles will not apply in so far as the management of public land is concerned. This National Land Commission Bill makes it quite clear and beyond any fear of contradiction that both the National Government and the county governments will have an important

role in the way public land is alienated. The National Land Commission will not just do what it requires to do without consultations with the National Government or the county governments.

Part 3 of the Bill deals with the composition and administration of the National Land Commission. It also deals with the appointments of the persons who shall be members and chairpersons of the Commission. The only thing that we discussed when we were in Mombasa during the workshop for the Members of Parliament was the issue of age and experience of the chair and the members of the Commission. In the Bill, the knowledge and experience of the persons to qualify as chairman --- I am sorry I talked about age, there is no age qualification, but there is qualification in terms of experience. It was felt that land being such an important factor in development and also an important commodity to the people of this country, we need an experienced person as chair of the National Land Commission. That person, according to this Bill must have experience of at least 15 years. That is something that this House can deal with. If we find, as many Members in Mombasa felt, that experience of 15 years takes out a lot of young people who would have probably experience not in terms of being in the job for a long time, but in terms of pure academic qualifications and acumen in dealing with matters relating to land. The persons who will become members of the Commission, again, require having experience of at least ten years. Again, it was felt that ten years is too long a time and I put that matter before the House and the House can deal with it.

Mr. Temporary Deputy Speaker, Sir, I will even mention that, in fact, when this matter went to the Cabinet, there was no unanimous position on this. However, some hon. Members felt that the age qualification may be a little too high. We thought is that if you go through some subsequent provisions of the Bill, this Commission will have some quasi-judicial functions. If you look at those functions, they are judicial functions to make determinations and adjudicate over disputes which relate to land in many ways. That may require people who have, not only the knowledge, but have appropriate experience in matters relating to land. So, they should be almost to the level of a senior High Court judge or a judge of the Court of Appeal. However, we are not saying that this Commission should be a commission of lawyers. I truly feel that there should be a balance of all experiences and professions in this Commission.

There are also the provisions that deal with how vacancies may arise in relation to the chair and the members of the Commission. This is the standard. They are a replication of what we saw in the Judicial Service Commission (JSC) Bill and many other Bills which have gone through this House. The only thing is that any person who is a member, his office shall become vacant if that person is convicted of a felony. We thought that any kind of criminal record for a member of the Commission should be frowned upon. There were those who also felt that if it was an offence punishable by a sentence of less than three years which also should be captured. But in the Bill, it captures only the convictions where it is determined that the person committed a felony.

Part of the criticism of the Bill which I may as well deal with in this regard has been that in this Bill, there is no provision for a vice-chairperson. If the House feels that we require a vice-chairperson, so be it. However, you will notice under Chapter 15 of the Constitution in the independent commissions, there is no require for a vice-chairperson. All that is required is a chairperson and not more than eight other members. This would mean that the constitutional threshold in terms of limit for any of these commissions is

nine unless they are established under the Constitution. The appointment made directly under the Constitution without any implementing or enabling legislation.

These are things that can be dealt with during the Third Reading. It has been stated by part of the players in the land sector that there should be specific provisions that the Commission is a body corporate with perpetual succession and power to hold asset. If it is the feeling of the House, I have no problem. However, this is a Commission established under the Constitution. It is an independent Commission. Therefore, all those powers relate to State organs or commissions would normally include it being recognized as a specific legal or statutory organ under the law that can enact, perform and make decisions in terms of the functions and powers spelt out by the Constitution or any other relevant law.

Mr. Temporary Deputy Speaker, Sir, then there are also provisions relating to removal of the chairperson and the membership of the Commission. The terms for the members of this Commission is limited to a single term of six years. Again, the political theory around this was that anybody sitting in such a powerful commission for more than six years, if there are many of them sitting for too long in this kind of commission, they will be too powerful, probably, or if they elected to go the wrong way, it would be very difficult to deal with cleaning up that commission. So, one long tenure of six years, is what this Bill recommends.

The power that is donated by the Constitution which is found in Article 68 of the Constitution which is found in this Bill, the National Land Commission Bill, is the review of grants and dispositions that are found to be irregular or unlawful. If I may go to the provisions in Article 68 of the Constitution what it says and what it requires of this Parliament to do. Allow me to quote, Article 68(c)(iv). It says:-

“Parliament shall enact legislation to enable the review of all grants or disposition of public land to establish their propriety or legality.”

That is a direct fiat by the Constitution to this Legislature that we must make provision for the review of all grants.

The Constitution says “all grants or disposition of public land”. Without a doubt, it means that every grant made in the name of the State; every disposition made in the name of the State, for as long as Kenya has existed will be subject to review. Now that left in that formulation as it exists in the Constitution and some people have read the Constitution to the effect that every grants and every disposition have to be reviewed.

If you take that literal meaning and that is not my reading of the Constitution, but if you take it literally that that is the interpretation, then it means that every title deed that is held in this country is not established as a legal document until there has been a review whether it was public granted or disposed and that left hanging may affect business and even operation of local people that you went before a registrar, let say in Kwale, he may ask you the first question: Has that grant been reviewed before you can deal or make any transaction in relation to that piece of land?

So, the formulation we found which can help this country move forward and with that having this country in log jump in so far as legality of propriety of title to land is, first of all, to appreciate what the Constitution is saying. To enact legislation to enable the review and if I pause there, the onus is for Parliament to enable the review which is different if the wording was that Parliament enacts legislation for the review of all grants. If that was the formulation, then one would come to the conclusion that all grants,

whether it was done in 1902 must be reviewed. However, my reading is that that is not what the framers of this Constitution were trying to say. But my reading is that, that is not what the framers of this Constitution were trying to say. So, you will now find the provisions in Clause 14(1) of the Bill being formulated in the way it has, coming from what I have just explained from the Constitution.

Mr. Temporary Deputy Speaker, Sir, Clause 14 is important in its entirety. It reads:

“Subject to Article 68 of the Constitution the Commission shall within five years of the commencement of this Act, on its own motion or upon a complaint by the national or county government, a community or individual, review all grants and dispositions of public land to establish the propriety or legality.”

I think the point that we want to make is that these provisions are made subject to Article 68, so that as you read these provisions of Clause 14, they should not be seen to be restrictive or going against the powers or provisions that may be elaborated in Article 68 of the Constitution.

Mr. Temporary Deputy Speaker, Sir, as I was saying at the beginning, this is a very important function of the Commission; that it will review all grants and dispositions. This informs the decision to have nine Commissioners rather than less, because of this work. For it to be undertaken throughout the country, it would probably require the Commissioners to divide themselves into groups to deal with the issue.

Mr. Temporary Deputy Speaker, Sir, Clause 14(2) then reads:

“Subject to Articles 40, 47 and 60 of the Constitution, the Commission shall make rules for the better carrying out of its functions under subsection 1.”

Mr. Temporary Deputy Speaker, Sir, Article 40 is on the protection to property under the Constitution. So, the rules that will be made by the Commission cannot go against the Article contained in the Bill of Rights, which is Article 40 on protection of property.

Mr. Temporary Deputy Speaker, Sir, Article 47 of the Constitution deals with fair administrative action. Again, the Commission in all its work, in this regard, must ensure that those rights under the Bill of Rights and specifically, Article 47, must be adhered to.

Mr. Temporary Deputy Speaker, Sir, Article 60 of the Constitution sets out the principles of land policy. Again, the Commission in dealing with this review of grants and dispositions, to put in consideration all the time, not as an option but a requirement, must have regard to those Articles of the Constitution.

Mr. Temporary Deputy Speaker, Sir, Clause 14(3) says that in the exercise of the powers under subsection (1), the Commission shall give every person who appears to the Commission to have an interest in the grant or disposition concerned, a notice of such review and opportunity to appear before it and inspect relevant documents. So, again, this is supposed to anchor fair hearing and due process.

Mr. Temporary Deputy Speaker, Sir, Clause 14(4) reads:

“After hearing the parties in accordance with subsection (3) the commission shall make a determination.”

Mr. Temporary Deputy Speaker, Sir, Clause 14(5) reads:

“Where the Commission finds that the title was acquired in an unlawful manner, the Commission shall recommend:-

(a) to the Registrar, the revocation of the title; and,

(b) to the national or county government the payment of compensation to the aggrieved party.”

Mr. Temporary Deputy Speaker, Sir, we cannot run away from those provisions. This is because the Constitution, under Article 40, does not recognize any right or interest in land, that is determined to have been unlawfully acquired. So, the only option then is for the Commission to recommend to the Registrar to revoke the title. But I think that these provisions are making a very important distinction which is found in sub-clause (6). It says that where Commission finds that the title was irregularly acquired, the Commission shall take appropriate steps to correct the irregularity and may also make consequential orders. Sub-clause (7) says that no revocation of title shall be effected against a *bona fide* purchaser for value without notice of a defect in the title. So, if the title was irregularly acquired and it has passed hands to a second or third hand, these provisions prefer the option that, that title should be regularized and the purchaser for value without notice of a defect in the title, should not be punished, and other methods of redress be found.

Mr. Temporary Deputy Speaker, Sir, in the interpretation clause, you will see the definition of the word “unlawful” as opposed to the word “irregular.” I think that, that is important, so that when the Commission or anybody is dealing with these matters, they would know the clear distinction between the two. But I must say that if there was no expeditious process of dealing with this issue of grants and disposition of public land, in a quasi-administrative and quasi-judicial manner, the courts would find it very difficult to deal with these issues because of the volume of work. Also, the Judges that are being appointed may never be enough. The land courts have not also been established properly. We will have one land court in every county. I think these are matters which we must find a way of dealing with.

Mr. Temporary Deputy Speaker, Sir, in saying this, I want to pose a question to Members of Parliament. For example, the Kenyatta International Conference Centre (KICC) was public land which was never available for alienation. By some decision which was made at some point it was passed to a political party and became its property, although the building is built from public funds and the land belonged to the public. It was never available for alienation and the political party concerned did not add even one brick on that building. You end up suffering a long court process because justice must cut both ways in determination. There is that person who legally owns the land and has done something with it. Do you wait for a long legal process to make such a determination? I think when we made a decision to give a title to KICC, the Government has found better things to do with that land. Even when they are working with other partners, it is much easier because they can then show that the building truly belongs to the Government and is a public institution. One can go on and on with examples. There is the court in Eldoret which has always been a court and was never available for alienation. There is also the court in Kisumu which was never available for alienation, but they find themselves in the hands of private developers who do not develop. In fact, in all the land that was grabbed in a similar fashion, the first thing they do is to get a loan using that piece of land as security, and that loan is not used for the purposes of developing that particular piece of land. So, we are dealing with a mischief that has made even development to be very difficult in this country. Those investors that are looking for land to develop cannot get it

because it all went into the hands of characters who were either speculating with the land or just wanted to make quick money.

We have to have a more expeditious way of dealing with such situations. So, this is a critical chapter that we need to look at. Members of Parliament can give their suggestions as to whether this is the desired process. It is here because the Constitution says that it should be somewhere in the laws and we have found that the appropriate body to deal with this particular issue should be the National Land Commission.

Mr. Temporary Deputy Speaker, Sir, with regard to the timeframe, the Constitution does not give a timeframe but this Bill, which is subject to what is in the Constitution, is trying to urge the Commission to deal with these matters within five years. However, if the Commission finds that they need a longer period, Clause 14(9) gives the Commission the opportunity to petition Parliament to extend the period for that particular undertaking.

The other additional function of the Commission that I think is critical and very important is the one of investigation of historical injustices. Those powers are already given to the National Land Commission by the Constitution in Article 67, which says:-

“67(2)(e) the functions of the National Land Commission are to initiate investigations on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress.”

Mr. Temporary Deputy Speaker, Sir, the way this has been dealt with in the Constitution is that the National Land Commission can only recommend redress. What the country is looking for is not recommendations. It is looking for action. The National Land Policy has recognition under the Constitution. The Constitution says that there shall be a national land policy that can be reviewed over time but once so reviewed, it becomes part of the principles of the Government on land matters generally.

The National Land Policy, which contained in Sessional Paper No.3 of 2009, contains various recommendations on how to deal with redressing those who have suffered historical land injustices. One of them was restitution. You actually restore back those communities or those persons into *status quo* prior to that injustice. You literally put those persons back to where they were at the beginning. You can also compensate them as a way of dealing with historical injustices relating to land. You may also find alternative land for those persons who are affected. All these principles are found in the National Land Policy.

We are empowered by the Constitution, as Parliament, to give the National Land Commission any further functions. In exercising those powers, we said that the Commission should go beyond making recommendations. Secondly, we said that in dealing with historical injustices, there should be a legal regime within which the Commission should do its work, adjudicate and thereafter give redress. So, Clause 15, which, again, is one of the important Clauses and which needs to be looked at, reads as follows:-

“(15) The Commission shall within two years of its appointment recommend to Parliament appropriate legislation to provide for investigation and adjudication of claims arising out of historical land injustices for the purposes of Article 67(2)(e) of the Constitution.”

Mr. Temporary Deputy Speaker, Sir, criticism has it that we have not dealt with this aspect and, instead, we are saying that there should be legislation within two years.



We were of the view that already, the Commission has powers even without this legislation; to investigate and make recommendations but we felt that in order to have a framework within which there will be a fair process of adjudicating all these matters and come up with redress, the Commission itself should come up with an appropriate legislation within two years for enactment by Parliament. However, this does not mean that once established the Commission cannot engage into the exercise of investigating historical land injustices.

The other factor that informed on this is that at the time when the Truth, Justice and Reconciliation Commission (TJRC) was being established, its mandate was to make inquiries into historical injustices and come up with a report. If you have been following the proceedings of the TJRC, you should know that many of the complaints that are being raised about historical injustices relate to land. We thought that once the TJRC accomplishes its work, the National Land Commission may find material in the TJRC's report, which will enable it to come up with an appropriate legislation recommend it to Parliament.

Mr. Temporary Deputy Speaker, Sir, Clause 16 talks about the Commission forming committees, co-opting members and so on, to enable it carry out its functions. The issue that, again, attracted a lot of criticism about the National Land Commission was the issue of devolution. A lot of references made to the absence of provisions to carry out the principle of devolution were based on the document I am holding in my hand – Legal Analysis of Kenya's Land Bills and Land Registration Bill. There is also an Analysis of the National Land Commission. This was undertaken by the USAID

I want to inform Members of Parliament that the Ministry of Lands has been working with this group. When we were having a workshop in Mombasa, they were there. In fact, when Members of Parliament left, I had a whole session with them to interrogate not only the drafts against the criticisms that they had made but also looked at the recommendations that Members of Parliament had made with a view to determining whether or not they met the standards of the criticisms that they had made in these very important documents.

So, I find that there all of the criticisms are justified but some of them were based on the versions of these Bills, which were not in place at the time. A lot of people had been looking at the versions of the Bills that were there in October and November but the version that we are now dealing with is a result of an engagement with this group. They have analysed the Bills. Although they may not agree with some of the Bills, my position is that it depends, ideologically, where you stand or the views that you have in relation to matters dealing with land. So, we adequately dealt with some of that criticism.

Mr. Temporary Deputy Speaker, Sir, Clause 18 deals with the issue of devolution. It provides that when the Commission deals with public land that lies within the counties in whatever way, there shall be what we are calling a "county land management board", which shall consist of not more than nine members, which is a big number; to take care of diversity within the counties. This body shall essentially have ex-officio members but shall also have members who are nominated by the governor and approved by the county assembly. So, in managing public land in the counties, the National Land Commission will not be sitting in Nairobi and dealing with matters that affect public land out there. Such matters will be dealt with by the county land management boards. It will be this County Land Management Board. This has been a big criticism of how either the

President, Minister or the Commissioner of Lands is dealing with land in Nairobi when the land is at the county level. However, at the county level, the people have no participation, or say in the manner in which that land is being given out. So, it cannot be said that there was no devolution.

We also felt that we should go beyond the county level. In the Constitution we say the National Land Commission can organize and structure its work below the counties. They can go to the sub-counties and the wards. In many areas in this country, for example, in Siaya, you will find that what we may call public land is very minimal. In fact, in my location, there is no single piece of land that we can call public land.

If you now replicate these boards up to the wards then you will be creating bodies that are there. However, the work will be minimal. On the other hand, the Exchequer at the national level or the county level will be burdened with payment of allowances and emoluments which are beyond the capacity of the counties.

Mr. Temporary Deputy Speaker, Sir, the financial provisions in this Bill are standards. The way they conduct business and the way they appoint the secretary. This is all standard as has been with all the other Commissions. There are transitional provisions in Part 5 which are found on page 73. In fact, when this Act comes into force, what you are calling the Ministry of Lands which falls under the Commission of Lands will be completely abolished and cease to exist. The staff in that part of the Ministry of Lands will have to apply to the Commission and be vetted before they can be employed by the Commission. Again, this is to address the issues of past malpractices that relate to some of the injustices that people have suffered.

The first Schedule is formation of a panel which will then appoint the members of the Commission. Again, that is basically standard.

All in all, I recommend this Bill to the House. I think it is Bill that we can make better through amendments. I think that the National Land Commission Bill has been interrogated by the Commission on the Implementation of the Constitution (CIC), the Attorney-General and the Law Reform Commission who have put their minds as to whether or not there are any provisions that have breached the Constitution. I think that generally you will find that in this Bill there are no violations of the Constitution.

Mr. Temporary Deputy Speaker, Sir, I beg to move and I ask Mr. Kimunya to second.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I rise to second this Bill that will facilitate the formation of the land management body, the National Land Commission to take over the responsibilities that are currently handled through the office of the Commissioner of Lands and what has been put within the councils through the trust and all that.

As I start on the seconding of this Bill, I want to recognize from my own experience as the Minister for Lands in 2003 to 2006. This was the first job I ever did in the Government. I was thrown into a Ministry that was just emerging from the histories of land grabbing and all the things that happened in the 1990s. I did learn a lot.

One of the first things I appreciated is that land is, perhaps, the most emotive issue in this country. It is where you will find families will be coming and say I killed my brother or will just be fighting because of that small piece of land. That piece of land cannot even sustain the people who are fighting and killing over it. People will actually

go to that extent of killing one another for it. Most of the wrangles, fights and cases in court in this country are to do with land.

One of the amazing things you will find when discussing matters of land and the petitions you receive in that Ministry would be - and I am sure my colleague is receiving no doubt exactly the same. It really does not matter the social standing of the people claiming matters on land. Whether you are talking about churches owning land or laying some claim to land or being accused of actually taking some of the public land, the biggest defence at that point is that you will find that even people who should be advocating for fairness, they do not do so. Sometimes because of their religious convictions will tell that on land matters, let us put the faith aside. Let us, first of all, sort out this land matter. It is that emotive. I do remember elders from Shatuka Group Ranch. The first time I saw a Maasai elder shedding tears when they were discussing in terms of the boundaries and the alignments. It just tells you the extent that people go to fight over what they believe is their right over the land.

The whole land issue goes back again into our history. Our forefathers shed their blood fighting over the land that had been taken over by the colonialists. I believe when the issue of historical injustices that the Commission will be looking into comes into proper perspective, we will not just be looking in some of the areas. However, when you look at all these lands even within Central Province, all these tea estates, they will be asking themselves who are the original owners of those lands? They were pushed away to villages, they were pushed away by colonialists; they were pushed into the forest to fight for that land, detained and given passes so that they could not fight over their land. Eventually, at Independence, they came back from detention only to find that that land had now been re-allocated into better uses by other people.

So, when we talk of these historical injustices, I believe people, probably, have the temptations to think that these historical injustices only happened at the Coast and in Rift Valley. But right next door you will actually find that there are communities who up to now, and Chair has been identifying himself with some of those causes, in terms of people fighting for reparations for what happened to the Mau Mau; how they suffered at the hands of the colonialists as they fought over land.

My late father was one of those people who was detained under the governor's detention orders because of his role. My own birth, obviously, was delayed by the same period that he was detained for those years because I had to wait for him to come out of detention for me to be born. Otherwise, I would have been much older than I am now. That is on a light note. The issues they went through, when I go through the recordings that he recorded in terms of his own life in the detention, you can see the torture they underwent and all that had to do with fighting for land. He was among many others who fought for this land.

The starting point in terms of looking at the issue of our land is knowing that our people are so intertwined with this land. You also look at all the people who have lost also their land since the advent of the multiparty politics in 1992. There are people who owned pieces of land in accordance with the Constitution in parts of this country. However, all over sudden, they were told branded foreigners and evicted from their pieces of land. Up to now, they are still living a dream that one day they will get to be resettled with their land and their assets. The same thing happened in 1997, 2002 and even worse 2007. We have seen the number of people living in IDP camps and we do

hope that when we are now talking of those historical and current injustices over land those are some of the issues that we will be addressed.

In 1992, it was the same, in 2002, the same and in 2007 it was even worse. This has made it very clear that all these land belongs to the people of Kenya. However managing it is doing so in trust for the people of Kenya. It set out the categories and this was debated extensively whether within the framework of Bomas or the framework of the National Land Policy Committees and whether within this Parliament. It was anchored very clearly within the Constitution in terms of who owns it. In fact, the biggest problem has been who then makes the decisions on this land that is owned by the people of Kenya? Who will be the person who will be entrusted to make that decision in terms of allocating rights to a piece of that land to a specific person to be told, "You can now use this land which is publicly owned for this period of time, for this purpose and on this conditions".

Mr. Temporary Deputy Speaker, Sir, in terms of grants, leases and even extensions of some of those leases which were given 99 years ago, who will be making that decision? Who can make a decision in terms of whether land can be sub-divided or not and the protection of the families? When all consultations took place, if I recall starting from my own days when there was a commission by the former Attorney-General Charles Njonjo. We must thank him for the work he did through the Njonjo Commission. They did a lot of work in terms of looking at some of those things. They were the first ones to come up and say, "Yes, we need a National Land Commission to take away the responsibility of the Commissioner of Lands and use that institutional framework to manage our land?"

This was followed closely by the Ndung'u Commission that looked at the same issues but again, with a view to restoring sanity in terms of the land that had been taken away; public land that had been unfairly, irregularly, some unlawfully and some given out in all manner of political considerations rather than the actual use of the land. They also reemphasized the need for having an institutional framework for the management of our work.

Mr. Temporary Deputy Speaker, Sir, then the debate went to Bomas and I do remember the tent or group that was looking into that issue. We went through it together and following the collapse of the Bomas process and the failure of the referendum in 2005, the group was meeting over land then came to me as the Minister for Lands and said that land is so important, Bomas may have failed, the referendum may have failed but we must rescue the issue of land. We then reconstituted them to look at that within the framework of forming a national land policy. The Cabinet did approve it and I was so happy that even after I left the Ministry of Lands the Ministers who came after that continued with the process and that it has finally seen the light of day. I must thank Mr. Orendo for being so passionate on this matter to actually bring the process to some conclusion and get the matter into Parliament. We now have all these Bills coming in that will eventually form the National Lands Commission to take over the responsibilities so that decisions will never be made by one single person sitting waiting at the end of a phone call to be given directions by the appointing authority who is the President to tell them, "Can you allocate land to so and so or this group has come to see me, can you look for some piece of land to give to them". The person cannot defy the authority. That is why all the former Commissioners of Lands are in some trouble one way or another

because how do they defy the appointing authority. They make decisions which are based on their personal assessment of the time but because there is no that institutional framework to get them through, when the matter is challenged in court on matters of criminality in procedure, they then had to shoulder that personal responsibility.

Mr. Temporary Deputy Speaker, Sir, I believe that when we now have this National Land Commission, guided by the principles that we put within the Constitution, guided with the principles we will be putting within the Land Bill itself, when this House eventually approves it and with the registration process that is now contained within the sister Bills that will also be coming to this House, we will at last resolve this matter of land. People will know, yes this is mine and this is private; how do I get protected into the future so that people can develop it with confidence. In terms of what is public, at least we will know who are we entrusting this responsibility of the little public land that is still left and the land within the counties that we will be getting through what was being given to the councils. The first task in the council meeting would be to agree, "Now that we have been elected, how many plots are available?" I went through this and I can quote it with authority.

I went through this when started repossession of public land. Immediately you give it back to a council, the sad thing would be that the first meeting that would be taking place would be, "Now that this has come, how do we allocate it among ourselves? How do we allocate it among our supporters?" This is the kind of thing that we must bring to a stop so that what is public land and what is public asset is maintained for generations to come without people looking at it that now that they are in power, can they use their new found powers to take away from the public and deny our future generations the opportunity to utilize that land. It is because of that haphazard decision making on that we now find kiosks sprouting everywhere.

Mr. Temporary Deputy Speaker, Sir, look at the road at Kangemi for example. It is quite an eye sore on a highway. People have been removed but you find a market on a public road and nobody can touch them because it is politically not correct to tell those people to move away from public road and go and do their business in the main market so that the road can be used for what it was designed. You find a lot of such.

Even we eulogized the late John Michuki it brings to some of those issues we shared when he made decisions that public assets had to be protected and it is important that people must move. He never stood back to ask what are the political implications of making this decision one way or the other. It is like, "Yes, if it is the right thing to do, let us do it". I would want to see a Land Commission that would restore sanity on our land so that if anyone is sitting on public land; be it a public park, public forest or public road, this Commission will be given the teeth within this House to make that decision and we support them so that public land is restored as public land. What is private is then protected as private land. Nobody would want to see at the back of your garden somebody coming and putting up a kiosk or somebody coming and saying, "From now on, where you park your car, I will also be putting up my temporary sector". Similarly we should collectively be guarding what belongs to all of us and saying nobody should come and take away from all of us and our children and their children the right to use that land that has been reserved as Uhuru Park or the land that has been reserved as Karura Greenery. Some people want to make political capital by using it as assets to make

money and take it to a bank to siphon money off NSSF and all the other bodies for purposes of electioneering.

These are things we need to safeguard and we hope that when we now set up this National Land Commission the men and women who we are going to put in that Commission will be people of high integrity who will take on the challenge knowing where we are coming from as a county; knowing that people have shed their blood to protect this land, knowing that all the fights we have seen has been to do with land. they will now bring back that sanity, give us that hope and by the time we come to the elections later this year or at whatever point it will be and subsequent elections land will never be a reference point because people will be seeing we have an institutional framework that guarantees us our rights as enshrined in the Constitution that what is yours is yours. You have rights to own property anywhere in the county and there is an institutional body that protects that for you and that you can now move with your investment to whichever county you want to settle in now and into the future with that guarantee. Once you have those guarantees peace will be sustained in this country.

It will not be based on political configurations that guarantee peace, but the law that will guarantee the peace of the people anywhere in the country. This is as opposed to politicians forming up one political configuration or another at the guise of guaranteeing the peace of our people in future. It should be a guarantee in the Constitution and the law and not something that will be based on some political bargaining that could collapse if that political bargain is not met one way or the other. I believe that we shall be on the right track once we put this framework in place.

Mr. Temporary Deputy Speaker, Sir, I have gone through the Bill and I am very happy with the contents. I really want to thank the people who have participated one way or the other in the formation of that. I know people are still asking for consultation, but we must draw a line as to when do we stop these consultations. That consultation has taken place since 1952 with the Senate and all that and so far, people have never agreed. However, one thing we must agree on is that we need an institutional framework to protect our land, whether private, community or public.

With those remarks, I beg to second this Bill and seek that this House does agree with us on the passage of this Bill.

*(Question proposed)*

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise in support of the Bill. This is a fairly straight forward Bill. Even though we may want to have more time with the other land Bills, this one should be debated and concluded so that the Land Commission can come into being, can assist us and be making preparations for the transition.

*(Applause)*

Mr. Temporary Deputy Speaker, Sir, I have looked at the Bill and it just replicates the Constitution as to the mandate of the Land Commission. I also want to note that with the new Constitution, we are now entering the transition phase with the Commission coming into being. Those who have huge interests in land are the political class. Among

the biggest land owners in this country are to be found in the political class. Among those who have been cited in scandals of land grabbing – whether it is the Ndung'u Report or the Public Accounts Committee or any other report – will be the political class in and out of Parliament. Therefore, as we discuss issues of land, we must acknowledge that in this House will be a lot of vested interests. But because we passed the Constitution and we really must move on, we need to get on with the Business before hand. We need to look at the provisions of this Act to see what mandate we are giving the Land Commission. Like I have said, this Bill only reiterates what is in the Constitution and, therefore, we need not fear it. We should get on with it.

Mr. Temporary Deputy Speaker, Sir, I want to note that since 2003, when the Kibaki Administration came into place, there have been various occupiers at the Ministry of Lands. One thing that is very notable – even with all the attempts at the reforms that have come – is that corruption has not been completely battled at the Ministry of Lands. We still have a lot of corrupt deals going on and the Minister has done well revoking land where it is necessary, but there is a lot that still needs to be done. We need this Commission to come in and help to unravel the mysteries that go on and the web of corruption in the lands office. I am looking at the mandate under Clause 14 and I have seen that this Commission will be able to review all grants or dispositions of public land. A majority of those in the political class have acquired huge tracts of land through grants and many other people connected. So, these grants will be revealed so that people stop sitting on huge tracts of land when a majority of Kenyans are landless. However, that will be done within the law and notice will be given and representations entertained by the people whose grants are being reviewed. I, therefore, hail this section which will help many counties recover land that has either been illegally excised or whose lawfulness of the disposition cannot be proved.

Mr. Temporary Deputy Speaker, Sir, I would even go further and say that we should insert a clause that, it is upon each individual, where the land grant is under review to show that they acquired that land lawfully. I know that in my home county, that is Kirinyaga, just like all counties in Kenya, there are huge tracts of public land that have been acquired by individuals in a manner that is suspect and, therefore, along with the country, these grants will need to be reviewed by this Land Commission.

I have seen that there will be county management boards. However, I am concerned that under Clause 18, we are saying that each county management board shall have, at least, three but not more than nine members. Why do we want a bloated land board in the county? The county is a small unit and it is not like the country. If the national Commissions have nine members, is there any justification of having nine members in the county? I am suggesting that we should later on amend this; that the boards at the counties should have at least three but not more than five. We leave room for between three and five members. We need to have lean and efficient entities to avoid burdening the Exchequer with a lot of expenses.

Mr. Temporary Deputy Speaker, Sir, I have also seen Clause 35, which talks about the offences. Clause 35 says that any person who contravenes sub-section (1), who without justification or lawful excuse, obstructs or hinders, assaults or threaten a member of the Commission staff or submits false or misleading information and misrepresents or knowingly misleads a member or the staff of the Commission will be liable on conviction to a fine not exceeding Kshs3 million or imprisonment to a term not exceeding five years

or both. I commend this Section but I want to recommend that we go further the same way we did with the electoral laws. We created offences for all the participants in the electoral chain. We created offences for candidates, for their supporters, for the electorate and for the Commission and its staff. I am recommending that we go a step further and we create an offence or offences by members or staff of the Commission; that if any person knowingly misleads, misrepresents or subverts the law so as to defeat the interest in title of an individual or of the public, shall be liable to an offence and I propose equal penalty to that given in 36.

I am saying this because a lot of problems in this country have come as a result of land. There would be people trying to hide their tracks where they have grabbed. There will be people trying to give misleading information if they want certain people to lose interest in land. We should put a very high threshold so that anybody who is working for the Commission knows that performing functions in the Commission is walking tight rope and that you really must do everything with utmost integrity. I recommend that at the Committee Stage we include a clause there for offences by the Commission or its staff.

I have been looking at the First Schedule on procedure for appointment of chairperson and members of the Commission. I have also looked at the problems we have undergone here in Parliament when doing vetting. We have complained about vested interests in either the selection panel or some of its members. Some times when the two interests are appointing, they are also not always devoid of interests because they have people behind them pushing them. We should include that any member of the selection panel who has an interest regarding any applicant must disclose and failure to do so will constitute a criminal offence. We must also make it clear that when the names – this is a political process – get to the two principals, if by chance any of the people listed is in any where related to them they have to let us know up front so that as we debate the names in Parliament we debate from a position of information. That is not to say that anybody related to a Principal cannot get a job. However, let us have first hand information so that as we assess the qualification we know whether it was by merit or patronage. That is very important so that manipulations do not occur.

Mr. Temporary Deputy Speaker, Sir, other than those few areas I have mentioned, like I said, this is a very straightforward Bill and we should strengthen the areas that we need to strengthen so that we get rid of it and the Commission comes into being to assist us in the rest of the work.

As regards the members of the Commission, the appointment of the Commission is under Clause 7. It provides for a Chairperson and other eight other members. That is necessary for the first Commission. Because of the way we are fragmented, it is necessary that we have members coming from all corners of Kenya. What about in the future when our country is moving well and we have got over our bad past? Is it possible that this clause should be worded differently to say, “Shall consist of a chairperson and not more than eight other members.” In the future, when we have reached a better place, the authorities of that day may find it fit to only appoint three members or five members of that commission. I, however, want to admit that for now we need that large number because of the various interests in the country and until we reach a more cohesive state.

With those few remarks I beg to strongly support and recommend that we debate this to the end and we bring forth the Commission immediately.



**The Assistant Minister for Industrialization** (Mr. Muriithi): Mr. Temporary Deputy Speaker, Sir, I rise to support and I will be very brief.

I agree with the hon. Karua that we should dispense with this one first, so that this Commission becomes part and parcel of the process.

Mr. Temporary Deputy Speaker, Sir, when I look at the function 5(e). It says to investigate on its own initiative or resorting from a complaint, historical land injustices, and to recommend appropriate redress. I wish this was put in a better way than it appears here. It is not clear whether the person or the body that receives these recommendations is bound to make that appropriate redress.

Mr. Temporary Deputy Speaker, Sir, furthermore, the Bill provides for review of all grants and disposition. It is still not clear, what would happen, for example, to Malmanet or Lalabel forests that are occupied not by way of grants or disposition. Some people are occupying those lands because they are public land. How do we deal with those areas? This should be made clear at the Committee Stage.

The idea of having a Commission is paramount because decisions will not be made by an individual. However, it does not imply that discretion cannot be abused. We need to relook this point.

Mr. Temporary Deputy Speaker, Sir, the Mover and the Seconder as well the Speaker before me have talked about the public lands that were grabbed by individuals or institutions. Want to take a radical departure, and to ask the question, what is it that fuels land grabbing? We need to ask ourselves what drives individuals to public land. It is because land is a scarce and it is easily tradable. Kenyans attach a lot of value on land. I think we should impose stringent measures to anybody who wants to trade with public land. We should also impose heavy penalties on any one who grabs public land.

Mr. Temporary Deputy Speaker, Sir, I believe this Commission will deal with land issues in a very sober manner. Registration of land will be dealt with in a appropriate legislation that will follow this Bill.

Mr. Temporary Deputy Speaker, Sir, I agree with who said that we, first of all, put this Commission in place so that it becomes part of the process.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Kilonzo): Thank you, Mr. Temporary Deputy Speaker, Sir. I want yet again to salute you for presiding over this law; allow me at the beginning to congratulate the hon. Minister, my good learned friend, hon. James Orengo and his team, including the Permanent Secretary for a wonderful job. However, there is a team that has been forgotten in this country, and I think it is fair that I also take this opportunity to recognize the Serena team that comprises of hon. James Orengo, hon. Martha Karua, hon. Musalia Mudavadi, hon. Wetangula, hon. Onger, hon. Sally Kosgei, hon. Samoei and myself. It is this team, and His Excellency Kofi Annan, that designed Agenda Four; this Bill, together with the other two, is a realization of that agenda.

Mr. Temporary Deputy Speaker, Sir, I also want to thank Kenyan people for accepting in the referendum Article 67 the way it is framed. On this particular item, I want to share the views of hon. Martha Karua that we should not at any time contemplate extension of time for this particular Bill and also the Land Registration Bill. I am convinced that between now and Sunday the 27<sup>th</sup>, there is sufficient time for Kenya to, at the very least, have this law on the National Land Commission and the Land Registration Bill; this is partly because we are in an election year. I am satisfied that in the preparation

for county governments and devolution, these two laws ought to be functional at the very latest by 15<sup>th</sup> of March.

Mr. Temporary Deputy Speaker, Sir, I just want to draw attention to Clause 5 on the functions of this commission. I ask hon. Members to vote for this Bill without hesitation, because its functions are so clear, particularly part (c) which says talks of “to initiate investigations on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress”. That is something that Kenyans have been looking for, and this law will create an opportunity for places such as Mt. Elgon, the Rift Valley, Coast Province and many others. The opportunity for this House to stamp its name on history is now.

Mr. Temporary Deputy Speaker, Sir, the powers also in Clause 6 are to be commended without hesitation whatsoever; under Clause 6(2) this Commission will have power to gather by such means as it considers appropriate, any relevant information, including requisition of reports, records, documents or any information from any source, including any State organ and to compel the production of such information where it considers necessary. This country is now full of false, fake, forged and grabbed titles; therefore, that power is so fundamental in order to move this country forward.

With those very few remarks, I beg to support. Thank you.

**Mr. Njuguna:** Thank you, Mr. Temporary Deputy Speaker, Sir. I also rise to support this very critical legislation and say that the new Bill will address the very serious concerns that Kenyans have voiced for a long time. We have noted sporadic violence in the country for many years, and people have already lost their lives; there has been displacement of the populations and even loss of livelihoods. You also realize hatred against clans and communities has been a common feature in this country. Therefore, this legislation will stem, or contain, some of these problems and bring about sanity, harmony and sobriety in the society. I am not forgetting that recently we had deaths at Mbo-I-Kamiti, because the land there has been taken by grabbers and the original land owners denied their right to this land.

Mr. Temporary Deputy Speaker, Sir, you also realize that in the 1930s, 1940s and 1950s, the Mau Mau movement came out strongly to fight for the land that had been taken by the white people. Therefore, with the formation of this Commission it will be possible now for some of the historical injustices that have been done in this country would be unearthed. The formation of The National Land Commission will be the saviour of Kenyans who have suffered for a long time. I think this will be the most important Commission in handling their lives. We note that the Commission will have six years to address all the concerns that we have in the country. This period, to me, is not enough and should be extended. Again, with the composition of the commission of nine members, this Commission will not be able to address all the ills that are in the country within six years. Therefore, I propose that there should be an *ad hoc* committee to assist this Commission to address the gigantic work that will be there.

The National Land Commission will be expected to carry out investigations, conduct restitution compensation and at the same time, revoke title deeds that were issued erroneously. We have seen title deeds that have been produced in courts of law as security bonds and a lot of money lost. The new deal withdraws presidential powers and the powers that were being enjoyed by the Commissioner of Lands to distribute land in this country. Therefore, the Commission will be expected to perform well and formulate

the 47 county boards in all the areas. It will be possible to make sure that in the county boards, the leadership will be taken by the most qualified Kenyans so that the downtrodden people who have been denied their rights can have them restored.

With those few remarks, I fully support the new legislation.

**The Temporary Deputy Speaker** (Mr. Imanyara): Mr. Orengo, it is your turn unless you want to donate a few minutes of your time to Mr. Mututho.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I would like to donate a bit of my time to hon. Mudavadi to contribute.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I would like to thank the Minister for giving me a minute. I just want to make two points. One is to enjoin other Members of the House in paying tribute and sending our condolences to the family of the late hon. Michuki who has served this country with distinction. We really wish his family God's grace during this trying moment.

The second point is to state that I am in support of this Bill because following deliberations at Mombasa and consultations with various stakeholders, the County Land Management Boards are being given the legal mandate in this Bill as brought out under Article 18 is very important. This provides a basis to ensure that at no time will any county government suffer a situation where land is alienated from their county without them being part of the decision-making process. So, this is a very important Bill to us and the inclusion of the County Management Boards and the idea of having them strengthened and facilitated appropriately will be very important.

I support.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I wish to commend those who have contributed to this Bill, more importantly, hon. Kimunya who seconded it. He was talking from a position of experience. He was in that Ministry when some of the changes that are being addressed by this Bill, particularly, The National Land Commission Bill, were initiated and triggered through various commissions such as the Ndung'u Land Commission.

I also commend hon. Karua. I think the suggestions she made are quite in order. I think when we get to the Third Reading, a lot of what she suggested concerning one or two provisions will be brought on board. I like particularly what she said about creating offences under Clause 34 that would capture the conduct and activities of those in The National Land Commission. It is tough and indeed the Commissioners themselves if they engaged in any malpractice of something that amounts to an offence under Clause 34 they will attract the same kind of punishment. That is captured in Clause 34 as it exists now. Probably the punishment could be even stiffer in regard to those working for the Commission. I also commend Mr. Nderitu Muriithi and Mr. M. Kilonzo who has been on this since the beginning for years ago. I also commend Mr. Njuguna who always seems to have something to say on any matter before the House. He has always something to say about something on any matter before this House. I commend his industry and energy. Again, if you look at the Bill properly you will find that the Committee can form *ad hoc* committees. There are provisions enabling the Commission to establish committees to assist in its work. There are other people who may want to participate in the spirit of the Constitution. Article 10 can find entry points through those provisions. Mr. Mudavadi, whom I think is the father of devolution in this country, again, I welcome his comments.

Mr. Temporary Deputy Speaker, Sir, for me, this is a very important stage of this Bill. I look forward to the Committee Stage or subsequent stages of this Bill to address all the matters in terms of content to make this Bill much better and much more perfect document.

With those few remarks I beg to move.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House today by leave of the House)*

### *Second Reading*

#### THE LAND REGISTRATION BILL

**The Minister for Lands** (Mr. Orenge): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Land Registration Bill be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, you will notice that this Bill is a consequence of a directive given by the Constitution under Article 69 which requires Parliament to revise, consolidate and rationalize existing land laws. On other issues that are found in the same Article, if I may just site some of their requirements that may be addressed either in this Bill or the Land Bill or has already been addressed by the National Land Commission Bill. The other command by the Constitution to Parliament is to revise sectorial land use laws in accordance with the principles set out in Article 61. That is not the subject of this particular Bill. Other requirements which may be important in terms of this Land Registration Bill is to regulate the recognition and protection of matrimonial property and in particular the matrimonial during and on the termination of marriage.

Finally is to protect the dependants of deceased persons holding interest in any land including the interests of spouses in actual occupation of land and provide any other matters necessary to give effect to the provisions of this Chapter. You find some of those commands by the Constitution to Parliament in terms of legislation; some of the provisions, in this Bill or in the National Land Bill. But when it comes to the issue of revising, consolidating and rationalizing existing law relating to land, this Bill, when enacted, will by consequence thereof and by what is set out in the Schedule, have the following statutes repealed:- The Indian Transfer of Property Act of 1882, The Government Lands Act, which is Chapter 280 of the Laws of Kenya, The Registration of Titles Act, Chapter 281 of the Laws of Kenya; one of the oldest statutes which was in existence as an ordinance before we attained our Independence, The Land Titles Act; which was then known as the Land Titles Ordinance, Chapter 282 of the Laws of Kenya and The Registered Land Act, which is the applicable law in most of the country particularly in the counties where adjudication processes have been completed.

So, five existing statutes will be repealed and together with the Land Bill, we are going to repeal several legislations in matters relating to land. This particular Bill, the purpose for it is to, as I have said, revise, consolidate and rationalize the registration of titles to land. This is specifically the main thrust of this Bill to revise, consolidate and

rationalize the registration of titles to land. With every statute or Bill that comes before this House, the principle of devolution in land registration has also been brought on board. Again, this is to address some of the criticisms that have been out there, but a lot of these criticisms have to do with the Bill before it was polished.

One of the big problems we have had in the past is that in some of the registries, particularly in Nairobi and Mombasa, when you walk in, there are several registries in a particular registry dealing with different statutes. Like in Nairobi, there is a Nairobi Registry, which deals with basically L.R. titles. Then we have the Central Registry which deals with land which is titled under the Registration of Titles Act. Even in terms of training staff to work within the Ministry and subsequently work for the Commission, it is difficult to operate an institution dealing with various processes of land registration.

### **ADJOURNMENT**

The Temporary Deputy Speaker (Mr. Imanyara): Hon. Orengo, I think that is a convenient point at which we can adjourn and you will have 55 minutes in the afternoon. Hon. Members, on that note, we interrupt the proceedings of the House until 2.30 p.m. this afternoon.

The House rose at 12.30 p.m.