

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 24th March, 2016

The House met at 2.30 p.m.

[The Speaker (Hon. Muturi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

COMMEMORATION OF WORLD TUBERCULOSIS DAY

Hon. Speaker: Hon. Members, this Communication relates to a visit by various Hon. Members of Parliament attending World Tuberculosis Day commemoration. We have with us in the Speaker's Gallery the following distinguished guests:-

- (1) The Hon. Faustine Ndugulile, Member of Parliament of the of the United People's Republic of Tanzania;
- (2) The Hon. Ruth Labode, Member of Parliament of the Republic of Zimbabwe;
- (3) The Hon. Abera BunoAdula, Member of Parliament of the Republic of Ethiopia;
- (4) The Hon. Kabasharira Naome, Member of Parliament of the Republic of Uganda;
- (5) The Hon. Jessie Kabwila, Member of Parliament of the Republic of Malawi; and,
- (6) Mr. Victor Ramathasela, Ministry representative from the Republic of South Africa.

Hon. Members, the delegation is in the country under the auspices of STOP TB Partnership (Kenya) to participate in the World Tuberculosis Day commemoration and the establishment of the Africa TB Caucus from 23rd to 24th March, 2016.

On my own behalf and that of the House, I wish to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful undertakings during the course of their stay in the country.

I thank you.

Hon. Members, there will be a Paper related to the mediated version of a Report of the Statute Law (Miscellaneous Amendments) Bill at the request of the Chairperson of the Departmental Committee on Justice and Legal Affairs and the Chairperson of the Legal Affairs and Human Rights Committee in the Senate. I will allow the tabling of those Reports and the giving of notice of Motion in the Assembly by Hon. Chepkong'a later on when they are ready.

Hon. Members, there is an indication by Hon. Mutinda Mule that he intends to say something, but first, let us get the Leader of the Majority Party giving us the order of Business for the week.

STATEMENTS

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BUSINESS FOR THE WEEK COMMENCING 29TH TO 31ST APRIL, 2016

Hon. A.B. Duale: Hon. Speaker, pursuant to Standing Order No.44 (2)(a), on behalf of the House Business Committee (HBC), I rise to give a Statement regarding the Business of the House for the week beginning Tuesday, 29th March, 2016.

The HBC met on Tuesday this week at the rise of the House and resolved to give priority to Bills with constitutional timelines, Committee Reports and Motions awaiting debate. Members will note that the following Bills are awaiting consideration by Committees of the whole House:-

- (i) The Division of Revenue Bill (National Assembly Bill No.4 of 2016); and,
- (ii) The Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No.5 of 2016);

Hon. Speaker, the following Bills have been prioritized should they not be concluded today:-

- (i) The Seeds and Plant Varieties (Amendments) Bill (National Assembly Bill No.43 of 2015)
- (ii) The Constitution of Kenya (Amendment)(Bill No.4 of 2015. This is the Bill on the two-thirds gender principle.
- (iii)The Judiciary Fund Bill (National Assembly Bill No.3 of 2016);
- (iv)The Election Laws (Amendment) Bill No.63 of 2015);
- (v) The Political Parties (Amendment) Bill (National Assembly Bill No.2 of 2016);
- (vi)The Kenya Roads Bill (National Assembly Bill No.26 of 2015); and,
- (vii) The Warehouse Receipts System Bill (National Assembly Bill No.12 of 2015)

This afternoon, I also signed the Anti-Doping Bill, which is very important. I expect that on Tuesday we will reduce its publication period so that it can be read for the Second Time to ensure that this House deals with it before we go on recess on Wednesday. I am sure that, that will enable us to meet the timelines given to the Government of Kenya by the relevant global body.

Hon. Speaker, regarding Questions pending before Committees, the following Cabinet Secretaries (CS) are scheduled to appear before Departmental Committees on Tuesday, 29th March, 2016: Because we had issues with some CSs last week, I can confirm today that I have talked to some of them and they have agreed to be in the House on Tuesday, next week. I hope Members will avail themselves.

The first CS to be grilled on Members' Questions will be the CS for National Treasury. He will appear before the Departmental Committee on Finance, Planning and Trade at 10.00 a.m. to answer Questions from Hon. Francis Mwangangi, Hon. Irshadali Sumra - I am not seeing him and I hope it is not because of the *tambuu* - and Hon. Kabando wa Kabando. My office will notify Hon. Sumra that his Question will be answered on Tuesday, next week.

The second one will be the CS for Education, Science and Technology. He will appear before the Departmental Committee on Education, Research and Technology at 10.00 a.m. to answer Questions from Hon. Ababu Nambwamba, Hon. Bernard Shinali, Hon. Peter Kaluma, Hon. Abdinoor Mohamed and Hon. David Gikaria.

Lastly, the CS for Land, Housing and Urban Development will appear before the Departmental Committee on Lands on Tuesday, next week to answer Questions from Hon.

David Wafula, Hon. Kinoti Gatobu, Hon. Francis Waweru Ndreritu, Hon. Geoffrey Odanga, Hon. Robert Pukose and Hon. Kipyegon Johana Ng'eno.

Hon. Speaker, Members should note that in line with the presidential constitutional obligation, His Excellency the President of the Republic of Kenya, Hon. Uhuru Kenyatta - I want to repeat it - has requested to address a Special Sitting of Parliament on Thursday, 31st March, 2016, at 2.30 p.m. That will be the only agenda in that afternoon.

Finally, the HBC will reconvene on Tuesday, 29th March, 2016 at the rise of the House to consider business for the remaining part of that week and the week after the recess.

I now wish to lay this statement on the Table of the House, with your permission.

(Hon. A. B. Duale laid the document on the Table)

Hon. Speaker: Very well. There has been a lot of anxiety in the country regarding the Anti-Doping Bill. There are fears that the country may not meet the deadline of 5th April. I want to confirm that I have just approved the said Bill for publication. The rest will be up to you, Members, since you are the ones who debate and resolve issues of concern to the people; as to whether you will be reducing the publication period of the Bill when it comes on Tuesday. I am sure that should give some comfort to the Member for Cherangany who has been very active and has, indeed, pursued that Bill quite diligently. I can see he is making his way into the Chamber.

Hon. Members, let me recognise the presence of students from Lokusero High School Laikipia North Constituency, Laikipia County; Ribe Boys High School, Rabai Constituency, Kilifi County and Emitik G. School, Kuresoi South Constituency, Nakuru County. You are welcome to observe the proceedings of the National Assembly.

WORLD TUBERCULOSIS DAY

Hon. Mule: Thank you, Hon. Speaker. I wish to make a Statement regarding the world TB day which is celebrated on 24th March globally. The year 2015 was a watershed moment in the battle against TB. It marked the deadline of global TB targets set in the context of Millennium Development Goals (MDGs). This year is the year for transition from the MDGs to a new era of SDGs and from the Stop TB Strategy to the End TB Strategy. Kenya continues to be a leader in the fight against TB.

For the past 10 years, accumulative total of 1.2 million Kenyans have been diagnosed with TB while 1 million TB patients have been successfully treated. The TB-controlled interventions have been made and an estimated 500,000 deaths during that period have been averted. These interventions are now easily accessible by citizens throughout 4500 health facilities and 1800 diagnostic sites in the country.

Despite this advance, and the fact that nearly all cases can be cured, TB remains one of the biggest threats in Kenya. It is ranked the fourth leading cause of death in the country accounting for 6.3 per cent of all TB deaths that occurred in 2014. We have had some successes in 2012---

(Loud consultations)

Hon. Speaker: Order, Members! The Member for Emurua Dikirr, even if you have to laugh, you cannot laugh so loudly as to appear like you are in a rally.

Hon. Mule: We have made successes in 2015 as a country with increased and improved equipment in the area of diagnosis and testing laboratories, improved drugs and other preventive therapies in the fight against TB. In fact, Kenya is one of the fewest countries that have treatment success rate of over 80 per cent against multidrug TB in the country and against the global success of 50 per cent. Our monitoring and evaluation activities have also been stepped up to better inform the country of the current TB situation and achievements made towards a TB free community.

As per the 2014/2018 Strategic Plan to this end, various activities such as national TB survey, drug resistant survey, operational research and use of information technology have been carried out. This has allowed collection of accurate data on TB to aid in decision making and planning by policy makers in the Ministry and also in this House.

I want, as the Chairman of the Parliamentary Caucus on TB, urge my fellow Members to continue in their effort in the fight against TB. This includes engaging in activities of the Caucus so that we can bring to an end this scar. I want to put this very clearly to Members; please go home with this. We are losing 27 lives every day in Kenya according to the WHO data because of TB. Please be aware. You are not immune to TB as Members of Parliament.

Let us fight this disease to end it.

Thank you.

(Applause)

(An Hon. Member clapped)

Hon. Speaker: Is that somebody introducing a new way of applauding? Is it the Member for Wajir? Please, that is not the way to applaud in the Chamber.

Hon. Kombe: On a point of order, Hon. Speaker.

Hon. Speaker: I see an intervention from Hon. Harrison Kombe. What is it about?

Hon. Kombe: Thank you, Hon. Speaker. I rise to seek your guidance. We have stayed for a long time now without the selection of CDF committees. Actually, we are stranded. Now that we are just about to go for the short recess, we need to go and work on our projects. However, we cannot do anything on that. We need the regulations on the National Government Constituencies Development Fund so that we can form the committees.

Two, I have heard the Leader of the Majority Party read out the names of the Members who are going to ask Questions the CS for Lands. It is now over a year or so and my Question is still pending. The Question is on the sold farms. Could he kindly work it out and have it come on board?

Thank you.

Hon. Speaker: If the Cs is among those ones to appear on Tuesday, all you need to do is also appear and you cannot wait. If you stay in Magarini and hope that you are going to be fished from there and be given answers--- Appear on that day and not just that day, but any other day that the CS is appearing before any Committee of the House. I have encouraged every Member, not just the Members who have asked Questions but any other Member to be present because you may well find that when the CSs are around, there are several other issues that could be of

concern to the people you represent that you can find solutions from them when they are present. It is not just through Questions that you have filed. Hon. Kombe, it would be advisable for you to approach the Leader of the Majority Party and ask him about your Question. I do not deal with Questions.

Hon. Lesonnet, the Chair of the National Government Constituencies Development Fund Parliamentary Committee is absent and not desiring to be present and, therefore, not desiring to respond. The regulations are before the Committee on Delegated Legislation. I can see Hon. Cheptumo relaxing comfortably.

Hon. Member: He does not have a card!

Hon. Speaker: How can he come to the Chamber without a card? Hon. Cheptumo, would you like to respond to the issue of regulations?

Hon. Cheptumo: Thank you, Hon. Speaker. I wish to inform this House that last week, my Committee jointly with the Committee on the National Government Constituencies Development Fund held two meetings.

It is important for Members to know that the Act requires prepublication scrutiny by my Committee. We did that last week. I want to confirm to the House that we have since approved the regulations. It is now upon Hon. Lesonnet's Committee to proceed and have them published so that we have the final regulations for implementation.

I want to assure Members that what is remaining is for the Attorney-General to publish, after which we will proceed to implement. The status of that position can only be confirmed by the Chairman of the Committee on CDF, Hon. Lesonnet.

Hon. Speaker: Does that Committee have a Vice-Chair? The Chairperson and the Vice-Chairperson are both missing in action. Hon. (Eng) Gumbo, do you have any information on the CDF regulations.

Hon. (Eng.) Gumbo: Hon. Speaker, we have not concluded those regulations. We were hoping that they would be done within this week. However, I cannot conclusively confirm this.

Hon. Speaker: You have not concluded?

Hon. (Eng.) Gumbo: Not yet.

Hon. Speaker: The Chair of the Delegated Committee says that you held meetings with his Committee.

Hon. (Eng.) Gumbo: There were some areas which we wanted to polish up which were not coming out quite well.

Hon. Speaker: Therefore, the regulations are with your Committee.

Hon. (Eng.) Gumbo: Of course, I cannot say for how long because---I beg your indulgence to give a more conclusive answer on Tuesday.

Hon. Speaker: I can hear some Members saying that you may not be aware. It appears like the one saying that may be better informed. Is it Hon. Opiyo Wandayi or Hon. Bosire who has better information?

An Hon. Member: Kaluma!

Hon. Speaker: Yes, Hon. Kaluma.

Hon. Kaluma: Hon. Speaker, the CDF regulations had left the CDF Committee. Remember, they had gone to the Attorney-General. Subsequently, we had a joint sitting with the Committee on Delegated Legislation. All the amendments Members desired were effected. I believe the regulations are now in the Office of Attorney-General for publication. That is what Members wanted to hear.

That also means that it has left our hands. It is now with the Attorney-General. I know what could be confusing people is how come the regulations have not come back to the House. Under the Statutory Instruments Act, the Delegated Legislation Committee will only bring them to the House upon gazettelement. That is the stage Members need to hear.

Hon. A.B. Duale: *(Inaudible)*

Hon. Kaluma: I am a lawyer, Hon. Duale. We had transitional provisions for the Board. I do not know what happened when we passed the Act in the House. We did not have the transitional arrangement for the Committee Members. Because it is not in the legislation, it cannot be in the regulations. That is something Members need to hear. So, let us wait for the regulations so that we constitute the committees as the Act requires.

I thank you.

(Applause)

Hon. Speaker: It is also fair before Members engage in arguments to look at the Statutory Instruments Act of 2012. That is between Sections 8 and 13. Most likely you will come and apologise to Hon. Peter Kaluma for saying the truth about that requirement. Hon. Kaluma says “he believes.” So, we do not know the basis of that but let us be content with the belief that the regulations are with the Attorney-General awaiting publication. What are all these interventions about?

Yes, Hon. Injendi.

Hon. Injendi: Thank you, Hon. Speaker. It appears like this is taking a bit of time. Some of us had allocated money and yet it is just lying in the account. We are requesting if the Committee can allow us, through the CDF Board, to spend the money through the CDF managers and Sub-county Treasury officials. Some of us, for example, have---

Hon. Speaker: Hon. Injendi, even assuming that what you are saying is admissible, we are in the plenary. So, you are asking the Committee to allow you. This is the Plenary of the National Assembly and not that Committee. Your request or suggestion will still be misplaced. It is better to approach the Committee so that your suggestions and proposals, perhaps, can be considered. We will just engage in a debate that will not resolve the impasse that may be there, if at all. I am sure, having listened to a few Members in the HBC, perhaps, what you are suggesting could be addressed in a different way. We do not want to discuss that here because this is not the Committee.

(Loud consultations)

Everybody thinks this is now the debate. No, this is not the business available. I know when you mention the National Government Constituencies Development Fund, everybody has something to say. You want to say it is the face of Kenya?

Hon. Onyonka: *(Inaudible)*

Hon. Speaker: I am unlikely to give you any direction on that because I do not sit in that Committee. I am not provided for in the Act. So, I cannot offer any solution. Are you a Member of the Committee, Hon. Onyonka?

Hon. Onyonka: Thank you, Hon. Speaker, for helping me from my brother Kaluma. The CDF basically handles all bursary funding for secondary and college institutions. The problem

we are having is that the commitment we had to some of the institutions is now coming back to us and the public may not know that we are stuck with the issue.

What needs to be done is to expedite this matter through Delegated Legislation Committee. We can do it faster if the Attorney-General is asked by our Chairman to expedite execution of the regulations, so that we can debate them here and finalise.

Hon. Speaker: Hon. Onyonka, except for giving you 'bonga points' what you have said does not add to anything that I can do. Of course, the country has heard that you are concerned about commitments and bursaries. Hon. Kaluma says that he believes that the regulations are either with the Attorney-General for onward transmission to the Government Printer or are somewhere on the way to the Office of the Attorney-General for transmission to the Government Printer. Hon. Kaluma, would you like to assist the Hon. Member?

Hon. Kaluma: Yes, Hon. Speaker. What remains is actually for the Committee on Delegated Legislation, and not for the CDF. In terms of how those regulations are published, when they come out and how they are actualized is now a matter with the Committee on Delegated Legislation. What Hon. Injendi was talking about is something that is upon us by frustration. Let me tell Hon. Members that there is no hope that they can be given because it is within the Act that we describe who should be signatories to the account.

Essentially, two are there, of which Hon. Members know. One is out there waiting reconstitution. So, there is nothing we can do about it. The prayer is to the Chair of the Committee on Delegated Legislation to expedite this process of regulations so that we deal with the matter.

Hon. Speaker: Hon. Cheptumo, you hear the plea from your colleagues. Follow up with the Office of the Attorney-General to expedite the matter, if indeed it falls within your mandate to do so. Do you want to say that it is not within your mandate, Hon Cheptumo?

Hon. Cheptumo: Hon. Speaker, we have a duty to make matters very clear to the Members of this House. As we proceed to recess from next week, assuming that we will take our recess then, the issue will be that of bursaries and so on. I want to state the true position; it is important for us to say the truth to this House. The Act gives my Committee powers to do pre-publication approval. That means my Committee shall approve the regulations before publication.

Hon. Kaluma, my learned colleague – of course junior – sat with us in the meeting twice. We established a technical sub-committee to which, again, Hon. Kaluma was a Member. We went through all the issues and came up with the final document. As you are aware, the function of the National Government Constituencies Development Fund Committee is different from the mandate of my Committee. The mandate of my Committee is to ensure that the regulations are done in accordance with the written law – the parent Act, the Constitution and any other relevant written law – which has been done. Once we do that, the matter goes back to the National Government Constituencies Development Fund Committee. The matter has since gone to them. It is for them to forward that document to the Board, which will eventually forward it to the Attorney-General for publication.

Hon. Speaker, I want to make it clear to this House that the mistake, from the word go was occasioned by this House because we did not provide for the Committee that was in place earlier on to proceed before the new Committee was put in place. That was our mistake. I remember that when Hon. Lessonet proposed such a provision, the membership of this House declined. That is why we now have a problem. The truth of the matter is that the Members of the

current Committee have no option but to wait for the publication of the regulations, so that they can be tabled. Since we have already approved the regulations, there will be no debate on them. We have already approved the regulations in our meeting.

Hon. Speaker, the law is very clear. If we are satisfied as a Committee, our function is to communicate to the Ministry that they are in order. The process of constituting committees in the respective constituencies shall proceed from there. That is going beyond where we are. At this point, it is important for me to inform the House that what is remaining is the publication of the regulations by the Government Printer through the Attorney-General.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, it appears like ping-pong. There is nobody to take ownership of that process. Why should it be the part of the Leader of the Majority Party? If Hon. Cheptumo, as the Chairman of Delegated Legislation Committee says that his Committee has finalised their mandate, having sat with the other committee, the best thing for me is not to allow any debate because there is nothing you are requiring me to do to facilitate that process, as your Hon. Speaker or administratively. I wish you were saying that the Office of the Hon. Speaker or the Office of the Clerk is supposed to do this or that. When Hon. Kaluma, who is a Member of the Committee on Delegated Legislation says one thing and another Member says another thing, there seems to be some ambivalence.

Hon. Cheptumo, there is no point of flogging a dead horse. We should get Hon. Lessonet to follow up the matter and report to the House on Tuesday. That will be the best direction so that Hon. Lessonet briefs the House on Tuesday, and not Wednesday, so that if there is anything that needs to be facilitated it may be facilitated by either the Office of Hon. Speaker or the Office of the Clerk, or by the Office of the Leader of the Majority Party. We have heard what the Members have said. What Hon. Onyonka said makes a lot of sense. Because Kenyans are suffering out there, it is only fair that we proceed this way.

Before we move from this Order, let us have Hon. Chepkong'a.

PAPER LAID

Hon. Chepkong'a: Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:-

The Report of the Mediation Committee on its consideration of the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.33 of 2013)

Hon. Speaker, I would also like to give notice of Motion on the same.

Hon. Speaker: Proceed, please.

NOTICE OF MOTION

ADOPTION OF MEDIATED VERSION OF STATUTE LAW
(MISCELLANEOUS AMENDMENTS) (NO.2) BILL, 2013

Hon. Chepkong'a: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on its consideration of the Statute Law (Miscellaneous Amendments)

(No.2) Bill (National Assembly Bill No.33 of 2013), laid on the Table of the House today, Thursday, 24th March, 2016 and approves the mediated version of the Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No.33 of 2013).

Thank you, Hon. Speaker.

Hon. Speaker: Let us move on to the next Order.

BILLS

Second Readings

THE DIVISION OF REVENUE BILL

(Hon. A.B. Duale on 23.3.2016)

(Resumption of Debate interrupted on 24.3.2016 – Morning Sitting)

Hon. Speaker: Order, Hon. Members! Debate on this Bill was concluded in the Morning Sitting. What remains is for the Question to be put.

(Question put and agreed to)

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

THE VETTING OF JUDGES AND MAGISTRATES (AMENDMENT) BILL

Hon. Chepkong'a: Hon. Speaker, I beg to move that the Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No.5 of 2016) be now read a Second Time.

Hon. Speaker, this is a Bill that seeks to extend the term of the Judges and Magistrates Vetting Board by three months. The Board appeared before the Departmental Committee on Justice and Legal Affairs that had a retreat in Mombasa. They discussed the pending matters. The Committee considered the issues that were outstanding and felt that the Board should be granted additional three months within which to conclude those matters pending before it.

We considered a number of issues, including fair administrative action as enshrined not only in the Fair Administrative Action Act that we passed in this House but also in Article 49 of the Constitution that requires every institution that undertakes a hearing, or prosecutes matters that touch on Kenyans to act in a fair and reasonable manner. We also considered the question of expeditious disposal of matters that are pending before the Board. The Committee felt that expedition should not be at the expense of the rights of the accused person and fair trial and disposal of matters that are pending before the Board.

We were informed by the Board that they had concluded all the 29 matters they had within the prescribed time. Unfortunately, and as Hon. Members know, the legislation gives the

persons that are being vetted the right of appeal or review of their matters. All the 29 persons that were vetted applied for review. Those matters are pending for review, as we speak. Hon. Justice Ombija was also vetted the other day as required by the Supreme Court. The matter was concluded. He was found to be unsuitable but he has seven days within which to appeal. He has a right of appeal or review. All those matters must be disposed of. They cannot be disposed of within the time that this House allowed the Board to conclude the business pending before them. So, it is not because of their inaction, neither is it because of the delay that has been occasioned by the Board. It is because of the wheels of justice that we must ensure that there is fairness to all the persons.

Hon Speaker, for you to be declared to be unfit and not to be given a right of appeal would be very unfair. That way, we will be going against our own tenets of Fair Administrative Action that we have passed in this House and which is contained in the Constitution. So, to allow them to prepare their final report which must include the review of the 29 cases that are pending before them, so that that report will be tabled in this House for consideration---

It is a requirement in law that once the Board concludes all their matters they must prepare a report which they must bring to this House for consideration. So, to allow them to prepare that report they need, at least, three months which we agreed as a Committee to grant. So, we are seeking that this House agrees with the Committee.

It is a requirement in law that the Board must archive all the works that they have done. All the investigations they have carried out, the decisions they have made, the reviews they have conducted must be archived for future generations and for purposes of people knowing what the Board did during their time. So, to allow them to conduct that process, it is important that we grant them the three months that they have requested. It is just a minor amendment that is being sought that is contained under Section 23 of the principal Act which reads as follows:

“Where the time prescribed in this section lapses, when the board has commenced the hearing of a matter but it has not made a determination under Section 21, the time shall be deemed to have been extended until such time is made and shall not exceed three months from the 31st December, 2015.”

Hon. Speaker, the three months shall lapse on 31st March. So, if we do not add them the three months, they will not be able to make a final determination on the reviews that are pending before them which are 29 of them.

The other thing that is important to this House that they need to know is that the extension shall not occasion any additional expenditure from the Exchequer. They have sufficient money to conduct all that work that they have proposed for the three months if this House considers appropriate to grant.

I am urging this House that we expeditiously process this matter so that we can allow them to conclude the matters by 30th June, this year. Three months is not inordinately too much time. It is fairly reasonable considering the work that they are undertaking and considering that it touches on the rights of people. So, I am pleading with this House that we grant them that extension.

With those remarks, I beg to move and request the Member for Ndhiwa, Hon. Aghostinho Neto to second.

Hon. Speaker: Hon. Aghostinho Neto, you have the Floor.

Hon. Oyugi: Thank you, Hon. Speaker. I thank the Chair of the Departmental Committee on Justice and Legal Affairs for moving this Motion. I would like to second it.

First, I would like to say something that he has not said in seconding this Bill. This extension is a no-cost extension. The Commission, Judges and Vetting Board have agreed that they have sufficient money that they need to do this undertaking. So, it has no extra cost on the people of Kenya. They have the money that was allocated to them. It is only because of other reasons that they were unable to finish their work but they are happy to work within the budget.

I know that the Board has taken fairly long to do its job. The Constitution had anticipated that their job was supposed to have been finished one year after the promulgation of the Constitution. However, it is good to appreciate that the Board went through various challenges. There were several appeals and court cases. Like the Hon. Chair said we, as the Committee, looked at all these things and we thought that the best we can do is to ensure that the cases they have considered also have sufficient appeals and review.

I know for a fact that this House has had several things with commissions and boards that had been given powers to do certain jobs. I would like to say that the Board out of about 16 or 17 bodies that the Departmental Committee on Justice and Legal Affairs oversees, this particular one has done a commendable job. The work of the Judges and Magistrates Vetting Board has been exemplary. We have had people come from other parts of Africa and other nations trying to seek and understand how this Board has done their work.

It is true that sometimes organs that are set up by Parliament do not do good jobs but it is also true that some do good jobs. One of the considerations that we had was a deliberation that we ought to think about creating legislation in future that will ensure that the Vetting of Judges and Magistrates Board is a permanent organ so that, at least, the Judicial Service Commission (JSC) apart from appointing judges is not the one that considers the firing of judges. This Board should be left to consider and review the conduct of various judges.

Like the Hon. Chair has pleaded, I request my colleagues that it is not the wish of this Board to stay in office for too long. They have given consideration that they will give sufficient reports in the next three months if we give them this extension. They have done a good job but it is also fair that the other Kenyans who have been subjected to the Board's decisions are given a fair chance of review and appeals.

It is for that consideration that we, Members of the Departmental Committee on Justice and Legal Affairs, found it appropriate to request this House to approve for a no-cost extension to the Vetting of Judges and Magistrates Board. Hon. Speaker, I plead with you to help and give considerations as other Members debate this that we support this Board for three months.

With those many remarks I beg to second. Thank you.

(Question proposed)

Hon. Speaker: Hon. Duale, you have the Floor.

Hon. A. B. Duale: Thank you, Hon Speaker.

Hon. (Dr.) Pukose: Hon. Speaker---

Hon. A. B. Duale: How can you put a Question on the Second Reading of a Bill? Hon. Pukose, you cannot just--- Whether it is a small Bill, it is a legislative policy.

Hon. Speaker, with a lot of respect to the Chair, I will support but I have reservations. The vetting of judges and magistrates started many years back in the last Parliament. Just the same way we sent home Hon. Charles Nyachae and his Commission for the Implementation of

the Constitution (CIC) and Mr. Kinuthia of the Transition Authority (TA), this should be the last time we are extending these three months to Sharad Rao and his team.

It cannot be open ended. If it is vetting, you start in the morning and finish in the evening. You cannot vet judges and magistrates forever. I am not even seeing the value of the vetting. It should be stopped. All the people who have been vetted are having serious issues including facing tribunals. What is the value of vetting?

Kenyans must ask themselves one question: Has the vetting of judges and magistrates achieved its principal objective that was anticipated by the Constitution?

(Applause)

This is the question in this House. This House will not just be extending terms.

I am not polluting the debate but when you vet me and approve that I have been qualified both in integrity--- Look at Judge Ombija. If you look at the Objects and Memorandum of this Bill, you will find that the only reason why they are looking for an extension is because of Judge Ombija. This man was vetted and found not fit to hold office. Judge Ombija went to the High Court and won through to the Court of Appeal. Barely two months ago, the Supreme Court disagreed with the Vetting of Judges and Magistrates Board and Judge Ombija resigned. The Board said: “No my friend, there was a stage when you were to resign and not now.”

Hon. Speaker, let us not make this vetting process an exercise in futility. A radical surgery of the Judiciary was done by the Senator of Meru, the then Minister for Justice and Constitutional Affairs and Justice Aaron Ringera. We thought the Judiciary would be as clean as Caesar’s wife. In 2010, we brought something called “The Vetting of Judges and Magistrates Board”. The mistake we did was that we did not look at the history of the person who heads it, Justice Sharad Rao. He was a prosecutor when there was a lot of injustice in this county; that is during the Kenya African National Union (KANU) Government, when Nyayo Chambers were in place.

Since vetting has been there from 2011 up to now they cannot tell me that they are still vetting judges and magistrates. This is the third time this House has extended their time. I want to ask the Chair of the Departmental Committee on Justice and Legal Affairs to talk the language Justice Sharad Rao and his team speaks. He should tell them that after three months, they must pack their bags and join Charles Nyachae, Mr. Kinuthia and the rest. Commissions cannot just exist forever.

As I support, I am sure this is the last time. Hon. Members, if you have noticed, the extension of the Judges and Magistrates Vetting Board always comes either when we are going on recess or when the House is going for its final year, requesting for reduction of publication period. This time I agree with the Chair because he is honest and always right. The person who seconded him is a man I have a lot of respect for. This should be the last three months whether they deal with Ombija alone or with others. Please tell them that. Finally, the value of this vetting must be analysed. An audit must be done on whether the vetting has helped or not.

Hon. Speaker, I support.

Hon. Speaker: Well, I will allow some more comments, including revisiting what was famously known as “radical surgery” or “surgery by radicals”. You have a right to decide which was which.

You have the Floor, Hon. Grace Kiptui.

Hon. (Ms.) Kiptui: Thank you, Hon. Speaker for the opportunity. I also rise to support the extension of time for this Board for a further three months. When the Board appeared before the Committee on Justice and Legal Affairs and the Committee on the Implementation of the Constitution (CIOC), they made a case which we thought was fair. We have spent a lot of money on this Board. They have been running this exercise for many years. It is only fair that they conclude it neatly and give us a report. They should also prepare their records in all languages that Kenyans can understand, including those living with disabilities, like Braille for the blind. Having come this far, it is only fair that we allow them to conclude in a neat manner.

Secondly, this Board has really tried considering all the hurdles and court cases they have gone through. They took some time when they were taken to court but they have tried as much as possible to move forward. Talking, for instance, about Justice Ombija, the law is an ass and we have to follow each and every process. The right for Justice Ombija to appeal or seek for review cannot be wished away. These are our laws which we made for ourselves and we must obey them.

In that respect, Hon. Speaker, I support the extension.

Hon. Speaker: Hon. Rose Nyamunga, take the Floor.

Hon. (Ms.) Nyamunga: Thank you, Hon. Speaker for giving me an opportunity to add a few comments to what has already been said. I want to support the Bill and the extension of three months. It is very important for the time to be extended. It does not matter whether it has been done two or three times before. It is important that at the end of the day we, as Parliament, are seen to be doing the right thing. We do not want the judges or magistrates to come back and tell us they did not finish or the vetting was not done to the end or the proper conclusion was not made and the report was hurriedly done. These are some of the things that may follow.

In my view, as long as there is no monetary impact in the three months, I do not see any harm in giving the Board an extension of three months so that they finalise their work. All of us know very well that judges and magistrates are the custodians of justice in this country. It is their turn to do a good job so that at the end of the day all of us are confident that the judges or magistrates given an opportunity to continue working are people who are already vetted and all the gray areas sorted out.

It is very important that we give the extension. I do not think we should take pride in how many commissions we send home. For instance, we sent the TA and Nyachae's team home and their job was not finished. What pride is there for us, as a nation or Parliament? It is very important that work is done and Parliament is seen to be above board.

I support this and it is important that we do a good job so that nobody will question Parliament for not doing a good job or sitting on the job and many other complaints. I support the extension and it is very crucial that it is done so that each and every judge or magistrate is given a fair vetting.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. John Waiganjo, you have the Floor.

Hon. Waiganjo: Thank you, Hon. Speaker for giving me a chance to debate the Vetting of Judges and Magistrates (Amendment) Bill. This is a Board that has appeared before the Departmental Committee on Justice and Legal Affairs on several occasions. We assessed their progress and we are satisfied that the work done by this Board is very useful not only to the country but can also be borrowed by other countries.

In fact, they have created precedent. This Board is unique because we have some foreigners serving in it. Therefore, it has acquired a wealth of experience and that is why it is important to archive their work and give them the extension so that they can prepare a good report which this House will be satisfied with.

It really does not matter like the previous speaker has said how many times we have extended. The extensions have come with very good and varied reasons. Remember these are judges and magistrates who are being vetted. They are jurists and each time they were vetted they would go for reviews, a situation that was probably not anticipated by the Board. The Board in its work sought adjournments on merit and that is why we extended their time. The last 90 days are very important and the Board will not be given a budget. I do not know why we should fail to extend its term because Parliament is not being asked to give more money.

Secondly, this country has already spent millions of shillings on this Board. It is only fair to give them an extension so that they can conclude their work. It is only fair to give them an extension so that they can conclude their work. I agree with my good friend, Hon. Neto, that in future, we should anticipate a situation where there will be a vetting board which will be on standby all the time. If it is not, we need to have a standing committee for complaints, where Kenyans can complain about a judge or a magistrate.

The Chief Justice has expressed himself very profoundly and has said that there is a lot of corruption in the Judiciary. There is also activism within the Judiciary. We cannot trust the JSC. The membership of the JSC is an extension of the Judiciary. Those who serve in the JSC are judges of the Court of Appeal, judges of the High Court, magistrates and even advocates. Therefore, when you have a JSC that is constituted in that manner, you will find that when the Vetting Board tries to vet those judges and magistrates, they go back to court and their cases are reviewed because we are just talking about the same group of people. If a member of the JSC is an advocate of the High Court of Kenya and a Senior Counsel representing a governor of a city like Nairobi and he or she is quoted in certain circles that he or she corrupted a judge of the Supreme Court, then what are we talking about here? We are talking about a Judiciary that is manned by people who are of questionable character. Whether that has been proved or not is a story for another day.

This Board must give us the way forward. We must look at this Board and ask ourselves as a country whether we want to stop vetting magistrates and judges. Even when the term of the Board expires on 31st March, 2016, who will vet the magistrates who were admitted yesterday, for instance? Who will vet those who come after the Board is gone? Is it the JSC? What do we do with a JSC that even defies Parliament when they are asked to appear and give an account of their own? The conduct of judges like Hon. Ombija should tell us that there are gymnastics that are being played in the Judiciary. How do you go to court, stop your vetting then when you lose, you resign the night before? What are you telling Kenyans? You are saying that there are issues that you do not want the public to know. That is why you jump before the beat of the drum to purport to move away from the vetting. Kenyans will still know and by extension quote the same Act which says that the Board's term is coming to an end and, therefore, it cannot vet you. Therefore, it is very important that we extend the term of the Board. The Committee expressed itself on the issue that there is need to have a standing committee where Kenyans can complain about judges and magistrates.

There is nothing worse than when a Judiciary is corrupt. Even if corruption cannot be excused, there are institutions that when they are corrupt, the country goes to the dogs. We know

very well why we went to war in 2007/2008. It was because people refused to go to the courts purporting that the courts would not give them justice. When we have a Board that is trying to dig deep and see what they can do about the judges and magistrates, we are reluctant to extend its term by 30 days.

I am very worried to hear the Leader of the Majority Party say that he cannot see the value added by the Board. This is the case and yet he is the Leader of the Majority Party in the Republic of Kenya. He supports the extension. We cannot blow hot and cold at the same time. We must appreciate that the country is moving forward. We perform an oversight role over the Judiciary. The Departmental Committee on Justice and Legal Affairs performs an oversight role over this Board and other boards. When you stand in this House and say that you do not see the value of a Board that has been vetted, listened to and recommendations passed by a Departmental Committee of Parliament, you really baffle me.

I support the Bill.

Hon. Speaker: Let us have Hon. Ababu Namwamba.

Hon. Ababu: Thank you, Hon. Speaker. Even as we favourably consider the request for extension, the justification or rationale cannot be that the extension of the term of this Board will not occasion any further cost to the taxpayer. That cannot be the primary consideration that this House looks at. This House must look at the value addition, the fulfilment of the mandate and expectation that Kenyans had when we put this Board in place.

You will recall that the radical surgery of 2003 was in itself motivated by a history of what you may call the trust deficit in the Judiciary. You can see the reflection of that trust deficit in the constitutional philosophy we adopted that basically pushed us to put in place mechanisms to completely overhaul the judicial infrastructure. Vetting was not supposed to be some run-of-the-mill, perfunctory mechanical exercise where you just take some characters through and say you have vetted them and so be it. It was not supposed to be merely a matter of time in that you are given 24 months and then an additional three months, then you write an impressive glossy report to this House and say that we achieved the goal of vetting.

The Concise Oxford Dictionary defines vetting in these terms:-

“to vet is to investigate someone thoroughly especially in order to ensure that they are suitable for a job requiring secrecy, loyalty or trustworthiness.”

The question which we should be asking, taking into account that simple, basic English definition is that, has it been thorough? Has it ensured that the standards of secrecy, loyalty, trustworthiness have improved by reason of this vetting? I have very serious doubts as to whether this vetting has bridged the gap of the trust deficit. I have very serious doubts whether if you were to conduct a fair opinion poll today, majority of Kenyans would tell you that the judges and magistrates that have gone through this exercise would meet the highest expected standards of trustworthiness, loyalty and fidelity to the rule of law.

Let me clarify that I support this extension. Even as I support the extension, I would expect the Departmental Committee on Justice and Legal Affairs to interrogate the task of this Board a little further than merely telling this House that they are seeking this extension because it will not cost any taxpayer any more money. That cannot be the primary reason. Give us some statistics. Give us some compelling and empirically verifiable data to demonstrate that, indeed, this whole vetting exercise, for the many months it has been going on, has cured the trust deficit that continues to encumber the Judiciary. That today or at the end of June, when this vetting

exercise concludes, the trust Kenyans have in the Judiciary, judicial officers, magistrates and judges will be higher than it was at the beginning of the vetting exercise.

Hon. Speaker, I am an officer of the court as you are yourself. As an officer of the court, I appear in court once in a while. I can confirm that the challenges we have experienced before remain to a very large extent.

We should give this Board an extension so that it can conclude its responsibility. We should also scrutinise its performance. My colleague from Ol Jorok Constituency, Hon. Waiganjo was wondering that after the mandate of this Board has expired, what we do with judicial officers entering the service. He should know this was a transitional mechanism and this exercise is not a permanent process. It is part of transitional justice and crossing the Rubicon from the old order where we had serious trust deficit in the Judiciary to the new constitutional dispensation. As we cross over to this new order, we should not do so with so much baggage of the temporary processes we put in place to help us transit. We should invest in permanent institutions including the JSC that must be capacitated to ensure that rogue characters do not pass the trapdoor to enter the judicial service. We should not bother about these temporary processes and I have serious doubts whether these temporary processes have served the very high ends that we encapsulated in the Constitution. We should think about how we can strengthen institutions such as the JSC and the Public Service Commission (PSC) to ensure that the persons who ultimately enter service are of high moral character, high training and beyond reproach like Caesar's wife.

In conclusion, I support this extension because of the requirements of Article 47 of the Constitution that guarantees every Kenyan the right to fair administrative action, that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. Those who have been appearing before this Board must be treated within the expectations of Article 47 of the Constitution. Some have appealed and justifiably so in pursuit of the end justice, we should give the Board time to conclude that.

We should also tell the Board that we are not absolutely satisfied with its performance in terms of bridging the trust deficit. My learned senior, Hon. Chepkong'a is upto the task of delivering this message on behalf of this House that we want the Board to justify its existence by bridging trust deficit in the Judiciary and Kenyans starting to have greater confidence in this key institution of the State.

Hon. Speaker: Hon. Joseph M'eruaki, you have the Floor.

Hon. M'uthari: Thank you, Hon. Speaker. I rise to contribute to this Bill. I grudgingly support it. There is very little that has been achieved by the Board. The way things are in the Judiciary show little trust and too much corruption. Our judicial system is being utilised by busybodies who want to stop projects or processes. Some people occupy offices because of the judicial system that cannot be relied on and we may not be sure if they are qualified. Despite the fact that they have been vetting, they have not bridged the trust gap. We still have a very big gap.

At the moment, I am aware of activities and projects that have been stopped. In my opinion, there are cases that should not be admitted but the judicial system has been utilised as a tool for delaying processes and implementation of programmes and projects to the extent of changing the Constituencies Development Fund (CDF) Act to the National Government Constituencies Development Fund Act because some people felt that it does not serve without looking at the value, essence and what is good to Kenyans. For fair hearing of the issues pending and for the Board to write its report, I support this process. The Members of this Committee led

by Hon. Chepkong'a should help us as we allocate taxpayers' money to the Board, what value do we get? It is useless to have a body or go through a process for the sake of going through it. It is important to get value, quality and have a mechanism for follow up.

With those few comments, I support it but grudgingly

Hon. Speaker: Hon. Peter Kaluma, take the Floor.

Hon. Kaluma: Thank you, Hon. Speaker. I rise to support the Vetting of Judges and Magistrates Bill. I would like to remind my colleagues of the unique and limited mandate that this Board was executing. There is no precedent for the work this Board was executing anywhere in the world; judging judges and judicial officers. I agree with Hon. Ababu that when we promulgated the new Constitution, we insisted in a good provision that all judicial officers who were serving before the Constitution came into force had to undergo vetting. Ours was a Judiciary lost. It was a lost institution in terms of integrity, independence and public trust, the good ideals that would anchor the proper judicial institution that Hon. Namwamba spoke eloquently about. The vetting was for that limited range of judicial officers, the ones who were serving before. When you are questioning the quality of decisions coming from the courts today, are these largely decisions of the judges who have been vetted or decisions of judges who were appointed after the promulgation of the new Constitution? We could be blaming the good body over the human errors of individuals who were not subject to their jurisdiction. The mandate of the Board was not just to check suitability on grounds of the Constitution and the law we are seeking to amend at very restrictive provisions.

I would like to report to the Members if they would permit me that as an officer of the court, like Hon. Namwamba, I continue to appear in court although on a *pro bono* basis and there is a lot of good that came from the Board. Before the vetting process started in 2012, as advocates, we feared appearing before some judges as Hon. (Ms.) Kajuju will tell you. They would even ask the colour of your shirt and where you slept before going to court. Kenyans were being harassed in a manner that going to court to petition for a right cost you a lot of pain. In our Judiciary today, with all those difficulties, the court is today more approachable, accessible and any Kenyan can walk into unrestricted about how they should deal with a matter. This is the way to go. The reason for that extension is that in that very Constitution, we said that all judicial officers, judges and magistrates who were serving then and desire to continue serving must go through vetting. This is not legislative. What does the Board do when a judicial officer applies for review, which is allowed by both the Constitution and the Act? What does the Judges and Magistrates Vetting Board do when a judge, even beyond those provisions, goes to the High Court in the exercise of those rights vested under Article 47 of the Constitution? The fact of the matter is that the Constitution has conditioned their seizing of duty to the vetting of all judges and magistrates. By going to court, the process is stopped. The body confirmed to us that they have undertaken the entire process of review. In terms of the matters that were pending before other bodies, it was only Judge Ombija whose matter was still pending. It was only last week that Judge Ombija resigned from the Judiciary. This is a unique board. The experiences of that Board can be taken elsewhere.

That is why the position of this Parliament has been that we cannot have permanent transitory bodies like the Transition Authority. We were saying that all those institutions must transit at some point in time. For this particular one, we made a decision in a collegiate manner with members of the Committee and other Committees of Parliament that we sat with. I remember we also sat with the Committee on the implementation of the Constitution. Cases like

the one of Judge Ombija were still pending. The review motions and applications were pending the termination. Let me assure Hon. Members here that the Board assured us that the terminations on those review applications were also already done. So, we made a decision that we would, therefore, bend back so that the good work that the Board has done can be consolidated, archived, documented and tabled before this House for perpetuity and for reference by not only Kenyans, but other jurisdictions which are already borrowing from our experiences here.

The composition of the Board had judges and former Chief Justices from Tanzania, Uganda and outside Africa. It had people who have a very good reputation worldwide. I can report to this House that the experiences and good work of this Board is already being copied by those countries. South Africa, Swaziland and most of those countries have borrowed our experience, particularly on the information of the Board on what was happening here.

Let me repeat what Hon. Waiganjo was coming to. If we had a properly functioning Judicial Service Commission (JSC), there would be no problem. If we had a properly functioning JSC, we would not be in the problem of vetting and thinking what to do next. The problem Hon. Members must begin thinking about is how we will structure the composition of JSC, so that we can have integrity in the Judiciary; have a Judiciary that is independent and which you do not fear if a judge has been bribed or spoken to when we go before him or her. That is where the problem is.

[The Speaker (Hon. Muturi) left the Chair]

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

A short while ago, we had the case of Justice Tunoi. I know there are some issues around it but, Hon. Members, you saw the composition. Members of the JSC have interacted with that case down there. Some have interacted with it as judges and others as advocates. Then they sit as the JSC to remit the matter to a tribunal to be created to investigate him. There is conflict of interest.

Let me say before the Kenyan people that corruption in the Judiciary is not a problem of the judges and the magistrates that we have. In fact, the biggest threat to the integrity of the Judiciary is the advocates. Hon. Deputy Speaker, you have seen what is happening in this country. Some cases are done by just a handful of lawyers. You must be asking yourselves as Kenyans and as Members of Parliament, how come when a case is of this type, just a few lawyers - hardly five - jump from one case to other? If you look at their background, they are mostly people who serve in the JSC or who have served before. There is no judge who engages in corruption if he or she is not approached by an advocate. There is no judge who engages in corruption if he or she is not approached by a Kenyan. Let us not measure the work of the vetting board by the fact that we still have some inadequacies in the Judiciary. It was not only their work. Let us change the society. Let us have a team that can work to serve this country. Let me assure Members that of all the bodies that have been under our charge as the Departmental Committee on Justice and Legal Affairs, this has been the best of them in terms of reporting, documentation and how they execute their mandate.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, Hon. Deputy Speaker, for giving me this opportunity to support this Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No.5 of 2016). Based on the Vetting of Judges and Magistrates Act 2011, the Board that was formed was to vet judges and magistrates who were either on employment before the commencement of the Act or just at the commencement of the Act. We ask ourselves: After that, what happens to all the other judges and magistrates who have come in? Does it mean that they are not corrupt? Does it mean that they have no integrity issues? One of the biggest issues we need to look at as a House is this: We must have a system in place that can do regular vetting of judges and magistrates. That is because the current Supreme Court Judges, Judges of the Court of Appeal and High Court who have come after the Act have not been vetted. It does not mean that all of them are very clean. That is an issue that we should look at.

The financial year of that Board ends on 30th June every year. Therefore, based on the estimates they have been given and the presentation of the Committee Chair, we know that the Board will perform up to the end of this financial year, which is June. We are within our mandate to give them three months for them to complete that work.

The Vetting of Judges and Magistrates Act 2011 states very clearly that once somebody has served in the Board, he or she is not eligible for appointment to be in the JSC as a judge, magistrate or a judicial officer for a period of five years. That might be the reason why some of those officers have delayed finishing their report. Being excluded from employment for the next five years makes them decide to prolong their work. However, time is up for them. They must perform within the given period of time so that they deliver to Kenyans. We do not see why they cannot work from Monday to Friday from 8.00 a.m. to 5.00 p.m., so that they can expedite those functions, finish them and submit their report.

With those few remarks, I support this Bill.

Hon. Deputy Speaker: Hon. Sakwa Bunyasi.

Hon. Bunyasi: Thank you, Hon. Deputy Speaker. I rise to support. I had a chance to interact with the Judges and Magistrates Vetting Board as a Member of the Constitution Implementation Oversight Committee. First and foremost, I would like to say that of the interactions I have had with various commissions that were nearing the end of their lives; this has been the most professional. They are not really seeking to extend their time. The leadership is eager to leave, but they do not want to leave any process behind. If you judge that Commission purely on the output relative to the input that they were given, they have done extremely well. They have broken new ground, as we have been told. Their work is already being used as a benchmark. That is very impressive. On that note, we should let them go home peacefully after the three months with the knowledge that they have served Kenya very well.

But there were certain intrinsic weaknesses or design of the exercise for which the Board bears no responsibility. The architects of that particular instrument must take some share of responsibility. For one, the target group they were to deal with were those in appointment only prior to 27th August, 2010. Clearly, they should have known that there are no angels in the pipeline and that, after August, 2010, the problem would still persist. That was a design that was intended to be like that. We cannot evaluate it alongside the extension of that particular mandate.

One of the biggest challenges we have got with our Judiciary is that, first, it is a complex place. Activities are a chain. People come in and go out. From which raw material are we hiring judges that come in? We get them from among the advocates. I do not think that if you were to get an opinion poll in this country, the advocates would score very high in terms of trust or

integrity. There is no way then you can expect that when they become judges, they are going to be different. We should use this occasion to shine a spotlight on the integrity of those who are coming in this particular line of work. We have too many cases of advocates that are not serving *wananchi* in this country - not just *Wanjikus*, but all of us genuinely.

The infusion of ethics in this pipeline seems quite poor judging from the outcomes of it. This is a matter that will lead us into continuous problems in this country, unless it is strictly addressed. The Law Society of Kenya must take a much more active role in weeding out those advocates who do not deserve to be where they are. The tolerance of the administrators within the Judiciary who are themselves part of the conduit for corruption must be addressed. This can be addressed seriously so that the judges are working in an environment; one, in which people are well trained and have ethics as one of their core mandates and know that there are consequences to the work they are doing. For as long as that is not addressed, we will continue to have a problem.

Of utmost importance now - and I would expect that those among us whose professions lie entirely in this area and who may be familiar with other mechanisms other than the one time mechanism that was intended by the Vetting Board will shed some light on the way to move in a dynamic way. Now that this has been done largely and is going to end, what else can be brought on board that is of a continuing nature in the vetting to ensure that there is no one who sits in the Bench a day longer than they should because of integrity issues? That, even the slightest whiff of bribery, they are willing to step aside because they are people of integrity.

Anecdotally, back in the 1970s, the then Attorney-General Mr. Charles Mugane Njonjo, commenting on the lifestyles of the Africans who were now joining the ranks of judges said:-

“You could not be really on the Bench and be down at River Road in a bar every weekend. You choose. If that is the life you want, then you stay away.”

There were some comments at the time whether people who get to the Bench must of necessity go into the *mzungu* lifestyle of clubs. The answer was essentially yes. If you do not go to that type of secluded lifestyle, then you are not going to be in the right place when you stay on the Bench.

We must make ourselves believe deeply and clearly without any pretence out there that there are angels out there and others are not and say that we are not going to succeed in the long run unless we have a system that checks out the wrong-doers.

A recent survey of young people generally about their desire in life was that they want to make money at all cost, including corruption. That is a huge testament of the challenges that we face. I do not think it is any different among our youth who are training to become lawyers, aspiring to become famous and aspiring to get bribes as a way of getting rich.

As I conclude, here is a Board that has done Kenya proud, professionally led and produced high quality statistics and documentation which is not being summarised, of course, in the amendment we are seeking to do. On that score, I give them extremely high marks. It is outside the original design but yet, a challenge for this country. What do we do with the challenges we have got? We are not going to get high integrity outputs in performance unless we have a mechanism in place. There is no line of work in life where there are angels. Not even the churches as we know them from what we see today. Even there, you do not expect anything done unless there is a mechanism that controls it. I hope that mechanism will be put in place as a result of this debate.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Timothy Wanyonyi.

Hon. Wetangula: Thank you, Hon. Deputy Speaker for giving me a chance also to contribute to this Bill. We must look back when we began this process. What was the intention of us setting up that vetting process? When we came from the old order to the new order, Kenyans were yearning for fresh air and they wanted to weed out the rotten potatoes from all our institutions. That is why we started the process of vetting. We have seen that some of the processes that have been going on have been very successful. But some have ground to a halt. But as we grant this extension, it is in the law that they must finish that process because those who transited from the old order to the new order had to go through the process. There could be some things that need to be looked into. This goes a long way in the judicial reforms. If we try to interfere with the reforms or try to stop them midstream, then we will lose the gains we have made. So, we must safeguard what we have gained and we must also be careful not to allow too much leeway for those commissions. They must perform within the time-frame which has been set for them and also within the budgetary allocation that has been given to them so that we achieve the intended purpose of the vetting.

We have seen several judges and magistrates who have been weeded out running to court and trying to stop the process. That has slowed down the vetting process. Some of them have challenged the decision of the vetting process. This is also an area that has actually challenged the vetting process and it has become very murky.

One of the earlier speakers mentioned that before the vetting process came into place, some of the Judges were the law unto themselves. Some of them were so arrogant that they could decide to dismiss your case before you even opened your mouth when they just do not like you. That vetting process has brought some sense of responsibility. These days, you will see professionalism being injected into the Judiciary. People who are applying to become judicial officers are people of high integrity. We must also look at the performance of the Judicial Service Commission (JSC). That is where the problem begins. The new judges and magistrates coming in through this process must be people who are above reproach. We must look at the gains we intend to achieve in the long term.

I support the extension of time because that process must be finished. This is the way Kenyans wanted the Judiciary to be. Especially, as we head to the general election, the Judiciary must be above board. It should not be suspected of being partisan or influenced or directed by anybody. The judicial process must be independent. The pronouncements of the Judiciary must be seen to be fair to all and respected by everybody. This is something we must safeguard as a country in order for us to move forward. What have failed us are our failed institutions. Some people have been given independent offices, but they behave as if somebody is directing them from somewhere. They do not direct their minds to perform. This is what we need to look into so that we do not appoint dubious characters to positions of influence, like in the Judiciary.

With those few remarks, I support this amendment.

Hon. Deputy Speaker: Hon. Chris Omulele.

Hon. Omulele: Thank you, Hon. Deputy Speaker, for giving me this opportunity. I would like to support the proposed extension of the term of the Board by three months.

From the sentiments that have been expressed by the speakers who have deliberated on this issue, it would appear that what has happened as far as the Judiciary is concerned is not good enough. This is not to say that the Judges and Magistrates Vetting Board has not delivered on its mandate but rather, to say that what is happening in the Judiciary needs an even more incisive,

intrusive and concentrated surgery than what has happened. I say this informed by the sentiments that were expressed by our Chief Justice one or two months ago, when he was commenting on the elections that had taken place in the positions that were available at the JSC. His comments were that those members who had found themselves filling those positions had involved themselves in massive treatment of the electorate. Those were the sentiments of the Chief Justice. He had posited that the people who found themselves in the positions that were serving on JSC had bribed the people who had voted for them.

What tickled my mind was that the people who were electing those who were going to serve on the JSC were magistrates and judges. As the Chief Justice, he said that the competitors had involved themselves in voter treatment.

As a House, we know that one of the greatest offences that one can commit during the election campaigns is voter treatment. We know it is an electoral offence. If it is alleged and established that a Member has been involved in what amounts to voter treatment, their election is liable to be taken away. He is liable to be found to have committed a crime in this country and his seat will be taken away from him. He will be fined or even jailed. So, it is serious when the Chief Justice says this. I looked at the members who now comprise the JSC in this country. We all know that JSC is the employer of judges and magistrates. Those are the people who determine the terms on which magistrates and judges will serve in this country. We are being told that those are the people who have got into office on the wings and wind of bribery and voter treatment. Yet, those are the people who will sit in judgement and determination of the very terms of the people whom they have bribed. I was left baffled and very afraid. That is because we know that if I sit in a position where I can determine whether your child, or even yourself, are going to have a meal today or not, most probably, I am going to perform things that are favourable to you.

Hon. Deputy Speaker, some members of JSC continue to practise law before the same officers who voted them into office. Those officers sit in court and the particular members of the JSC appear before them. I have previously alluded to the fact that we currently have, before the Magistrates' Courts at Milimani, humongous bills that have been brought against the City of Nairobi by one of the members who sits in the JSC. The same member is the one who determines the terms of service of the registrar whom he appears before to determine whether he has performed such services that attract the fees that he is requiring the registrar to pass and award him. I say this with a heavy heart. I have never seen a more incestuous relationship in any forum of practice.

Today, we are saying that some of the JSC members have acted for people who are of interest, even before a tribunal that is sitting in this country against one of the judges of the Supreme Court of this country. That lawyer still has bills against the City of Nairobi, which is presided over by this person of interest; who is the Governor of Nairobi. There are two or three pending bill cases in that court amounting to billions of shillings, which are to be determined and awarded by a magistrate and registrar who is answerable to that particular officer.

I submit that we are in trouble. I want to join one of my brothers who has said that we probably need to look at the value. We need to look at where the rain started beating us. That vetting board has done its job reasonably well, but it has not gone far enough. As the people to whom Kenyans have entrusted with the mandate of legislation, we need to think about what needs to be done in order to ensure that the people who serve in this Judiciary do not go there to serve purposes other than interpreting the law and arbitrating between Kenyans without interference from quarters that should not be interfering with court processes.

They should determine those matters in accordance with the laws of this country only so that, even a poor man in this country can go to court with confidence and say: "I have lost something to so and so. This is the law that we have set. If you take my things by force, then you must return them and compensate me."

However, this simple truism is not true for everybody in this country. Today, people will take things from Kenyans, steal our money from our coffers and they will walk to the courts and the only question they will ask is this: "How much will the judicial officer take so that I can delay this case forever and even before I go and sit in some other position where I can determine whether this judge or the other magistrate can serve or not?"

People are boasting because they have millions of shillings which they have taken from Kenyans by crooked means and they are walking free. They are proudly saying: "I am going to run for this and the other position". We are in trouble, but we need to give that Board those three months. Let it complete its work and provide the records for us as we think on how to vet the people who have escaped the knife of that Board.

With those many remarks I support,

Hon. Deputy Speaker: Let us have Hon. Naomi Shaban.

Hon. (Dr.) Shaban: Ahsante sana Mheshimiwa Naibu Spika kwa kunipa nafasi hii nami pia kuunga mkono Mswada huu wa kuweza kuongeza muda wa kukagua mahakimu na majaji kwenye tume ambayo inatakikana kufanya hiyo kazi. Tume hii ilipatiwa kazi kufuatia sheria na Katiba mpya ya nchi yetu ya Kenya. Walivyopatiwa kazi, hawakujua mwanzo kuwa kazi hiyo ilikuwa ni nyingi kadri ambavyo ingechukua muda mrefu. Lakini nataka kusema kuanzia hapo awali kuwa kazi waliofanya, walijaribu kadri ya uwezo wao.

Tume hiyo imepata matatizo kadha wa kadha. Hata mahakama yenyewe pia iliwatatiza tangu pale mwanzo. Ilichukua muda kuweza kuendeleza kazi yake kwa njia ambayo ilikuwa inatakikana kwa urahisi na kwa wepesi. Hivyo basi, wakati wa kukagua mahakimu na majaji, waliweza kufanya kazi nyingi zaidi. Walichukua muda mrefu kwa kila jaji kwa sababu mambo yalikuwa bado hayajashika kasi.

Muda huu wanaouliza wa miezi mitatu kuweza kumaliza maswala yale ambayo walikuwa wametumwa kuyatekeleza inafaa uongezwe. Bila shaka ni sawa kwa Bunge hili la Kumi na Moja kuweza kuwaongezea miezi hiyo mitatu, ili waweze kutekeleza jukumu lao na kulikamilisha inavyotakikana. Nakubaliana na wenzangu ya kwamba tume ya kusimamia maswala ya mahakama imekuwa na matatizo mengi. Wakati ni sasa sisi tuweze kuangalia sheria iliyotengeneza tume hiyo ili tuweze kutengeneza kuwa wale wanachama wa tume waweze kufanya kazi pasipo kuchanganyikiwa na kazi zile zao za uwakili na ujaji. Katiba imewapatia nafasi ya kukaa pale, lakini inawachanganya kwa sababu vile vile wanaendelea na shughuli zao na inawabidi pia wafanye kazi kufuatana na vile Katiba ilivyotaja.

Binadamu si kamili. Mara kwa mara, sio rahisi kwa mtu kuweza kutenganisha lililoko rohoni na lililoko mbele yake. Hivyo basi, nakubaliana na wenzangu kuwa hata hiyo sheria ya hiyo tume ya kusimamia maswala ya mahakama, itabidi tuiangalie ili tuweze kurekebisha pale ambapo wanachama wako na matatizo .

Miezi mitatu si muda mrefu na kwa vile hawahitaji kuongezewa fedha za kufanyia kazi, basi mimi naunga mkono kuwa wapatiwe muda huu wa miezi mitatu waweze kumaliza maswala walioanza kufanya. Ukweli ni kuwa ni rahisi kwa wale ambao hawafanyi kazi hii kuona kuwa labda hawajafanya kazi. Mimi najua kuwa kazi imefanyika na sio rahisi kwa sisi sote kusema kuwa kazi hiyo ingekuwa nyepesi. Kazi hiyo ni nzito na haikuwa nyepesi. Nataka kuwapa

pongezi. Waongezewe miezi mitatu ili wamalize hiyo kazi ngumu waliopewa na Katiba yetu ya Kenya.

Naunga mkono.

Hon. Deputy Speaker: Hon. (Ms.) Fatuma Ibrahim.

Hon. (Ms.) F.I. Ali: Thank you, Hon. Deputy Speaker for allowing me to speak on this. I support this Bill. It is necessary to extend the period of the Judges and Magistrates Vetting Board. We need to appreciate that the Board has done remarkable work despite the challenges. We need to appreciate that the Board is the first to be established globally. It will be a practice that will be referred to in the context of Kenya. It was new and members had to go through a lot of processes in terms of learning and understanding many things.

We also need to appreciate that the membership of the Judges and Magistrates Vetting Board included international actors and that has delayed some of its work. Sometimes, its members could not do their work because of the requirements of the international membership. We also need to appreciate that the vetting of judges and magistrate was a very intensive and elaborate process, which allowed even the civilians to interact daily with the judges and magistrates to give complaints or information.

We need to appreciate the work of the Board. As a member of the Departmental Committee on Justice and Legal Affairs, we interacted with them and they have done extremely good work. They have vetted all the judges and magistrates. But there are some appeals, which is natural in all circumstances that are pending.

They have done a lot of documentation on this process and they have done very interesting reports regarding the vetting of magistrates and judges. We need to appreciate that they need 90 days. The cost is not there because they will use the money they have within their allocation. They are not seeking any additional money for the extension of 90 days. But, definitely, they will use their existing money for the work to be completed on time.

What was very impressive in terms of persuading our committee was that they have huge documents which they need to archive. We need to appreciate that because vetting of judges and magistrates is the first in this country and globally. It has a lot of sensitive documents which need to be archived, safeguarded, stored and carefully handed over to institutions. Three months is not too much. It is a short period. When you compare the value addition of extending 90 days to the Judges and Magistrates Vetting Board, it is valuable and not a waste. It is something that will enable them to publicly and transparently do a clearer and smoother handing over, documentation and archiving.

We need to appreciate that vetting of judges and magistrates is not an easy job. We should appreciate the work that they have done. In this country judges and magistrates are still engaged in corruption and a lot of malpractices. As a country, we are dealing with corruption across board in all places and institutions. I really feel that the culture of accountability is being inculcated in the process of vetting judges and magistrates. It could be a small gain but it has nurtured an element of accountability and auditing of individual's work and could be containing the likelihood of new practices to be perpetuated. It is also setting pace for the new judges and magistrates who are likely to be recruited and vetted.

That Board has left behind instruments of vetting newly recruited judges and magistrates because this is a growing country. Even the judicial officers working in the Judiciary, there are instruments that have already been developed by the Board that will be utilized as a starting point in order to build a stronger and sustainable practice of accountability. The Judges and

Magistrates Vetting Board shared with us that they are developing post-vetting of judges and magistrates work so that they can hand over the new instruments and structures. This will allow continuity of vetting in the future, so that there will be no gaps. It will inculcate a culture of accountability, personal audit and personal reflection among judges and magistrates. I support the extension of time for the Judges and Magistrates Vetting Board for 90 days for them to do a better quality finalization of their work.

Thank you, Hon. Deputy Speaker. I support.

Hon. Deputy Speaker: Hon. Chris Wamalwa.

Hon. Wakhungu: Thank you, Hon. Deputy Speaker for giving me this opportunity. From the outset, I rise to support. While I support this, I listened carefully to Hon. Chepkong'a when he was moving this Bill. I did not hear him give a proper report. It is, indeed, important as we move on to be given a progress report so that we are told up date how many judges and magistrates have been vetted and how many are remaining. This is key. We also need to be explained to: Why the three months? What are the criteria of choosing the three months? Are the three months realistic? We expect this to be answered when the respective person is called upon to reply. We do not want then to extend for 90 days and then come back afterwards to say they have not finalized.

As we move on, the Chair of that Board, Justice Sharad Rao, is the same person who is chairing the Justice Tonui Tribunal. I am wondering whether he is going to compromise in terms of efficiency and effectiveness. I do not think he is going to have time to move on and yet, he is going to get involved in the Justice Tonui Tribunal. This is a question we expect to be answered when the Mover will be responding.

The radical surgery that never was, was done during the time of Justice Ringera. Recently, about three or four months ago, the Chief Justice himself confirmed to Kenyans that the level of corruption in the Judiciary is very high. In fact, he was recommending that some of the judges who had already been vetted should be vetted again. Is there any value addition as far as this vetting is concerned or it is just a rubber stamp exercise? This is a critical question that we need answered. Secondly, we must know the time-frame. The time-frame that those people have been given, have they just been dilly-dallying for purposes of them getting another extension as a way of creating employment? This is a critical question they cannot run away from. We must be answered as legislators because we are here also to safeguard the wage bill. If they continue extending, we need to be told on each day the average number of judges or magistrates who are vetted so that we can calculate.

The Judiciary has its core values and one of them is integrity and zero tolerance to corruption. Have those values been institutionalized and operationalized? As those judges and magistrates continue acting, there are new ones who are joining them. There is a very high chance of them getting to absorb that culture. The issue is that we must continue vetting every now and then. The aspect of institutionalizing the core values is where the problem is. When those new judges and magistrates come, how is induction done? Those are some of the issues that must be operationalized and institutionalized. Otherwise, we will keep on repeating issues every now and then.

Another issue we need to be explained is the tool. They cannot just do vetting without having a tool in place to be used. We need to know. Maybe, it is time they need to re-examine the tool they have been using. If the vetting is being done and the level of corruption is going up, then we are not getting it right. It is the same way we looked at the questionnaire used in the

Public Appointments (Parliamentary Approval) Act. It is not 100 per cent perfect. There is room for improvement. The same case applies to that Board. The tool they have been using, what is its validity and liability? They might be using a tool that, in the long run, may not achieve the desired results. It is, indeed, very critical that, as the Board moves on, it needs to re-examine the tool it has been using for purposes of vetting and improve on it. Maybe, the tool was correct at that particular time of radical surgery by Justice Ringera, if at all it is the same. Times have changed. The issues of corruption have changed. They are also improving as technology improves. It is critical that they re-examine that particular vetting tool. We cannot have a tool in place that Kenyans are spending a lot of money on and not see any value addition.

As I conclude, we are told: "Justice delayed is justice denied". I have seen Hon. Members coming here and saying there is no cost implication, and that they are not going to ask for more money. Maybe, they have that money. But we want to look at the cost implication in terms of opportunity cost. If justice was delayed, what is the opportunity cost to the person who is, maybe, accused or behind bars? Look at this in a comprehensive manner than the monetary aspect. It is wider than that. You might not get the direct cost as far as the Exchequer is concerned, but you can see the opportunity cost incurred by those people to whom justice is delayed.

Another issue is the Judicial Service Commission (JSC). We know very well that the JSC is the employer and the one in charge of the Judiciary. It must develop a framework or a committee to do continuous monitoring so that the issue of forming those boards is not there. The JSC is also sleeping on the job. They need to develop a mechanism of continuous monitoring and evaluation. In case the judges or magistrates get involved in such an aspect, it will be a deterrent.

When there is corruption, it is not the judge or the magistrate alone who is involved. Even the advocate is involved. It is high time that we put in place sanctions to deter the element of corruption in case one is found culpable.

I hope that as the Board gets on with the job, it will move with speed so that vetting of judges who are yet to be vetted can be done within that time-frame of three months. If I heard it clearly from the Chairperson of the Departmental Committee on Justice and Legal Affairs, we are only extending its term for three months. We will not extend again.

With those few remarks, I support the Bill.

Hon. Deputy Speaker: Let us have Hon. Sunjeev.

Hon. (Ms.) Sunjeev: Thank you, Hon. Deputy Speaker for giving me this opportunity to support this very important Vetting of Judges and Magistrates (Amendment) Bill (National Assembly Bill No.5 of 2016). I would like to thank the Departmental Committee on Justice and Legal Affairs, under the able chairmanship of Hon. Chepkong'a, which has done a great job in bringing this matter.

It is very important that we give that Commission its extra three months. I support that because of Sharad Rao and his team. I do not mind saying that again if you did not hear me properly. They have some pending work which will be finished within three months. We are all proclaiming that they are not taking in any extra money. They will complete the work within the stipulated time-frame without any extra money. We need to look into the work they shall be tabling before us. I anticipate that their work is going to be of quality nature. We hope it will be done in three months. After three months, as a House, we need to look into the justification and the recommendations of the report, which will be very important.

Having that particular Board is sending a very serious message to the world, especially the western world that, Kenya is very committed to reducing corruption in this country. We need to support them in any way possible.

Lastly, the Law Society of Kenya (LSK) recently held their elections. I wish to congratulate the new Chairman, Isaac Okero. Because the LSK is part of this whole system in which they also work with judges and magistrates, I wish him well. I wish he could bring back the integrity that has been lost within the JSC and the whole legal fraternity.

Hon. Deputy Speaker: Let us have Hon. Jakoyo Midiwo.

Hon. Midiwo: Thank you, Hon. Deputy Speaker. I rise to support the extension, but with a very heavy heart. I support it because that particular Board would be leaving a messy and unclean house.

It is important for us to reflect on the thinking of the drafters of our Constitution in terms of the establishment of those vetting boards. I do not believe that what we are being treated to was the intention of our Constitution. I do not believe that vetting was supposed to victimise Kenyans. I believe that the new Constitution was supposed to give all and sundry a new beginning. If you look at the work of that particular Board, more qualified people have gone home in a way that was not intended by the Constitution.

One judge was sent home because he or she made a ruling so many years ago which was of a political nature. They could have been wrong. A new Constitution meant that rulings are now made under the new Constitution. A ruling made under the old Constitution should not have sent a judge home. What have we achieved? We have experienced Kenyans like Justice Bosire and Justice Onyango Otieno who have been sent home. The list is endless because the vetting became subjective. It was based on who you like or who you have seen. It is a shameful embarrassment both to that Board and, more particularly, to the one that is purporting to be vetting police officers. What has happened to the men and women in uniform in this country is not acceptable. Why have we allowed a society where a new beginning was envisaged, but only a few are expected to have that new beginning?

If what is happening to judges and policemen was to happen in this House, many of us should have been vetted, if that was the purpose and intention of the Constitution. I know it was not. We should give them three months to clean up. If you talk to some of the people from the Judiciary who have been victimised, they will tell you that so and so on the Board just did not like them. That cannot be allowed to happen. We have expanded the Judiciary to include younger and more vibrant members of the Bench. However, corruption has instead shot up. You saw what happened in the National Rainbow Coalition (NARC). Younger members of the opposition joined the Government and became more corrupt. People who had been fighting Moi for many years joined the NARC Government. If you see them now, they are always in and out of court. That was not the change we envisaged. It is personal change and the Constitution is a piece of paper with a message which is supposed to be internalised. It is supposed to give us a new way of living.

The Government - which is our first Government under the new Constitution - is one that abets corruption so that when you say that the Judiciary is corrupt, then it is a reflection of the Executive. It is what is allowed as a norm and practice of the day. Whatever we are trying to do must begin from the leadership of the country. We will have to do so much to change our country. But I am of the feeling that the experiment we are doing is a bad one that shall never

change our country. The youth who are now the majority seem to be inculcating in their minds that this is the right way to do things.

The National Land Commission (NLC) is very interesting. There was so much acrimony between the Chairman of NLC and the Cabinet Secretary (CS) of Land, Housing and Urban Development. A meeting was held between the two and peace was made. The Pandora's box has been opened. The commissioners have become political. They are grabbing land and overseeing the pilferage of land in this country.

I had occasion to look at the Standard Gauge Railway (SGR) land acquisition programme. It is dirty. We are waiting for the Departmental Committee on Lands to table a report that tells Kenyans how Kshs25 billion of the Standard Gauge Railway (SGR) public land was stolen between here and Mombasa. If they will not, they will go to the Budget and Appropriations Committee anyway. I saw the report and it is dirty. Even though somebody said that we should not be sending commissions home, some of them are unnecessary. Look at what is happening at the Independent Electoral and Boundaries Commission (IEBC). It is only 15 months before an election and so we cannot leave them. They must go home. They are not good enough. Fifty three years after Independence, this country can certainly do better. If you look at what is happening in Rift Valley, there is already an ugly animal rearing its head of land clashes. We cannot keep quiet to let somebody create an opportunity for more land clashes. The IEBC is leading us to chaos and mayhem. I would be shocked if anybody in this country thinks that IEBC is credible enough even by a pinch of salt to take this country to an election.

Lastly, there is a lot of talk directed towards the members of the Judicial Service Commission (JSC) and one Hon. Member mentioned Tom Ojienda. We should talk about the mess in the Judiciary. We need to revise the Constitution in a way that we do not keep on victimising Kenyans. There is nothing wrong with being a lawyer and doing your work, but there is everything wrong with Parliament keeping and leaving loopholes for people to make money unfairly.

Hon. Deputy Speaker: Hon. David Gikaria.

Hon. Gikaria: Thank you, Hon. Deputy Speaker. I would like to thank Hon. Chepkong'a for bringing this Bill. I attended the seminar in Mombasa where these issues were discussed.

Hon. Deputy Speaker, I had pressed my intervention button regarding what Hon. Jakoyo had mentioned a few minutes earlier. I wanted your indulgence so that you could, maybe, give a ruling on the same. I think it is wrong for a Member to allude that the Judiciary is a reflection of the Executive. It is unacceptable. The Constitution is clear on separation of powers between the Executive, Judiciary and the Legislature. People should not vent their anger on the Executive all the time when other arms have made mistakes.

Hon. Jakoyo mentioned that the Board was vetting people based on rulings made before the new Constitution. If I can recollect well, according to the Act, that is what they were supposed to do. The new Constitution did not take care of a situation where a judge was picked after its advent. We respect Hon. Jakoyo, but it is wrong for him to allude to facts that are not true.

Regarding IEBC, it could have had its mistakes, but there is a process of removing an independent body. We should do that so that we do not keep on saying so.

The Constitution Implementation Oversight Committee (CIOOC) and the Departmental Committee on Justice and Legal Affairs did not agree with the Board on a certain recommendation. The Act requires that if you are a member of the Judges and Magistrates

Vetting Board, then you cannot be picked by the President to serve as a judge. They wanted to delete that clause so that they can be appointed as judges in future upon serving the Board. I accept that the Committee did not bring that amendment.

Regarding the amendment that has been brought to the Floor, I think it is right for us to support it. It is very clear. As it has been said, it has no financial implication. All Bills with financial implications require going through a certain process, unlike this one that does not have any. What was raised as to this amendment is that the additional three months will not ask the taxpayers to provide for the extra money for documentation and presentation of what they have been doing. As CIOC, we wanted to look into the JSC. The members of the Judicial Service Commission go to represent a person who is charged by the Board. Hon. Jakoyo has mentioned one of the lawyers. There is a conflict of interest. That is why we were saying that it is important for Parliament to start seeing whether we can have a complaints committee where people can take their complaints. If we leave the JSC to handle the complaints on judicial system, then we are going to be bound by conflict of interest. Some of its members can act on behalf of people who have been mentioned. Some of the lawyers who are JSC commissioners can also serve in the same courtrooms.

Justice Ombija has decided to resign. One of the issues they wanted to do is to finish with that. The Judges and Magistrates Vetting Board did a very good job. We can see some changes within the judicial system. One of the issues is this: It would take years for some of the judges to make a verdict on a certain ruling. Expedience of cases is good for a judicial system of a country. It is so unfair for someone's case to be in the courts for 20 years and over. I have seen this. The issue of what will happen after the Board's term comes to an end was raised. You vet a judge, you give him or her a clean bill of health and then after two months, they are up again with a corruption-related case, or an integrity issue is raised against the same people who had been vetted. What happens after that? The law provides for a tribunal as it happened recently. A petitioner can make a petition and when it is found that there are some facts, a tribunal can be set up as per the law. However, that is a very long process. Not every Kenyan can bring such a petition. As it had been suggested, the Departmental Committee on Justice and Legal Affairs, which is headed by Hon. Chepkong'a, should come up with some legislation. We can create a complaints committee where Kenyans can go whenever they feel aggrieved by the judicial systems and be heard and, maybe, some action can be taken.

With those few remarks, I support the amendment. But let it be the three months. Let them not come back after this and start to ask for more extensions. We would like to see this process come to an end and allow the Constitution to take its course.

Hon. Deputy Speaker: Hon. Manson Nyamweya.

Hon. Nyamweya: Thank you, Hon. Deputy Speaker, for giving me a chance to contribute to this Bill. There is an issue I want to raise. What is printed here says: "shall not exceed three months from 31st December 2015." Are we debating something which is valid in this National Assembly? What has been stated here has actually passed. I am reading what it says. The Bill says:-

"Shall not exceed three months from 31st December 2015."

Unless I have a different Bill, that needs to be corrected.

Hon. Oyugi: On a point of information, Hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, Hon. Neto.

Hon. Oyugi: Thank you, Hon. Deputy Speaker. I would like to inform Hon. Nyamweya that the three months he is talking about is the amendment we are making. We are seeking to replace by six months, which precedes that. So, the Bill will read:-

“Six months from 31st December 2015.” That means that we are giving them an extension from 31st March to the end of June. I thank you.

Hon. Nyamweya: What you are saying is not written here. We have to go by what is written in the Bill. What you are talking about is probably what you discussed in the Committee. I am reading what is in the Bill. I am guided by what is there. The Bill is very clear. So, it is up to the Committee which has done this Bill to see what they have come up with. Again, on that issue of Memorandum of Objects and Reasons, we cannot, as Parliament and as a Committee, do a memorandum subjecting ourselves to a specific person.

Hon. Deputy Speaker: Hon. Nyamweya, have you looked at the first page of the Bill – the preliminary?

Hon. Nyamweya: I have looked at it, but I have gone to the Memorandum of Objects and Reasons. They are there. That is what they have brought here in the House. That is what I am reading.

Hon. Deputy Speaker: Maybe, it is not in the Memorandum. I have looked at the first page and the Bill proposes to substitute “three months” with “six months.” That is on the first page.

Hon. Nyamweya: What about the other section? Which one supersedes the other? Which one is more superior to the other? It is the same Bill. With your guidance, under Standing Order No. 96, should we continue debating this Bill or should it be withdrawn so that the Committee can do the necessary amendment and we debate what makes sense as the National Assembly?

Hon. Gikaria: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Gikaria?

Hon. Gikaria: Hon. Deputy Speaker, you have just asked Hon. Nyamweya to look at the Bill. Unless he has another copy that was not circulated for this purpose, the Bill is very clear. The second page of the Bill is very clear. As Hon. Neto has just indicated, we are changing from “three” to “six” months. They have already cleared the six months to March. I do not see the confusion.

Hon. Deputy Speaker: That is also in the Memorandum you are reading Hon. Nyamweya. Where are you reading because even the Memorandum clearly states: “The remaining time of the Board from three months to six months?” Are we reading different Bills?

Hon. Nyamweya: Hon. Deputy Speaker, I am reading page 73.

Hon. Deputy Speaker: Yes, Hon. Neto.

Hon. Oyugi: Thank you, Hon. Deputy Speaker. Hon. Nyamweya is supposed to be an old Member of this House. He ought to understand that when you are amending a Bill, ordinarily you show the section which you purport to amend. Hon. Nyamweya, what you are reading is a section that the Committee is proposing to amend. So, our amendment is actually the first clause.

Hon. Nyamweya: Okay. Let me proceed. When the vetting of judges and magistrates came up, people thought that those people would make fair decisions. But when you read their verdict and analyse the evidence given, you will find that they have not reached a correct decision. If you look at the people who have been vetted, some of them have been removed from office unfairly. When the framers came with the new Constitution, it was clear that the decision of the Board would be final and you cannot go to any court of appeal. The Judges and

Magistrates Vetting Board have worked beyond what was intended. What has happened as we sit now is that we have another breed of judges and magistrates who are more corrupt. I wish this country can go back to 2002 when the National Rainbow Coalition (NARC) took the leadership of this country. Kenya was a united country.

Hon. Deputy Speaker, there is a new need for this country to start afresh. We may have that to go through a national leaders' conference, collapse parties, the Executive and the Judiciary. We need to rethink and re-examine ourselves as a nation in terms of what is ailing us. We should be truthful to ourselves. Unless we do so, this country is heading into a very serious crisis. The fact that Uganda does not want to use Kenya for her pipeline speaks volumes for us to understand that as a country, we are facing a crisis. The level of trust in our institutions is very low. Today, there is a problem in the Judiciary, in the Executive and even in Parliament. We are in a serious crisis. We can extend this time as requested, but let me hope that no extra funds will be used. They are saying no extra funds will be used, but to me, extra funds will be used.

If we do not pass it this month, it will go to next month which means that it will interfere with the Budget for the next Financial Year. Therefore, extra funds will be required. They were given money to finish their time as scheduled. If you are extending time, then there must be money for them to use. Where will that money come from? Was it accounted for? Did we anticipate that they will have an extension and factored those funds in the Budget? More funds will be required.

I support this, but as a nation, there is need for us to think as one Kenya. We do not even need to think about parties. I wish the country will be renewed. I urge the leadership of this country, especially the Head of State, to lead from the front, so that we can move forward. So much is happening and there is much dissatisfaction. You find that young boys and girls are praising corruption. They do not care how you have acquired your wealth, whether you have killed or robbed somebody, but they just want to acquire wealth. We have glorified wealth for the sake of it and not glorifying hard work. Yes, wealth can be created by hard work.

With those few remarks, I support.

Hon. Deputy Speaker: Hon. Manje.

Hon. Manje: Thank you, Hon. Deputy Speaker for giving me this chance to support this Bill. I want to support it because it will only take three months to get the results they need.

Having said that, it is good to realise that proper vetting should be internally. The vetting will not make any sense if you vet them, but repeat the same things. When we realise that we have to vet judges, it is good to appreciate that things are not going well. There has been a lot of interference with the judges in this country and amongst themselves.

There is nothing as important in a nation as the rule of law. We have to respect the rule of law as individuals. Let us all submit to the rule of law because that is the only time we will have a country that will be appreciated by everybody.

The opposite of rule of law is anarchy. Anarchy will delay the growth of this country. We have seen countries that have gone astray because of lack of rule of law. We should not go the same way. If you disagree with somebody over a dispute, people used to say "let us meet in court". This was a place you expected the rule of law and sound judgement. Soon, this saying is losing meaning. This is because you go before the judge and you do not expect to get good judgement. This saying will take this country in the wrong direction.

The other issue I want us to embrace as a country and on those judges who are being vetted is to have correct value system. If you are a judge and you know you are corrupt or taken

something from that case, there is no way you can judge properly. It is better you withdraw from that case and give other reasons. Anytime you preside over a case and you have taken something small, you are adding to the mess we have in this country.

The rule of law is simple and natural. You just let the natural things take their course. If you commit a crime somewhere and you know it, you will never feel offended if you appear before a judge who discovers what you did, but if you know you did it and the judge rules the other way, you know that the system is not good. It is not enough just to vet and the process continues after that. We have to have the best. No corrupt person should be a judge. That is the essence of a country. If judgement is corrupt, there is no other system that will hold. Nobody will respect judgements at the end of the day. Our country will not go the right way.

The credibility of a country also depends on the Judiciary. That is one area we cannot afford to mess up with. Currently, we cannot say that the Judiciary does not have good resources or money to put in place good systems. What it does not have are the right people to be judges. I request those in position, especially the Judicial Service Commission (JSC) to know that Kenyans are looking at them. Do they have to create a country where people do not respect the rule of law? Do they want to be respected? Judges have been respected for a long time. If they rule against that, they will be creating anarchy in this country.

Mob justice takes place as a validation that the rule of law is failing. If somebody is taken to a court of law and is released, the next time people will not take him to court because justice will be denied. This is the right way. To some extent, we can blame some provisions of our Constitution. For example, somebody robs you, they are taken to a court of law and after three or four days, they are released on bail. People despair. They think that the person has bribed yet it is the Constitution that has given the procedure to deal with that kind of cases.

With those, I want to submit and say that we have to change our value systems and personalities in various positions. For us in leadership, let us not interfere with justice in this country. If somebody is convicted, let the rule of law take place. The system should be smooth until that person is judged.

Hon. Deputy Speaker: Hon. Joyce Emanikor and then we will call upon the Mover to respond.

Hon. Shimbwa: Hon. Deputy Speaker ---

Hon. Deputy Speaker: But I do not have any Member from Coast here. You are not on my request list, Hon. Shimbwa. You are not here.

Hon. Shimbwa: Thank you, Hon. Deputy Speaker

Hon. Deputy Speaker: No. I know you have been here physically. From my screen, it is like you are not interested in speaking. So, there must be a problem. Let Hon. Joyce make a few remarks and then you can say something. We are looking forward to starting the Health Bill at the Committee of the whole House.

Hon. (Ms.) Emanikor: Thank you, Hon. Deputy Speaker. I rise to support this Bill.

Before I make my remarks, I would like to congratulate the Judges and Magistrates Vetting Board for the good work they have done since they started the vetting process. It is only fair and reasonable that we support this Bill to enable the Board complete its mandate. It will be unfair to have some judges vetted and others left out just because of lapse of time if the process stops stop mid-way.

My hope is that there is no cost implication. Now that this country is talking of austerity measures, cutting down on cost is a big issue and this should be one of the things to be critically

looked at. Looking at the latest development in the Judiciary, there is graft and cases of judges going outside the scope of their mandates and jurisdictions. I know of cases where a judge ordered that criminals should not be arrested or charged. There are judges who are partisan in their determination of cases. The Board should go further than just looking at backlog of cases in determining the suitability of judicial officers to serve in the Judiciary. They should go deeper into issues of graft in the Judiciary. That will make the vetting more meaningful.

With those remarks, I beg to support.

Hon. Deputy Speaker: Member for Changamwe!

Hon. Shimbwa: Thank you, Hon. Deputy Speaker, for giving me this opportunity. I would also like to support the Bill.

However, I would like to support my brother, Hon. Chris Wamalwa, in asking the Chairman of the Departmental Committee on Justice and Legal Affairs to explain why he needs three months and not one month. It is upon everybody, including us, as Parliament, to transact business within the stipulated timelines. It would have been prudent for the Departmental Committee to be on the toes of the Board to ensure that it completes its work on time. I presume we need to get some measurable in terms of how many cases are pending and how much time is required by the Board to complete the job instead of giving them a blanket of three months.

I would also like to add my voice to the argument that was advanced by the Chairman to the effect that this extension does not have any monetary implications. The extension may be in the interest of the Board. The motivating factor could be availability of funds at the Board, which they could be planning to spend in a manner that is not commensurate to the work that is remaining. When the Mover is called to reply, I would like to know why he needs three months.

The law allows players to be equal. When it comes to the Bench, the law makes everybody equal. We used to go to court and sometimes we asked ourselves who the best lawyer was in this country. During the Moi regime, we used to go to court to listen to lawyers give their legal output on matters before the court. You get convinced that the reasons and citations that were given were enough to make somebody win a case only to see the opposite of that during the judgement. I remember in 1993 when I took a petition to court against the late Shariff Nassir, Hon. Orengo, was my lawyer. He used to tell the judges who were there that he knew he was going to lose the case not because he did not have a case, but because the judges had already made a decision. That is what used to happen during that time. Unfortunately, there are signs of experiences of those times creeping back into the Jubilee Coalition era.

Judges were appointed not because they merited the jobs, but because of political inclination in support of the Government of the day. This led to judges giving political judgements. A few weeks, we saw the Cabinet Secretary for Interior and Coordination of National Government ordering the arrest of a journalist who had published a certain story that incriminated his Ministry. It seems we are not following the rule of law. We are very keen on satisfying our egos and protecting our image. Again, last week, we saw the same Cabinet Secretary giving orders for the arrest of the Governor of Mombasa because he had not surrendered his gun. The Cabinet Secretary knew very well that there is law in this country. Everybody should know that in order for this country to advance and develop, we must abide by the law. We must be ready to be governed by the law and not our interests.

Because of the inclinations that we are talking about, during the recent parliamentary by-election in Malindi Town Constituency, some people bribed voters openly at the Sir Ali Primary School Poling Station. When somebody raised the matter with the Presiding Officer, all he could

do was to say that his duty was only inside the polling room, but not outside, yet the whole polling station was under him. Police officers at the polling station watched helplessly as this transpired. Nature abhors vacuum. People had to intervene to correct the situation. As I speak, some people have been charged with robbery with violence because of that incident. That is against the Bill of Rights.

Kenya, being a leading country in this region, should play its rightful role in protecting the image of the Judiciary and the country by doing the right things. We are now copying Uganda, which has all along been a Military dictatorship. We are purchasing armoured personnel carriers for the police, so that they can torture our voters during elections. This shows that we are moving backwards as a country because we do not observe the rule of law.

Hon. Deputy Speaker, Kenya is a good country where people love one another, but the habit of trying to confine the presidency to particular communities is taking us to a position where one day, this country will be a place where nobody wants to live. If you asked people in this country whether they love Kenya, you will find that nobody loves Kenya. If you go to the Jubilee side, they will tell you that “we are going to retain the presidency by whatever means it takes”, while we, in CORD Coalition say that “we will never allow you to do that”. What interpretation do you get out of such scenario? It is just anarchy and nothing else.

During the anarchy that followed the 2007 General Election, we had to protect people from a certain community from being sacrificed. People were buying for their blood, but we could not allow such a thing to happen.

Chapter Six, Article 73(1)(a) of the Constitution talks about leadership and integrity and states that:-

“Authority assigned to a State officer—

(a) is a public trust to be exercised in a manner that—

(i) is consistent with the purposes and objects of this Constitution;

(ii) demonstrates respect for the people;

(iii) brings honour to the nation and dignity to the office;

(iv) promotes public confidence in the integrity of the office”.

Today, because the Executive does not believe in the rule of law, even County Commissioners in our respective regions take the law unto their hands. They have also become corrupt. Corruption is not just in the Judiciary, but in the whole society. If you ask anybody in this Parliament including our Committees, you will find that---

Hon. Deputy Speaker: Hon. Member, I am finding you are going away from the essence of the Bill. You are moving away from the topic that is at hand.

Hon. Shimbwa: I am supporting.

Hon. Deputy Speaker: Yes, but the examples that you are giving are taking us away. We are dealing with the issue of vetting.

Hon. Shimbwa: I stand guided Hon. Deputy Speaker. The vetting has assisted our judges to, at least, gain back their consciousness. Today, anybody giving a judgement is conscious that the public is watching and one day he will be subjected to vetting where his judgements will form a basis for his remaining on the Bench or being removed from the Bench.

So, they are doing a good job and I hope that out of this exercise, we have a corrupt free Judiciary. There must be goodwill from the other arms of the Government for the Judiciary to exercise its work fairly and in a manner that satisfies the general public.

Hon. Deputy Speaker: Okay. I now want to call the Mover, Hon. Baiya, to respond. I see Hon. Magwanga, but if you want to give him a minute to say a word, it is up to you.

Hon. Baiya: Hon. Deputy Speaker, well, I take the opportunity to give him one minute.

Hon. Magwanga: Thank you, Hon. Deputy Speaker. I rise to support this amendment. The Judiciary is a key institution and the public expects it to be independent. The independence of the Judiciary will give hope to this country. This Board should be given extension to conclude its work and come up with a better report on every magistrate and judge in this country, so that we have faith in the Judiciary.

Everybody looks at the Judiciary when it comes to Supreme Court rulings which are key to this country. I believe that if vetting is done in a free atmosphere, independently and fairly, this will give us hope.

I support.

Hon. Deputy Speaker: Hon. Baiya, please, proceed to respond

Hon. Baiya: Thank you, Hon. Deputy Speaker. I rise to reply on behalf of the Chairman of the Departmental Committee on Justice and Legal Affairs, Hon. Chepkong'a, who asked me to hold brief for him.

First, I record our appreciation to the various Members of this House who have made their contribution. Most of them have spoken in support. We have also noted the concerns that they raised and I wish to clarify the following. The Judges and Magistrates Vetting Board was a special institution that was set up to vet judges and magistrates who were in office as at the date of promulgation of the new Constitution. This arose from an arrangement that was made part of the transitional process as far as the inauguration of the new Constitution was concerned.

The initial idea was that vetting would last one year within which all judges and magistrates who were then in office would have been vetted. Unfortunately, as the process of implementing that went underway, there was clear reaction from the judges and magistrates who were being vetted. Some went to court. It was not that the process was locked out from the court, but the court gave different interpretations. At times, the work of this Board kept being interrupted. After the decisions allowing the Board to proceed were made, more than one occasion we inevitably had to extend time to ensure that the process would go on. I want to confirm that so far, about 58 judges and over 258 magistrates have been vetted. That only concerns those who were in office as at the date of the promulgation of the Constitution.

The new Constitution is very clear. Other judges and magistrates whose term is past the date of the new Constitution, the mandate of ensuring their vetting and conduct is constitutionally vested in the Judicial Service Commission (JSC). So, the mandate of this Board was very clear. It was for the period before the new Constitution. Indiscipline cases within the Judiciary fall squarely within the JSC whose mandate is also to take care of disciplinary issues.

It is true that Kenyans have issues about the new dispensation after the vetting. It is also true that some of this information has also been brought to light by the experience of the Vetting Board. Part of the time we are going to extend will be spent preparing a report which they will share with the country, the experience of the process and hopefully give recommendations on the possible way forward or the way to carry forward the gains that have been made by the Judiciary through this process of vetting.

I want to assure Members and the country at large that this Board did its work in a professional manner, particularly the arrangements that we had made that it would have components of foreign members sitting on it. The work they have done is all documented.

Among the challenges that they faced as they have informed us was that Kenyans were very reluctant to come forward and represent complaints about corruption or misbehaviour of former judges. That tended to reduce the grounds upon which they could take action against any of the judges. I have also heard issues being raised that some of the judges who were vetted were victims. This process is like any undertaking done by human beings. It cannot be said to be beyond reproach. It is safe to state that as far as the criteria of vetting was concerned, the Act which was enacted by Parliament clarifying the mandate of this Board was very clear. We even gave the criteria which would be used to vet the judges and magistrates who were then servicing. They were not arbitrary criteria. They were derived from what we call the Bangalore Principles of Judicial Practice. These criteria have not been brought to the Kenyan experience before, but it was very relevant to the conduct of sitting judges and magistrates to test their integrity, competence and ability to uphold the dignity of the institutions they carry and issues on corruption.

They used these criteria and we are not aware of any case where a judge can say that there was any irrelevant consideration they had to bear in making a consideration. The outcome may not have been in accordance with expectations, but it cannot be anything else. The Board conducted itself professionally. There was a clear distinction between this procedure and process of the Vetting Board unlike what happened before when the country witnessed the surgery of judicial institutions. It has clearly been noted even by other countries what Kenya did with its Judiciary in terms of coming up with a mechanism for vetting judges and magistrates. It is something that has been picked by other countries seeking to duplicate it in their cases to deal with the unique problem such as the one we had in Kenya.

Moving forward, the institutions under the JSC should incorporate the procedure and process of vetting as a routine mechanism to deal with complaints arising against the serving judges and magistrates. In this regard, perhaps Parliament will need to consider a mechanism to amend the JSC Act to compel and make it mandatory or obligatory for the JSC to deal with every complaint that arises in a particular way and procedure. I know that kind of approach stands to be resisted by the JSC because at the end of the day, the judges and the magistrates serve Kenyans. It is Kenyans who suffer when there is no standard practice from the judges and magistrates.

We cannot allow the members of the JSC, who are themselves public servants, to subject Kenyans to nothing, but the best standards in terms of what to demand from the serving judges and magistrates who are paid from public funds and are, therefore, supposed to give selfless service to the people of Kenya.

I beg to reply.

Hon. Shimbwa: Point of order.

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

Hon. Shimbwa: Hon. Deputy Speaker, Hon. Baiya has left out a very crucial matter about what percentage of judges and magistrates have been vetted, so that we may know the justification of three months.

Hon. Deputy Speaker: Yes, Hon. Baiya.

Hon. Baiya: Hon Deputy Speaker, I said the mandate of the Board was to vet all judges and magistrates, who were in office as at 10th August, 2010. There are none in service who was not vetted. The last judge against whom there was a suit that was prohibiting the Board from vetting, was Justice Ombija and the Board had indicated that they will deal with that. I am not sure whether he has resigned or is still serving. That is one of the reasons why they are

requesting for extension of three months. The other factor is that they also need to prepare their final reports. They have vet all magistrates and the last group to be vet was Senior Principal Magistrates. The delay in vetting them had been occasioned by a court order that stopped the process. Once the order was removed, we needed to extend time. Those magistrates could not move to the next stage in terms of promotion without undergoing vetting. It was mandatory and necessary to ensure that the Board vetted them because as per the law, they could not seek appointments or promotions until they were vetted.

I want to assure the Member that all the cases that needed to be vetted under the law have already been vetted. The others may be cases that arisen after the cutoff date. If a magistrate or judge was vetted and a new case arose post the cut-off date, that was to be dealt with by the JSC and not the Vetting Board.

Hon. Deputy Speaker: As you are aware, we are not able to put the Question. Therefore, we will move to the next order.

(Putting of the Question deferred)

Hon. Deputy Speaker: Hon. Members, before you sit, we are deferring this Order No.9. This is because we are still receiving amendments. Remember the Speaker, indicated that we are not going to have amendments on the Floor. Therefore, Members asked they be given time to furnish the office with their amendments, so that the Committee can look through them. It is for that reason that this Order is being deferred. Therefore, we move the next Order.

(Order No.9 deferred)

BILL

Second Reading

LAND LAWS (AMENDMENT) BILL

(Hon. A.B. Duale on 9.3.2016)

(Resumption of Debate interrupted on 15.3.2016)

Hon. Deputy Speaker: Hon. Members, this was ongoing debate and there was nobody on the Floor. The person I have on my card and I hope has not contributed earlier is Hon. John Nakara.

Hon. Nakara: Thank you, Hon. Deputy Speaker. I rise to support the Bill after amendments. Land is one of the things that have brought a lot of fighting in this country and Bill will make bring peace to this country.

Making land public is one of the things we have been waiting for to empower the public to have ownership. We cannot have ownership in some parts of this country because there are no title deeds. For example, in Turkana and other pastoralist areas, land is still public and no investor is willing to go there because there is no title deed. We are requesting the Government, immediately this Bill comes to effect, to make sure that they issue title deeds to people in those

counties. People will benefit from that land by using their titles to get loans. We cannot improve the lives of our people if they cannot access loans. People in some parts of this country have no capital to start businesses.

[The Deputy Speaker (Hon. (Dr.) Laboso) left the Chair]

[The Temporary Deputy Speaker (Hon. Kajwang') took the Chair]

The only way people can start businesses is by taking loans using a title deed for land that belongs to a particular person.

People need capital to start businesses in this country. The only way we can help them is by issuing them with title deeds, so that they can access loans. Some people possess large plots of land in this country yet in some other places, people have small plots of land. We need to make sure that we combine these small pieces of land to make up big lands that we can use for cultivation to produce large quantities of food as opposed to the small pieces of land. We want to encourage our productive parts of the country to use plantations as a way of reducing poverty. Using those big pieces of land, we can produce a lot of food in this country.

Allowing community land is beneficial to some pastoralist communities. However, there are some white settlers who were left behind who still own huge tracts of land. Near those tracts of land, people are still landless. The white settlers have occupied those huge tracts of land for many years with their children and great grand children yet this country is independent. We want to encourage the Government to buy those tracts of land and distribute them to the landless people who have been living in those areas for many years. If you go to Naivasha, you will see big plots of land and near those pieces of land, there are poor people who do not even own a single plot of land yet they have been working there for many years. A white man owns that piece of land. I am not encouraging the Zimbabwe way of getting land from the white settlers, but the Government should buy those chunks of land and settle the poor people who have been living there for many years.

With regard to tourist attraction sites, we want tourist attraction sites to be protected. Such sites bring revenue to the counties. Giving the county government ownership of such sites will encourage them to generate revenue and increase their income.

There are some tribes in this country who are pastoralists. The major activity that they engage in is pastoralism. We need to make sure that these tribes continue to practice pastoralism in their areas. As much as we want those areas to be devolved and infrastructure to be developed, we want to make sure that those people have land for their livestock. Pastoralism is part and parcel of the lifestyle of the pastoralist people. If we are going to implement public ownership of land, we should also encourage pastoralists to obtain ownership of land for their livestock, so that they can continue practicing pastoralism which is the backbone of their culture and lifestyle.

On the issue of those who have used our land for many years, they need to pay back to the locals in terms of rent for the years they have invested on that land. They need to give back to the community. You cannot generate a lot of money from that land yet the locals around are not getting anything. For such kind of land, we want to encourage the people to pay back to the community in terms of corporate social responsibility. There are some people who own land, but do not give back to the community. We want to encourage companies like Tullow Oil and

Delamere to give back to the community in terms of corporate social responsibility to develop these areas because they have benefited from that land for many years.

I support this Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): Let us have the Member for Ndhiwa on an intervention.

Hon. Neto: Hon. Temporary Deputy Speaker, I rise on Standing Order No.96. Looking at the number of Members in the House and given the magnitude of this Bill, which is fairly important, there are not many Members present in the House to engage in debate on this particular Bill. Would I be in order to request that we adjourn debate on this particular Bill until such a time when Members are present in the House, so that we give this Bill due consideration and the substantive debate that it deserves?

The Temporary Deputy Speaker (Hon. Kajwang'): I hear you. As I understand it, Member for Ndhiwa, this is a dilatory Motion. It is one where I am able to hear comments from Members before I pronounce myself. Let us have the Member for Awendo.

Hon. Opiyo: Hon. Temporary Deputy Speaker, usually before Members ready themselves to attend a particular sitting---

The Temporary Deputy Speaker (Hon. Kajwang'): Can you, please, speak directly to the microphone.

Hon. Opiyo: Usually before Members prepare themselves for the sittings, they look at the Order Paper. In the Order Paper, there is the Health Bill, which Members had really anticipated to speak on. Because it has been deferred to some later date because of the amendments that are still coming in, we are now presented with this Bill. Looking at the size of the House as Hon. Neto, the Member for Ndhiwa, has said, I wish that we adjourn debate on this Bill to enable the number of Members who want to participate on this to be available in the House and also to prepare adequately to speak on this matter. This is one of the most serious issues that affect this country.

The Temporary Deputy Speaker (Hon. Kajwang'): I am considering the Standing Orders. Standing Order No.96(3) states:-

“If the Speaker is of the opinion that a dilatory Motion is an abuse of the proceedings of the House, the Speaker may forthwith put the Question thereon or decline to propose it.”

I am of the view that this Motion is not in the abuse of the proceedings of the House.

Let us have the Member for Gem. Your fingers may have reached the console by mistake, but I certainly did not pick you by mistake. Otherwise, I would not have known where you are sitting.

Hon. Midiwo: Hon. Temporary Deputy Speaker, this chief is the one who pressed my button. I forgive him because it is Easter. I want to thank you for allowing us to speak.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Awendo, we are handling something new. I am sure you have not handled this since you have been around. In the process of the debate, a Member moved that debate be now adjourned. I have considered Standing Order No.96(3). I have expressed myself that I do not think that that dilatory motion is in the abuse of the proceedings of the House.

I have, therefore, allowed you to intervene. Your intervention was a little earlier and I should have proposed it before your intervention, but because the Speaker is in charge of

Standing Order No.1, the fact that I will pronounce myself is still neither here nor there. Member for Gem, I think you are rising because you are a ranking Member.

Hon. Midiwo: Hon. Temporary Deputy Speaker, I raised this issue last and Members from the Coast Province and marginalised parts of this country said they had an interest. According to the Order Paper, the Third Reading of the Health Bill should have followed and that is why I was hanging around because I want to give Kenyans some proper free health care with amendments on that Bill. Now that we are here, we would be protecting ourselves from being accused of sneaking in the issue of land. As I speak, there are sporadic land chaos. It will be fair to indulge us and postpone this debate until we come back from recess. After all, it is Easter and donkeys also get tired.

The Temporary Deputy Speaker (Hon. Kajwang’): I, therefore, order that Business No.10 be adjourned to a further date as will be convenient to the House.
Next Order.

*(Question, that the Debate be now adjourned,
put and agreed to)*

(Debate adjourned)

BILLS

Second Readings

THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. Kajwang’): I am not seeing the proposer of this legislation in the Assembly, the Leader of the Majority Party. For the convenience of the House, I hereby defer this Order to the next available opportunity.
Next Order.

THE CONSTITUTION OF KENYA (AMENDMENT) BILL

(Hon. A. B. Duale on 22.3.2016)

(Resumption of Debate interrupted on 22.3.2016)

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. (Ms.) Sabina Chege, you have a balance of nine minutes and for very good reasons, you do not have a card. I can see you do not have a handbag and a pocket, so I assume those were the reasons you did not walk with your card. I will anyway give you an opportunity to speak.

Hon. (Ms.) S.W. Chege: Thank you, Hon. Temporary Deputy Speaker. I am privileged to speak on this Bill. This was the Bill on gender and I am grateful this evening that Hon. Jakoyo Midiwo is here and I am sure he has changed his mind and heart in support of the Bill. Gender is not just about being male or female, but it is about all of us. The most important bit of this Bill is that we need to prepare for our daughters and sisters who will come after us. Because we have a

sunset clause of 20 years, I am sure women who have been given an opportunity to lead in this country will have led in such a way that after 20 years, we will have so many women in Parliament. When I last spoke on this Bill, I made a request to the political parties and because Hon. Midiwo is a leader of a political party, we should not go through the cost of having a bloated Parliament by nominating many women. Political parties should support women financially and provide them with security because those are some of the factors that hinder women from vying.

Women leadership has not been embraced in African countries, but we have great mothers in our society. In church movements, organisations or *chamas*, we trust women to be treasurers, but not in political leadership. I want to urge the nation that it is high time we supported women because they have been cited as the best leaders. I would like to tell ladies who are watching or listening to this that the time is here. Education was initially biased, but based on the Kenya Certificate of Primary Education (KCPE) and Kenya Certificate of Secondary Education (KCSE) results, gender parity has been achieved. Education is the foundation for the future. I want to urge women who have political ambitions not to shy away from joining, so that we will not have to debate about adding the number of women.

However, we might need to amend the Political Parties Act. It is not good when we have great women who throw themselves into the political race and do not win at the end of the day, but they have some votes. When nominations are done prior to party primaries or general elections, sometimes women are left out because there are women who were nominated earlier than them. We should have a formula that ladies who try political positions be it member of county assembly (MCA), governor or Member of Parliament (MP), that we look at the percentage of the votes garnered, so that we have them as a priority of women who come to represent people in the National Assembly, Senate or the county assembly. We will end the debate that girlfriends or relatives of various people were nominated to these political positions. It is good to reward women who brace themselves and go out to fight politically. We need that amendment, so that nominations can be done after the general elections and that will cure the suspicion that comes long after nominations have been done.

I support and urge women of this country to support. I want to thank gentlemen and Hon. Members who supported this Bill. We need to empower the women of this country. I promise Kenyans and people of Muranga that I will be a role model. I hope there will be more women who will be inspired come the next general election to be Members of Parliament, Senators, governors or even MCAs.

The Temporary Deputy Speaker (Hon. Kajwang³): Member for Awendo.

Hon. Opiyo: Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to speak to this important Bill. As we speak on this Bill, it is important to understand several issues. One, you will agree that this House as it is currently constituted is too big.

Two, presenters of the Bill should have talked about numbers in this case. If we continue along this path, I can see a situation where we will be nominating 90 women. So, you can imagine a Parliament that has more than 400 Members. It will not provide the correct atmosphere for Members to contribute effectively to debate. If that number of people comes here through nomination---

An Hon. Member: Women are watching.

Hon. Opiyo: I know. For the record, women are my greatest constituents and voters. I speak here knowing so well that we want the best thing for this nation. We have been speaking

about the wage bill for a long time. We are saying that we add more Members of Parliament through nomination. We must be candid with ourselves and ask ourselves how we are going to reduce the number of Members who are elected to come to this House, say, by reducing the number of constituencies or amalgamating constituencies, so that when we are talking about nomination, we talk about lower numbers.

Another issue will be raised. Close to 90 nominated Members will be sitting here without specific constituencies that elected them to come and represent them. These are moral questions that we need to ask ourselves as we debate this matter. If we love this country and our children and grandchildren, we must think about burdening them with unnecessary wage bill that we can avoid.

Going forward, the people who presented this Bill must present us with the actual numbers that we are talking about here. Let Kenyans know that when we talk about nomination, we are we talking about 10, 20, 30, 40 or 50 Members. Let them state the number in actual figures, so that Kenyans will understand what this House is about to present them with. It will be immoral for this House to just agree that we nomination. I encourage the women of this country to actively engage in politics. Our business as a House is to make legislation that will make the political environment conducive and accommodative to our womenfolk.

There were suggestions here that we consider the ladies who have actively expressed their willingness to join politics. Other suggestions were that after the elections, the winners should come to Parliament and the runners-up be automatically nominated. We will be doing a disaster to this House because sitting Members will be perpetuating their positions in Parliament through the back door. If you are a serious Member of this House, you will either be number one or two in an election. Going forward, the women Members must tell this House and this country their interest in this entire Bill, so that everyone is carried on board and we support something that we all agree with.

I express my reservations with the Bill as it is today.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Laikipia, did you say that you do not have a card? The reasons you have given are not sufficient, but because this discussion is about gender, I will allow you to speak, so that next time you remember to carry your card.

Hon. (Ms.) Machira: Asante Mhe. Naibu Spika wa Muda. Mswada uliopo mbele yetu wakati huu wa kusawisha idadi ya akina mama katika Bunge hili ni muhimu sana. Tunafurahi tunapofikiria jinsi tutakavyoweza kuwaongeza wanawake katika Bunge. Sio katika Bunge peke yake bali pia katika ajira na hata huko mashinani wanaweza kusimamia mahali popote. Tunafaa kuwahusisha akina mama. Tunapaswa kujua kuwa akina mama ndio wenye idadi kubwa zaidi. Sisi Wabunge tunapigiwa kura na akina mama. Pili, sisi sote tumetoka kwa akina mama. Ni wazazi wetu, dada zetu na watoto wetu. Kwa hivyo, tunapowafikiria akina mama, tuangalie kama sisi Wabunge tuna watoto wasichana. Je, tungetaka watoto wetu wawe akina nani? Je, hatungetaka wawe Wabunge katika miaka ijayo wakati hatupo Bungeni?

Ni lazima tufanye juhudi ili idadi ya wanaume na wanawake iwe inalingana kama ilivyo katika nchi nyingine. Tunafaaa kuangalia wakati Kongamano la Beijing lilipofanyika. Mikutano iliyofuatilia ilikuwa mitatu huko Uingereza (UK), Copenhagen na Beijing. Mkiangalia katika historia, mtaona kwamba baada ya Kongamano la Beijing, kulitokea Serikali 189 ambazo ziliunga mkono pendekezo la akina mama wasawasishwe na wanaume katika nyadhifa zote. Hili si jambo jipya Kenya. Ni jambo linaloendelea. Lazima tufikie usawasishaji wa akina mama

kulingana na Malengo ya Milenia. Muda wa malengo haya utakapotimia, lazima idadi hii iwepo kwa sababu sio Kenya peke yake bali dunia nzima. Sisi tutaweza kuachwa vipi nyuma? Sisi akina mama hatuombi. Ni jambo ambalo linaendelea. Ni haki yetu pia sisi kupatiwa nafasi. Katika hili Bunge, tunafurahi sana kwani tunaungwa mkono na wenzetu wanaume ambao wana watoto wasichana ambao wangetaka waingie katika Bunge hili na pia katika Bunge za Kaunti.

Tunaomba tupatiwe nafasi na tutawaonyesha kuwa akina mama wanaweza. Akina mama wanaweza kushikilia nyadhifa zozote. Tunataka akina mama huko mashinani tunakotoka wasijihisi kama wameachwa nyuma. Wakijihisi kama wameachwa nyuma ilhali tunawakilisha katika Bunge, hiyo itakuwa kutupeleka nyuma. Akina mama wanaweza kusema kuwa hawana wawakilishi Bungeni. Kama hawana wawakilishi katika Bunge, basi sisi tufanye nini? Mbona tusiwashike mkono kama wenzetu katika Bunge? Kwa hivyo, wakati sio mwingine ila ni huu. Tungetaka sehemu mbili kati ya tatu iwe ya akina mama.

Naunga mkono. Kwa hivyo, sisi tunangoja wakati ambao Mswada huu utakapopitishwa tuwe tumepata ile sehemu yetu. Asante.

The Temporary Deputy Speaker (Hon. Kajwang’): Member for Changamwe.

Hon. Shimbwa: Thank you Hon. Temporary Deputy Speaker for giving me this opportunity. I hereby rise in support of the amendment. However, I would recommend that this be done in progression. It may not be easy to achieve that target at once. Under normal circumstances, it is a fact that Kenyan women, and I stand to be corrected, normally enjoy voting for men even when they are the majority. When you go to hospitals, you find that they prefer to visit male gynaecologists for delivery. So, these are norms of this country. As much as we would like that to happen, I suggest that this country needs to try to change its ways of doing things, especially when it comes to electioneering. Most women have been discouraged. If you can remember during the Moi era, women used to be roughed up. They were embarrassed in public. They shied away as a result of the misgivings that they received.

However, that can be achieved in this country if the rule of law is observed, there is fair play and we have an IEBC, which is fair to the word and spirit of the law. If we have a Police Force that is fair and just, all will be fine. I know women are great leaders. It has been demonstrated even in homes. Ladies have taken the responsibility of taking care of homes very effectively in the absence of their husbands due to one reason or the other. In this House, we have great leaders like Hon. Amina Abdalla, Hon. Sabina Chege and many others that I do not need to mention, who are very good contributors.

The one-third gender rule is not a bad thing, but as we know, it may not be easy for us to achieve it at once. I support this although with reservation to the effect that it should be given time, so that eventually ladies can get encouraged to vie for elective posts and campaign in a free atmosphere where they will be elected without undergoing the troubles that we experienced during the dark days of our country.

With those few remarks, I beg to support that the amendments be approved by this House.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Order, Hon. Members! The time being 6.30 p.m., this House stands adjourned until Tuesday, 29th March 2016 at 2.30 p.m. It is so ordered.

The House rose at 6.30 p.m.