

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 1<sup>st</sup> March, 2016

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** Hon. Members, Communication will come immediately after you have taken a decision on business appearing as Order No.11.

### PETITION

#### SOLIO RANCH LAND DISPUTE

**Hon. Kanini Kega:** Thank you, Hon. Speaker. This is a public Petition by the residents of Kieni Constituency on Solio Ranch Land Dispute.

I, the undersigned, on behalf of residents of Kieni Constituency draw the attention of the House to the following:-

THAT, the Government of Kenya acquired 15,000 acres out of Solio Ranch for settlement of squatters in the year 2008;

THAT, on account of alleged interference in the acquisition process by powerful politicians and Government officials, 6,000 of the 15,000 acres were allocated to a single person leaving only 9,000 acres for the intended settlement;

THAT, during the profiling of settlement beneficiaries many deserving cases were ignored and in their places, politicians, their spouses, relatives and friends were irregularly included in the settlement list;

THAT, various efforts to resolve the issue through the area Provincial Commissioner then and the Ethics and Anti-Corruption Commission did not bear fruit; and,

THAT, the matter in respect of which the Petition is made is not pending before a court of law.

Therefore, your humble Petitioner prays that the National Assembly through the Departmental Committee on Lands:-

- (i) investigates the matter and establishes how the 6,000 acres of land set aside for squatters ended up in the ownership of a single individual;
- (ii) establishes the number of deserving individuals who were left out during the Solio settlement programme;
- (iii) intervenes with the relevant authorities to ensure that the irregularly acquired land is reverted back to the national Government for the settlement of deserving cases that were left out during the allocations; and,

- (iv) makes any other order or direction that it deems fit in the circumstances of the case.

And your Petitioners will ever pray.

**Hon. Speaker:** Let the Petition be referred straight to the Departmental Committee on Lands to deal with it. When they bring their report, it will be easier that time to make comments and seek clarifications.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday, 1<sup>st</sup> March, 2016:-

The East African Community Protocol on Sanitary and Phytosanitary (SPS) Measures and the Explanatory Memorandum from the Ministry of Agriculture, Livestock and Fisheries.

The Report of the Auditor-General on the Financial Statements of Egerton University for the year ended 30<sup>th</sup> June, 2014 and the certificate therein.

The Reports of the Auditor-General on the Financial Statements in respect of Golf Hotel Limited, Parliamentary Car Loan Scheme Fund, Parliamentary Mortgage Scheme Fund, Agriculture and Cooperative Training and Consultancy Services Limited, Privatisation Commission, Public Procurement Oversight Authority and University of Nairobi Enterprises and Services (UNES) Limited for the year ended 30<sup>th</sup> June, 2015 and the certificates therein.

**Hon. Speaker:** Very well. Let us now have the Chairperson of the Departmental Committee on Environment and Natural Resources, Hon. Amina Abdalla.

**Hon. (Ms.) Abdalla:** Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today, Tuesday, 1<sup>st</sup> March, 2016:-

The Report of the Departmental Committee on Environment and Natural Resources on the proposed sand harvesting in Diani in the South Coast by China Road and Bridge Corporation.

Thank you.

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON SAND HARVESTING IN DIANI

**Hon. (Ms.) Abdalla:** Thank you, Hon. Speaker. I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the proposed sand harvesting in Diani in the South Coast by China Road and Bridge Corporation, laid on the Table of this House today, 1<sup>st</sup> March, 2016.

Thank you.

### STATEMENT

#### STATUS OF BPS REPORT BY LIAISON COMMITTEE

**Hon. Speaker:** I am giving extension for the Liaison Committee to come and make a report on where it has reached with regard to the Budget Policy Statement (BPS). As you know,

the Report was tabled here on 15<sup>th</sup> February, 2016 and the Committee has 14 days from that date, which ends today. I like encouraging all of us to constantly remind ourselves the provisions of Article 94 of the Constitution. No authority has power to make provisions having the force of law other than Parliament.

Notwithstanding the provisions of Public Finance Management Act and our own Standing Orders we, as a House, as we did in the previous years, have the power to make resolutions having the force of law because it is within our mandate under Article 94.

So, we expect the Liaison Committee to come and inform the House how far the Committee has reached with regard to its consideration of the various reports from various departmental committees relating to the BPS. It is fair that we hear from that Committee about their position whether they are laying their report today or if not, what it is that they would like this House to resolve relating to those timelines. They will be at liberty to make their report any time in the course of the proceedings today.

Next Order!

## PROCEDURAL MOTIONS

### HOLDING OF SITTINGS ON THURSDAY MORNINGS

**Hon. Katoo:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order No.30(3)(b), this House resolves to hold Morning Sittings on Thursdays commencing from 9.30 a.m. to 1.00 p.m. as follows:-

(i) Thursday, 3<sup>rd</sup> March, 2016;

**Hon. Speaker:** For what purposes? The Motion talks about the purposes.

**Hon. Katoo:** Sorry Hon. Speaker. Let me repeat.

I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No.30(3)(b), this House resolves to hold Morning Sittings on Thursdays commencing from 9.30 a.m. to 1.00 p.m. for purposes of considering Bills to implement the Constitution, as follows:-

(i) Thursday, 3<sup>rd</sup> March, 2016;

(ii) Thursday, 10<sup>th</sup> March, 2016;

(iii) Thursday, 17<sup>th</sup> March, 2016; and

(iv) Thursday, 24<sup>th</sup> March, 2016.

As the Motion clearly states, it is for the purpose of considering Bills that have constitutional timelines in terms of implementation of the Constitution. I just want to remind the House that in the last Session, just before we went for the long recess, we had extended the timeline from 27<sup>th</sup> August, 2015 to 27<sup>th</sup> August, 2016.

We only have one chance in accordance with the Constitution to extend the period of time. We do not have another chance. As a House, we all know the consequences of not meeting those deadlines.

There are several bills that are lined up for the purpose of implementing the Constitution. It is good to let Members know which ones they are:-

(1) The Forest Conservation and Management Bill, 2015;

- (2) The Legal Aid Bill, 2015;
- (3) The Access to Information Bill, 2015;
- (4) The mediated version of the Mining Bill, 2014;
- (5) The Controller of Budget Bill, 2015;
- (6) The Election Laws (Amendment) Bill, 2015;
- (7) The Petroleum (Exploration, Development and Production) Bill, 2015; and
- (8) The Energy Bill, 2015.

If this is carried, Order No.10 talks of reduction of publication time and this applies to the Judiciary Fund Bill, which also has constitutional timelines. There is one Bill which has not yet been published and that is the eviction Bill. These are more than 10 Bills.

We only have 14 sitting days to handle these Bills between now and the short-term recess, in accordance with the calendar of the House, which was just approved last week. The moment we come back from that short recess, we will start discussing the Budget Policy Statement and budget preparation Bills.

I appeal to the House to support this Procedural Motion. Beginning the day after tomorrow, we should start sitting on Thursday morning, for four Thursdays, and see whether we can finalise these Bills on time. Almost all of them will be going to the Senate because they concern counties. Therefore, if we take into consideration the amount of time they take in the Senate, we should give ourselves sufficient time if there will be any need for mediation.

Order No.11 on today's Order Paper is on the Climate Change Bill. It went to the Senate in March last year and then there was need for mediation. It is still in this House a year later. If one Bill takes one year, what about 10 or so Bills? We need to fast-track and burn the midnight oil to ensure we pass these Bills on time.

For that reason, I beg to move and ask Hon. Chris Wamalwa to second.

**Hon. Wakhungu:** Thank you, Hon. Speaker. I rise to second this Procedural Motion.

It is important because we have some Bills with constitutional timelines. We extended the period for consideration last year and so I do not think we have any other provision for extension. We must create time so that we debate these Bills and pass them.

As my colleague had indicated, there are other Bills which concern counties. We know that it is a requirement that such Bills have to go to the Senate. In case of mediation, we need to have sufficient time. As we approach the general elections, many Members of Parliament may not find time to come to the Floor of the House towards the end of their term and as such, we might have problems of quorum. It is important that we do this now while we still have time.

As indicated, we have so many laws which we require like yesterday, for instance, the election laws. It is important that we pass it as quickly as possible. We have seen legislative proposals indicating that Members of Parliament should have degrees. Some Members can complete their degrees within the remaining timeframe. When that time comes, they will have degrees if at all the Bill goes through.

I humbly request, hon. Members, that as we start sitting on Thursday, the issue of quorum will be very critical. I request you to be here by 9.30 a.m., every Thursday, so that we find time to clear the business of this House.

I beg to second.

**Hon. Speaker:** Order, Members! There are those of you who are incapable of transacting business while seated. The Member for Embakasi, Hon. Sumra, is permanently on his feet.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** Is it the mood of the House that I put the Question?

**Hon. Members:** Yes!

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Members, while appreciating the decision we have taken on this, it is also important for me to announce that starting Thursday this week, there are three or so Bills which are meant to implement the Constitution, which you have already concluded debate on in the Second Reading. I would urge that as many of you as may be willing or desirous of making amendment proposals, submit those proposals either through your committees or by yourselves, by 1 p.m. tomorrow at the latest, so that they can be included in the Order Paper and to enable every Member to know the intentions of the various Members who desire to oppose the amendments. This is so that we properly utilise that period of Thursday morning. The decision of the House Business Committee is for us to properly utilise such periods, ensuring that we pass these Bills so that our colleagues in the Senate can also have ample time to give their input.

Did I see a Member who had raised his hand? I am unlikely to see you when you raise your hand even if you run in marathons, Hon. Wesley Korir.

**Hon. Korir:** Thank you, Hon. Speaker. I just wanted to contribute to this Motion on Bills with timelines. I want to bring the attention of the House to the fact that we have a deadline of 15<sup>th</sup> April, 2016 on the anti-doping Bill. If we do not pass that Bill before that time, this country is going to be banned from all international races outside this country. As we consider these Bills with constitutional timelines, I would like to urge this House to take that into consideration.

**Hon. Speaker:** Where is the Bill?

**Hon. Korir:** I brought a Bill last year, Hon. Speaker. It has been published and it is with the Committees.

**Hon. Speaker:** Which Committees? It would be good for stakeholders like yourself who run or who have a history of participating marathons to participate or encourage other younger Kenyans.

Hon. Korir, if indeed you brought a Motion, Bill or a proposal to have that kind of law passed by this House, please move with speed. I am sure your colleagues here sympathise with your history and would like to encourage other Kenyans. I am sure most of you represent Kenyans who may be desirous of participating. Hon. Korir, move with speed and see the Office of the Clerk to make sure that business is prioritised.

I can see the Member for Matungu raising his hand to comment on the same. Yes, Hon. Were.

**Hon. Were:** Hon. Speaker, as far I am concerned, there is no Bill. We have a legislative proposal. Hon. Korir is appearing before my Committee on Thursday. So far there is no Bill. It is something we are going to handle from Thursday. We should not mislead the House.

**Hon. Speaker:** Hon. Korir, being a marathoner, had assumed that maybe the proposal has already become a Bill. Move with speed to ensure that your proposal is prioritised. What you are informing the House and the country at large is very important that the country risks getting its athletes banned from participating in various races internationally.

Hon. Members, I wish to draw your attention to the following: These are the Bills scheduled for the Committee of the whole House on Thursday this week. Hon. Members who may have proposed amendments as I had indicated earlier on, can begin preparing and submitting them to the Clerk's Office for processing by tomorrow at 1.00 p.m. They are:

- (i) The Natural Resources (Classes of Transactions Subject to Ratification) Bill (National Assembly Bill No.54 of 2015).
- (ii) The Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No.44 of 2015) and,
- (iii) The Energy Bill (National Assembly Bill No.50 of 2015).

Hon. Members, next week on Thursday, the following Bills are scheduled for the Committee of the whole House:-

- (i) The Forest Conservation Bill;
- (ii) The Legal Aid Bill; and,
- (iii) Access to Information Bill, 2015.

Those three Bills are for Thursday next week and the other three are for Thursday this week. Please move with speed.

Next Order!

#### REDUCTION OF PUBLICATION PERIOD OF THE JUDICIARY FUND BILL

**Hon. Speaker:** Hon. (Ms.) Kajuju, are you the one holding fort?

**Hon. (Ms.) Kajuju:** Yes, Hon. Speaker.

**Hon. Speaker:** I see. Please proceed.

**Hon. (Ms.) Kajuju:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.120, this House resolves to reduce the publication period of the Judiciary Fund Bill (National Assembly Bill No.3 of 2016) from 14 to 11 days.

Hon. Speaker, we are seeking reduction of the publication period of the Judiciary Fund Bill because we had a meeting with the Judicial Service Commission (JSC), and they expressed to us some of the challenges they have encountered in expediting the process of access to justice and implementation of the Constitution. Taking into account the separation of powers between the three arms of Government, it is important that this important arm of the Government is empowered because the Judiciary Fund Bill will ensure that there is a proper kitty allocated to the JSC, and that it runs smoothly as expected.

I beg to move the Motion and request the Leader of the Majority Party, Hon. Aden Duale to second.

**Hon. A.B. Duale:** Thank you, Hon. Speaker. As I second, I would like to tell Hon. (Ms.) Kajuju to look for Members of the Departmental Committee on Justice and Legal Affairs. It is a Procedural Motion and the Judiciary Fund Bill is one of the constitutional Bills before the House. I am happy my colleagues have approved the Thursday morning sittings. This is one of the Bills that was published---

*(Hon. Shill tripped)*

Sorry, Hon. Shill. It is about age, he taught me in primary school. He was my senior teacher in Class 4. I did not want him to fall.

We need to reduce the publication period so that the Bill is read the First Time today and then the Committee can deal with it. The Committee needs to talk to stakeholders and then move it before it is referred to the Senate.

I beg to second.

**Hon. Speaker:** Hon. Members, I believe the reasons have been explained. If you look at Article 173 of the Constitution, you will find that the Judiciary Fund is established but Parliament was required to enact legislation to provide for its operationalisation.

*(Several Members stood up in their places)*

Those of you who are capable of remaining upstanding like Hon. Wangamati, you do not want to participate in this one?

*(Question proposed)*

*(Question put and agreed to)*

Next Order!

## BILL

### *First Reading*

#### THE JUDICIARY FUND BILL

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

## MOTION

#### SENATE AMENDMENTS TO THE CLIMATE CHANGE BILL

THAT, the House do agree with the Report of the Committee of the whole House on its consideration of the Senate Amendments to the Climate Change Bill (National Assembly Bill No.01 of 2014)

**Hon. Speaker:** Hon. Members, again the House considered this Motion which relates to the Senate amendments to the Climate Change Bill (National Assembly Bill No.01 of 2014). The debate on this Motion was concluded and what remains is for me to put the Question, which I proceed to do.

*(Question put and agreed to)*

## COMMUNICATION FROM THE CHAIR

## APPOINTMENT OF MEMBERS TO THE MEDIATION COMMITTEE

**Hon. Speaker:** Hon. Members, I indicated to you that depending on how you will vote on Motion No.11, I will make a Communication that is consequent upon the decision you have taken. This Communication relates to the appointment of Members to the Mediation Committee on the Climate Change Bill (National Assembly Bill No.01 of 2014).

Hon. Members, you will recall that on Wednesday, 24<sup>th</sup> February, 2016, this House while in the Committee of the whole House rejected Senate amendments to Clause 7(2) paragraph (g), 7(4) and Clause 32 of the Climate Change Bill (National Assembly Bill No.01 of 2014). Consequently and in light of the decision that the House has just made, the Bill stands committed to a Mediation Committee in accordance with Article 112(2)(b) of the Constitution.

In this regard, I have appointed the following Members to represent the National Assembly at the Mediation Committee:-

1. Hon. Amina Abdalla, M.P.
2. Hon. (Dr.) Wilber Otichillo, M.P.
3. Hon. Chachu Ganya, M.P.
4. Hon. Kathuri Murungi, M.p.
5. Hon. Opiyo Wandayi, M.P

Hon. Members, it is advisable that in attempting to develop an agreed version of the said Bill the Committee confines itself to the contested clauses.

Thank you, Hon. Members.

**BILLS***Second Reading*

## THE CONTROLLER OF BUDGET BILL

*(Hon. A. B. Duale on 17.2.2016)*

*(Resumption of Debate interrupted on 24.2.2016 – Afternoon Sitting)*

**Hon. Speaker:** Again on this one, Hon. Members, it was the Mover who was to reply. Let us have the Mover, the Leader of the Majority Party.

**Hon. A.B. Duale:** Thank you, Hon. Speaker. I want to thank the various Members who contributed to the Controller of Budget Bill, 2015. Their immense contribution, I am sure, will translate into various amendments that will be introduced at the Committee stage.

This Bill gives effect to provisions of the Constitution, namely Articles 225, 228 and 252 regarding the functions of the Office of the Controller of Budget. Basically, this is a new and independent office created by the Constitution, 2010. It is a core and important office. So, this Bill is trying to align the administrative aspect and the resources. I am sure the Controller of Budget, Madam Agnes Odhiambo, is doing a very good job. She was the Chief Executive Officer of the Constituency Development Fund Board in the last Parliament. She is a person we



know and I am sure she will make sure that the use of public resources both at the national and the county level is observed at all times.

With those many remarks, I beg to reply.

**Hon. Speaker:** Hon. Members, I will now put the Question. I hope that Members have been paying attention because several Members contributed to this important piece of proposed legislation.

*(Question put and agreed to)*

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

#### THE COMMUNITY LAND BILL

**Hon. Speaker:** Yes, the Leader of the Majority Party.

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

I beg to move that the Community Land Bill be now read a Second Time.

This is the Bill this House has been waiting for. It is one of the most controversial Bills that must be enacted before 27<sup>th</sup> August, 2016. As you are aware, the Community Land Bill, 2015 is one of the legislations to be enacted by Parliament as required by the Constitution under Article 261(1).

The importance of this Bill, with regard to the recognition of community land, the protection of community land and the management and administration of community land cannot be underestimated. All of us - 349 Members sitting here and 350 when you are included - are Members of Parliament representing various constituencies. In those constituencies, we represent people who own land that is called "community land". This House is under obligation to make sure that a legal framework is prepared to protect that land. For example, I, the Member for Garissa Town would like to say that Kenyan land belongs to all of us, I included. However, the land in Garissa belongs to my community, just like land in North Horr belongs to the community that lives there. I am sure that the land that is found in Meru County belongs to the Meru people under the able leadership of the Women Representative and many other colleagues who are here.

So, this House must put a legal framework in place so that no other entity can interfere with the land that belongs to our communities because Kenya is composed of communities. As we build one united nation, we must also be proud of the diversity of the communities that we come from.

This Bill talks about how to recognise community land and how you protect and administer it. This Bill, within the framework of Article 261(1), is trying to legislate an Act of Parliament that will create a legal framework. This is necessary for the protection and proper management and administration of various community lands.

The Bill before this House seeks to provide a legislative framework that gives effect to Article 63 - if Members can read - of the Constitution. That Article says that recognition, protection, management and administration of land must be clearly stipulated in the Constitution as an institution. It also says that communities can own, register, manage and administer their land.

I am sure that each one of us here has certain economic activity unique to the community. For me, land is so crucial that without pasture and water resources the pastoral community will not live. The same applies to the farming and fishing communities.

I will now go to the basic summary of the salient features of the proposed legislation. Clause 6 of this Bill provides for the holding in trust of unregistered community land by county governments on behalf of the communities. So, Clause 6 says that county governments, and I am talking about a perception of a good county government, will not sell land. Where a governor and his team are not land grabbers they can be entrusted with community land. I am sure that when we will be dealing with Clause 6, we will be alive to the fact of the kind of county governments we have in Kenya today. Can we give them that holding in trust?

I hope that even Chair and the Vice-Chair of the Departmental Committee on Defence and Foreign Relations are here. Barely three months ago, the Kenya Defence Forces (KDF) decided to grab, in my constituency, over 3000 acres of land.

Hon. Speaker, the Committee Chair should listen because we will bring a petition. You need to relax. Do not defend the KDF. I am the Leader of the Majority Party and so, I am the one to protect the KDF. However, when it comes to the interest of the people I represent, I will say that in Garissa which is my county, the KDF has been allocated a piece of land. We agreed and gave them the piece of land many years ago when I was the Member of Parliament in the last Parliament. However, one morning, they woke up and, with contractors, decided to extend the fence to cover three locations. I have talked to them. They have not gone into Somalia because my constituency is about 300 kilometres away from the Kenya-Somalia border. We are now dealing with that matter and we will solve it. I want the Chair of the Committee and his Vice-Chair, who comes from that county, to know that there are many issues.

A governor may say he wants to bring an investor. Yes, we want investors but you cannot bring an investor and then give him or her two million acres of our land. The communities must be involved.

Hon. Speaker, you are aware of the story of the oil fields in Turkana where title deeds were owned by people in Upper Hill and the community did not know. This Bill is very critical. Clause 6 is very important. Can we entrust county governments with land?

Clause 7 of the Bill gives the procedure for registration of community land. How do you register community land and make sure that registration is above board? Clauses 8 and 9 provide for the development and publication of a comprehensive adjudication programme. They give the procedure. How do you recognise, adjudicate and designate community land within the framework of the Registrar of Lands? I am sure the Chair of the Departmental Committee on Lands and his Committee have involved stakeholders. They will give us their input.

Clauses 10 to 13 provide for the registration classes of holding community land. How do you set aside communal or reserve land? Within the community land, we have reserves, land held by the community, community land setting and a piece of land for holding.

Clause 14 confirms the validity of the existing customary right of occupancy in community land as equal in status to the right to occupancy under the category of land. There are shrines. There are those who believe that certain places have religious significance. I confirm that I am a very good Muslim, so I do not visit shrines. The only place I visit to worship God is mosque. However, there are communities, and we must respect them, that have shrines in particular forests or land. These places have some significance. For example, Suswa is significant to the Maasai community while the *Kaya* shrines are significant to the Mijikenda and

the coastal communities. The people living in the Rift Valley have some areas. There are also particular areas which are significant in Western Kenya. The protection of those areas must be put in the legal framework because some of them have environmental significance.

I saw in the news a five-star hotel purportedly being built in Karura Forest. If we want to respect our great lady, Wangari Maathai, we must at all times conserve Karura Forest in her memory. May her soul rest in peace.

Clause 14 confirms the validity of the customary right of occupancy. Clause 15 vests the Cabinet Secretary (CS) with power to make regulations prescribing the procedure for registering community land. After we pass this Bill, it is upon the CS for Lands to bring regulations. Regulations will deal with how to manage and administer community land on behalf of respective communities and to identify on provisional basis the boundaries of community land and liaise with the CS in recording of rights and interests of registration.

Clauses 17 to 21 contain provisions that set out the interests conferred on a community upon the registration of community land and the rights of the community as proprietors of registered community land and other matters.

Clauses 22 to 27 of the Bill contain general provisions relating to the conversion of community land to public or private land.

Clause 25 of the Bill provides for the conversion of public land to community land through allocation by the Commission. So, how do you convert public land to community land? This can only be done through a conversion done by the National Land Commission (NLC) or through legislation by the national Government.

Clauses 28 to 30 provides for the rights and entitlements of individual community members to registered community land. How do you register individual community land, including the full and equal enjoyment of rights of use and access and prohibit discrimination? Here we are talking about the ranches which are owned by communities. It is very common in the pastoral areas and in the coastal region. In those areas, communities agree to do a joint venture of a ranch or a conservancy. The rights of each member must be protected from discrimination. They must have equal enjoyment of rights like equal rights for grazing in pastoral communities.

Clause 32 provides for transition relating to community land. Clause 35 talks about the right to use and occupy any part of community land. Clause 36 of the Bill provides for the use and management of natural resources. Clause 37 deals with making agreements relating to investment in community land. It also talks about how to invest in community land like putting solar, wind and geothermal energy or the Tullow Oil and the agreements that you are going to be subjected to in terms of investment in community land through a free, open and consultative process.

Hon. Speaker, you will find somebody saying that he or she has a title and already people are working with geological teams. For example, they can go to Mvita, a constituency of my very good friend, and find a certain place within the constituency which has a likelihood of having oil deposits. You will find that before the community has been consulted, somebody has a title and has entered an agreement. Clauses 35 and 37 deal with that.

Clause 38 confers upon a registered community the power to make rules and by-laws for the management and administration of community land. This is a very good provision. Once the community has the land, then it is them who have the power to make the by-laws that govern their land.

Clause 39 of the Bill recognises the State, under Article 66 of the Constitution. The State is given the powers to regulate the use of the land or interest in or the right over the land. These interests include the interest of defence, public safety, public order, public morality, public health and land use planning. So, under Clause 39, the land belongs to the community but the State has certain overriding provisions.

Hon. Speaker, these provisions include in the interest of defence. If it is about national security, the State can take that land and put up a military base for purposes of defending the country. The State can do so in the interest of public safety. If the Government anticipates a volcanic eruption to take place on a certain piece of land, the State can acquire it. The State can also acquire a piece of land in order to maintain public order. You can claim that a certain piece of land is your community's shrine, and that you meet there periodically to worship when the truth is that you use such functions to cause public disorder. In such instances, the State can reclaim parts of such community land to maintain public order. The State can also reclaim community land if it turns out to be a threat to public morality. If you decide to create a park on your community land and use it for immoral activities, like moving around while you are nude – the State can decide that such activities are a threat to public morality and reclaim such land. If that land is a threat to public health and land use planning, the State has overriding provisions.

Despite the vesting of the management and administration of land on registered communities, Clause 39 also subjects the management of community land to national Government laws and policies. This relates to policies relating to fishing, hunting and gathering, protection of animals and wildlife, water and forestry. You can rightly claim that ancestral land belongs to your community but if it is put to a kind of use that contradicts the laws that we have passed in this House, the State has overriding powers.

Clauses 40, 41 and 42 mainly deal with settlement of disputes relating to community land through traditional dispute resolution mechanisms. The Bill recognises the fact that neighbouring communities as well as individuals within communities can have disputes over land. Clauses 40, 41 and 42 provide guidelines on how to settle such disputes.

Clauses 43 to 48 contain general provisions, including offences of occupying community land unlawfully and general penalties for such offences. The clauses also provide for repeals, savings and transitional regulations. Therefore, I request Hon. Members to support this Bill because it is a constitutional Bill. It is very important. Eighty per cent of the disputes that we have in all the 47 counties are about land and moreso community land.

In the last Parliament, this House passed the Independent Electoral and Boundaries Commission (IEBC) Act but it has taken the IEBC many years to operationalise the boundaries. They are only focusing on the electoral part. We have a serious time bomb. There are serious constituency and boundary issues. We have serious boundary issues between Makueni and Taita Taveta counties, between Garissa and Wajir counties, between Isiolo and Meru counties, between Baringo and Turkana counties as well as in parts of Kitui, Murang'a and Kiambu counties. Kiambu County has expanded to Murang'a County and Murang'a County has expanded to Kiambu County, according to different arguments.

All the 47 counties have disputes. There is also a serious boundary issue between Kisumu and Vihiga counties over the Maseno area. We have serious disputes. I do not know why the IEBC is only dealing with the electoral part of its functions. They must operationalise the boundary commission, which is their function. I am sure that once we enact all the subsequent laws, including this important Community Land Bill, we will resolve such disputes. This subject

matter is very dear in my heart. One of the reasons why I am a Member of Parliament is that there is a certain constituency and boundary.

There is also the culture of ferrying voters from one constituency to another. I saw it last night on television. People within a constituency will either love or hate you. You do not need to ferry people from Nairobi or Mombasa. The people in your constituency must vote for you. If they are Luhya, they will vote for you. If they happen to be Somali, you just need to talk their language, and they will vote for you.

In an urban centre like Nairobi, there should be no problem. However, if you ferry people from Nairobi County to Kiharu Constituency in Murang'a County, or you ferry people from Murang'a County to Kasipul Kabondo Constituency, that is not democracy. What happens if you win? You will be dealing with ghost voters because those people will go back to where they came from.

Last night I saw a serious war in Kasarani Constituency. As politicians, let us encourage members of our constituencies who have attained the age of 18 years to vote where they are. They should not agree to be transported to other areas.

With those many remarks, I beg to move and ask the able Chairman of the Departmental Committee on Lands to second.

**Hon. Speaker:** The Departmental Committee Chair, you have a maximum of 30 minutes to second but I have determined, given the interest that the membership of this House has in this Bill and the amount of sittings that you have had with the various stakeholders, should you require more than the 30 minutes, this House should accord you more time. The Question will not be put. I will exercise my dictatorial authority granted by you under Standing Order No.1, because we would like to hear as much as possible what the stakeholders have told your Committee.

Take the Floor to second the Bill Hon. Chair.

**Hon. Mwiru:** Thank you very much, Hon. Speaker. I do not require a lot of time because at the end of the day, I know that there is a lot of interest in this particular Bill, especially having consulted most of the Members of this House who have been affected directly by the Community Land Bill.

Hon. Speaker, the Bill intends to operationalise and give effect to Article 63(5) of the Constitution. The Bill entails all the land that we previously used to call "trust land" in this Republic. After the promulgation of the Constitution that we are now using, all the land that we thought was trust land has now turned out to be community land. That is what we are trying to legislate.

Article 63(3) of the Constitution, which I want to bring to the minds of the membership of this House, reads as follows:-

"Any unregistered community land shall be held in trust by county governments on behalf of the communities for which it is held."

What we have seen in this country today, after the coming in of devolution, is total plunder of community land by county governments. Previously, trust lands were held in trust by county councils. We have seen some county governments in some fora woo investors to their counties by promising them land to invest in, in terms of putting up manufacturing factories.

Hon. Speaker, from where I stand as the Chairman of the Departmental Committee on Lands, this is total corruption in that line because they are only holding community land in trust.

They are not supposed to transact any business on this land until such a time that this land has been registered to the community which it belongs.

*(Loud consultations)*

Hon. Speaker, please protect me from loud consultations so that these Members can understand where we are coming from and where we are headed to.

**Hon. Speaker:** Order Members! The Member for Tharaka will be heard.

**Hon. Mwiru:** Thank you, Hon. Speaker. I was trying to bring to the attention of these Members in this House that counties are plundering community land. They are trying to woo investors promising them land for investment and yet they are not supposed to transact any business on community land especially which is not registered. It is incumbent upon this House as well to be vigilant and take these governors to account. This is because they are rushing, before we enact this Bill we are debating, to plunder this resource. They are already ahead of us.

The more reason why I urge Members here that we do it quickly for purposes of curtailing these acts of governors in the counties. Now that the land has been described as “community land” which used to be “trust land”, what happens in areas where people feel they cannot form a community in line with ancestral lineage or customary laws? This is what we have been looking at as a Committee because in some cases when we were meeting stakeholders, some were saying “Yes” but in some cases like Ukambani people would prefer to hold the land individually rather than as a community. So, some of these things are going to come out clearly in the Third Reading where we need to introduce an amendment for the purpose of fitting in every interest of the communities of this country.

I am pleased that this Bill has been moved in this House as it has been appearing on the Order Paper and exiting with equal measure. I am happy that now we are dealing with it. I thank Hon. Members from the pastoral communities, including Hon. Chachu Ganya and Hon. Aden from Balambala. We have consulted widely on this matter so that it can be settled because it was very emotive at the beginning. Quite a number of stakeholders have been consulted in the process of drafting this Bill. That includes the Ministry of Land, Housing and Urban Development, the NLC, the Commission for the Implementation of the Constitution (CIC), Kenya National Commission on Human Rights (KNCHR), the Transition Authority (TA), the Council of Governors (CoG), the County Land Management Boards (CLMB) and private sector organisations that deal with matters of land.

We have consulted the Land Development and Governance Institute (LDGI), Katiba Institute, the World Wildlife Fund (WWF), the Ogiek people, the National Environment Management Authority (NEMA), Kenyatta University (KU) and Egerton University (Njoro Campus) just to name but a few. As a Committee, we have been able to reach out to great numbers for this purpose in the registration of this Bill. There are two areas we need to look at which are very clear in this Bill. One may confuse the difference between registration of a community and registration of a community land.

“A community” is identified through a given criteria already provided for in the Constitution. It has to be registered before even registering or identifying the land for alienation for the purpose of that community. This is because you can register land in vacuum or in void. Communities are supposed to identify their land so that Government officials get to know the extent to which that community land lies. The mistake the Bill would have made which we are

going to sort out in the Third Reading is to have involved the CS for Land only as the national Government. The Committee has ensured that the county and the community must be included in the management of this land.

Why do I say so? We cannot just let the community and county government do it alone. There are community lands that crisscross counties. If it is a matter of clan, in some areas like North Eastern and Upper Eastern, we have found clans crossing the boundaries of the counties that they live in. Therefore, the national Government has to come in and control that aspect so that there is cohesion.

Secondly, if we allow it to go the county way alone, the likelihood would be that every county would run away with its community. It can decide and say: "Nobody else should enter that area." So, we have to bring cohesiveness in this country. All in all, the Bill is proposing that the community must have the highest management structures in trying to manage community. Now, what happens if a *Mutharaka* like me is living somewhere in Wajir, and the community goes to declare that particular land their land? So, we have put in mechanisms to ensure that that particular person is also protected regardless of him or her not belonging to that clan. At least he or she has been there and has been recognised as having been there. So, this Bill is going to deal with that.

It is also important to note that there are only three categories of land in this country. There is private land, public land and community land. The Bill is providing mechanisms and an environment to make sure that the community does not only deal as a community but can also be converted to public land or private land. That mechanism is already there and there should not be any fear that you cannot afford to get a slot somewhere in community land, if you have to go and negotiate with that community for certain development because the assembly of that community is going to make decisions.

We have also ensured that decisions of the community in terms of the management of land are done by a majority of members of that community. There must be a good threshold so that few individuals do not make decisions and deprive the community of their rights of ownership of land in that community. Therefore, although the Bill put it at the threshold of 50 per cent we, as a Committee, have put it at a better threshold of almost 70 per cent because a serious decision has to be made by that community. The fear here which the community saw is that some of this land traverses areas with low education levels.

In the process, a few learned individuals will caucus and deny the ignorant people the rights to own land. The threshold has to be higher. Resources within a community land must be negotiated with the community that owns that land to ensure that no one deprives the community of its land just because there is some oil on that land. In the case of Turkana County, God has blessed them with that natural resource. The community should be involved in the negotiations, so that that resource is well exploited. Involvement of the people will also ensure that they are not deprived of their rights simply because they were ignorant of the existence of those resources underground their land. Those are some of the things that we need to look into.

Hon. Speaker, I said that I would not take much time since my duty is just to help Members understand what the various parts of this Bill provide. It is not just a matter of dealing with it clause by clause but rather to explain what the content in the Bill means. This will ensure that as we debate the Bill, we understand how to navigate through it for the benefit of this country. This Bill will save Kenyans from the kind of clashes that happened in 2007/2008.

Resources, land included, are very important in this country. If land is well managed, we will deal with those kinds of issues, because people have been deprived of their land.

Hon. Speaker, I second this Bill knowing that Hon. Members will support it.

*(Question proposed)*

**Hon. Speaker:** Let us now have the Leader of the Minority Party.

**Hon. Nyenze:** Thank you, Hon. Speaker for giving me this chance. Over the weekend, I was in my constituency, where I talked until my voice became hoarse. Despite my hoarse voice, I will contribute to this debate.

I am happy that the Committee did a good job. They consulted more than 27 groups. It is good that whenever we deal with a Bill touching on land, we consult our public to know their interests. That is what the Committee has done and that is why I support the Bill.

Earlier on, I raised concern that the powers that were conferred on the CS in the Ministry of Lands were too much. I suggested that those powers be given to the communities that have lived on their native land for a long time. It is good that this Bill gives us an opportunity to secure the rights of our communities. We know the communities that have suffered.

From history, I know that Nairobi was initially occupied by the Maasai community, who were subsequently pushed to Narok and Kajiado. The Maasai have lost most of their community land. Prior to colonialism, many pastoral communities owned huge tracts of land. I was initially against this Bill because it has not provided for compensation of a community like the Maasai that has lost a lot of land to government prospects. Most of the land was not sold but grabbed. Where it was sold, it was sold without the Maasai people understanding their rights to that land. I would, therefore, say that they were exploited.

This Bill should have talked about compensation of such communities. In as much as the Maasai is not the only community that has lost land, it has lost most of its land. Therefore, I will be moving some amendments to include the issue of compensation.

Hon. Speaker, this Bill has many positive things. For instance, it has recognized customary rights to occupy land. Instead of leaving such communities to the mercy of county governments, the NLC and the Ministry of Lands, this Bill gives the communities power to protect their own land.

Clause 9 of this Bill talks about community land. It creates the Office of the Community Land Registrar, who will deal with matters of registration of community land. Clause 21 addresses the role of communities in conservation and management of community lands. The county governments have promised investors land that does not belong to them.

In Kitui County, where I come from, there is a tract of land called B2, which was used for ranching. Before colonialism, the said land belonged to the people of Kitui but it was subsequently taken away from them. This Bill seeks to address past practices which facilitated the stealing of land from communities.

The other reason why I support this Bill is that the communities who were moved from their land through laws put in place by the British colonial administration and independent Kenyan regimes will get back their land. The county governments have no business controlling them. We do not want to hear governors telling communities who live on such lands, like B2 and Yatta Ranch in Kitukuni, to move out because they have no land.



Clause 31 talks about the rights of all community members, including women and people living with disabilities, to benefit from community lands. I listened to the Chairman of the Departmental Committee, who talked very well. We have seen communities that have been exploited by the well-to-do, well-schooled and opinion leaders. Such elite groups have exploited the ignorance of ordinary Kenyans. They were convinced to sell their community land or use the land as security for bank loans, only for the communities to subsequently realise that their land has been sold. I am happy that the Chairman has expounded on this aspect. In addition, they have raised the threshold of the community members who can bring about such changes.

Hon. Speaker, during the colonial era, land was alienated. There were laws that alienated land from communities. The problem that we face as a country today includes boundaries, stolen community land and a few individuals owning too much land while very many people in this country have no land on which to put up houses or farm and provide for their families. These are anomalies that this Bill has addressed, but not comprehensively enough to include private land. Community land has been abused so much in the area of Kajiado.

This Bill should have addressed certain things that I had raised earlier on a similar Bill. One of the shortcomings of this Bill is the definition of “community”. It should be very close to the definition that is given in the Constitution of Kenya, 2010.

This Bill has fallen short of giving the timeframe when regular review of the community land register would be carried. I propose that the review should be done in every two years, instead of the proposed five years. That is because land is very important. About 66 per cent of Kenyans depend on land for their livelihood. I want to issue a notice that I will move an amendment in this regard.

In Kitui County where I come from – and this Bill has addressed that issue – there are prospective “clever” people from outside the county who have bought land in areas where there is limestone, coal or copper. Even though those people have bought land regularly, I expected this Bill to say that if you have legally bought land with minerals from a community that is not informed, when that community gets to know that you had prior information that there were minerals underground and in one year’s time you are paid compensation, then you must be fined. I expected the Committee to refine that part. That is an area I want addressed because that is what has happened in Kitui where there is limestone, coal, copper and iron ore. People did not know that those minerals were underground, but the land has been bought by other people. There should be compensation for the people of Kitui County who have lacked rain and food. Their children cannot go to school because someone with the knowledge of where minerals are found came and bought their land. What does the Committee plan to do with that kind of scenario?

This is the same thing I am talking about in regard to Maasai land. Frankly speaking, Nairobi belongs to the Maasai. All the area towards Karen belong to them, but they were pushed away. I am sure they were not paid the right prices for the land or they never sold it. People who were “clever” enough went to the Ministry of Lands, obtained documents and the Maasai were pushed out of their land where they used to graze and farm. Now they are found in Narok and other towns. This Bill should address that. When I talk about the Maasai, I am talking about other minority communities in Kenya who have been pushed out of their land. This Bill should address the issue of compensation.

I am not saying that people should lose the land that they bought fairly, but the Government should put in place a mechanism to compensate the people who were taken

advantage of. The land belonged to them, but now they are made poorer and their children cannot go to school. I will move some amendments at the Committee of the whole House stage.

This is a good Bill. There was a lot of public participation and consultations in its development. I thank the Chairperson of the Committee, Hon. Mwiru, and his Committee for doing a good job. But there are small grey areas which I feel should be addressed so that the communities that lost land because of lack of prior knowledge are compensated.

With those few remarks, I support the Bill.

**Hon. Speaker:** Hon. Members, as I had indicated to the House earlier, there is intervention from the Deputy Speaker.

#### REQUEST FOR EXTENSION OF TIME ON BPS REPORT

**Hon. (Dr.) Laboso:** Thank you, Hon. Speaker, for forewarning the House about my short intervention. You remember that we were unable to constitute the Budget and Appropriations Committee and its tasks fell on the Liaison Committee. I feel we should give the House the status of what has happened up to this point because of the timelines involved.

We have so far held six meetings to consider the Budget Policy Statement (BPS). During those meetings, we have been able to meet with the following stakeholders:-

- (i) Departmental Committees.
- (ii) The Auditor-General.
- (iii) Parliamentary Service Commission (PSC).
- (iv) Commission for Revenue Allocation (CRA)
- (v) The National Treasury.

Due to the limitation of time and the fact that this was a relatively complex and new task for the Liaison Committee, we request the House to give us an extension of time. We were supposed to present our report today, but for the facts that I have mentioned, we ask the House to allow us to conclude the report and present the same on Thursday. That will be in order considering, as I have said, the members of the Liaison Committee have been involved in a new task. It is also the same Chairpersons of Committees who have been involved with meeting stakeholders in their own Committees. I believe this is not an unreasonable request from the Committee and I believe we will get concurrence from the House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, I had already forewarned the House about the possibility of this request coming. It is not an unreasonable request. So, do I get the concurrence of the Members that the House resolves to extend the period by which the Liaison Committee is to submit its report on the consideration of the BPS to Thursday, 3rd March 2016?

*(Question put and agreed to)*

**Hon. Wakhungu:** On a point of order.

**Hon. Speaker:** What is your point of order, hon. Wamalwa?

**Hon. Wakhungu:** Hon. Speaker. I rise to seek your guidance.

**Hon. Speaker:** Do not argue with my exercise of discretion in terms of Standing Order No.1. I am sure you are part of the decision-making.

**Hon. Wakhungu:** Hon. Speaker, I am part of the House leadership and, obviously, I cannot go against that. The issue is that I am a member of the Committee on Defence and Foreign Relations. I know very well that the Budget Policy Statement is supposed to be scrutinized by respective Committees. As members of that Committee, we did not have a chance to look at the reports of the Deputy Principal Secretary because of our absentee Chairman. In this case, Hon. Speaker, I seek your guidance because, as a Committee, we are disadvantaged. We have not had an input pertaining to this and yet, our Chairman has gone to an extent of presenting the Report of the Committee on Defence and Foreign Relations to the Liaison Committee, without the input of Committee members. Please, I seek your guidance on this because it has brought problems in the Committee.

**Hon. Speaker:** Hon. Wamalwa, it will be a little unfair for me, from the Chair here, to pretend to want to superintend the work of Departmental Committees. As members of a particular Departmental Committee, you know how you are supposed to deal with those kinds of internal matters, including processes provided for under Standing order No.193. You could check what that particular Standing Order provides. That way, I do not have to sit here myself to deal with matters that should be dealt with by the Committee.

More particularly again, hon. Wamalwa, remember the Chair of the Committee reports to the Committee on Liaison. It is the Committee on Liaison who should be reporting now to the plenary of the House. If I purported now to intercede, it will be un-procedural and it will not be good for the House and the Chair to do so. Of course, even if a Chairperson is not present, the rules provide that you can get the Vice-Chair or any other Member to chair the meetings of a Committee. So, you should not feel inhibited by the mere absence of a chairperson.

Those of us who have had the advantage of also chairing committees have done that liberally. I keep wondering why we cannot borrow a leaf from your very good neighbour the Member for Rarieda, who is the Chair of Public Accounts Committee (PAC). I find PAC being chaired by other Members. Is it not possible for you to borrow a leaf from hon. (Eng) Gumbo? I usually see from records that other Members Chair. The chairing of a Committee should not be tied to an individual, unless there are other issues which I may not be privy to myself from where I sit. Committees should find it easy to constitute themselves and appoint or elect a person to chair a particular sitting of that committee.

For the time being, let me not make any particular comment or response to that. Maybe, hon. Wamalwa, since he is a member of the House Business Committee (HBC), could raise that matter in that other forum and, even better, before the Committee on Liaison.

Hon. Katoo ole Metito.

**Hon. Katoo:** Thank you, Hon. Speaker. I stand to support this Motion No.13 on the Community Land Bill. I want to say that this is a very important Bill. It is one of the Bills that are meant to implement the Constitution. I am happy that this Bill has put clarity on the two types of community land. It is good to note that there is registered community land and unregistered community land. This is in accordance with Articles 63 and 64 of the Constitution; that registered community land falls under the national Government, that is the Ministry of Land, Housing and Urban Development, and unregistered community land falls under the county governments and, previously, it used to be known as trust land.

Hon. Speaker, very quickly on the Bill, under Clause 2, it has defined “community”. In the interpretation, it means an organised group of users of community land who are citizens of Kenya. Most importantly are the attributes that the Members of that group share, that is either a

common ancestry, similar culture, socio-economic or other common interests, geographical or ecological space. That now brings the idea of what a “community” is. From there, they have decided what “communal use of land” is. In some cases, people do not know what it is? “Communal land use” is defined in the Bill, in Clause 2 and 13. It is the use of land, first of all, as declared under Article 63(2) of the Constitution. It is also important to note that it is land that is meant for holding or using in undivided shares.

If you look at Clause 13, read together with Clauses 20(2), 21(2) and 30, it says:-

13(1) “ A registered community may recommend to the members of the registered community portions of the community land to be set aside as communal or reserve land and for what purposes.”

It is good that people get to know this. Especially for pastoral land, when people see vast tracts of land, they think, maybe, it has no owner. It is good to know that it is community land and it is used for communal purposes. It is used as land occupied or available for occupation for communal use on public basis by all the members of that community. It is only for members of that specific community under that registered land.

Should anybody, be it the Government or otherwise require any portion of community land, the Bill clearly specifies the conditions under which it can be acquired. I like the way it says that before it is even given out, there should be just compensation to the person or persons in full. It is that kind of land that, at times, people like to grab. This specific Bill makes it very difficult to have that land grabbed, should it be required by the Government or specific agencies. There should be just compensation paid in full, before that land is given out.

Trust land, as I said earlier, falls under the county governments. That is in accordance with Clause 6. We have registered community land which falls under the Ministry. Another key note of this Bill, in Clause 6(4), states:-

6(4) “A county government shall not dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held”.

Therefore, even county governments cannot dispose of trust land that they hold on behalf of the community.

Clause 10 of the Bill talks of a register of community land. For one to belong to a certain community land, one must belong to that community. Another way of belonging to that community, other than the attributes earlier prescribed under Clause 2, is that there should be a register of community land. Members always pass resolutions in annual general meetings. More importantly, this clause says that, that register shall be updated every five years. That is very important because, at times, a periodic review of land use system due to climate or lifestyle changes is called for. It is good to have those meetings. However, an update of the register could be due to death whereby there are inheritors to inherit the land. Also, there may be new applicants because original members of the community land may have descendants who need to be registered. Therefore, it is very clear that the register should be updated once every five years.

Clause 12 states that community land may be held as communal land, family or clan land or as reserve land. However, community members have the right to set aside those reasons. I like Clause 12(c) where it states that community land may be held as reserve land. That reserve land can be used for conservation, mining, exploration or any other investment that is of great benefit to the community.

Clause 20(1) and (2)(a) states that the community can submit a plan to the county government for registered community land for purposes of conservation, environmental or heritage issues that are relevant to the development, management or better use of the land.

Clause 21 talks about ways in which the community can benefit or make good use of their land. It talks of administration and management of the resources on community land. That means that communities shall establish measures to protect critical eco-systems and habitats. They shall also establish incentives for communities and individuals to generate income from natural resources and conservation programmes. They shall also establish measures to facilitate access, use and co-management of forests, water and other resources. They shall also establish procedures of natural resources in an appropriate register. Putting in place such necessary measures to conserve resources will benefit the community.

The other very important aspect of this Bill is the issue of conversion of community land. The Bill talks about how you can convert community land into public land; public land into private land and private land into community land or public land. Part V of the Bill in Clause 22 clearly specifies how land can be converted. A very good procedure should be followed. Even if it is compulsory acquisition, there should be procedures and compensation. Therefore, this Bill identifies the owners of the land. They should have a say when it comes to conversion of the land.

Part VI talks of special rights and entitlements in community land. The community can lease land, but they cannot issue a title deed. Therefore, even if the community leases land, community land must be protected by not issuing a title to anybody. Also, those leasing rights are not transferrable. I can see my time is up. The Bill clearly says that the community can set aside some portion of land for grazing, depending on the grazing patterns during the wet or dry seasons.

This is a good Bill. Let us support it. It will help in the realisation of the benefits of the new Constitution.

**Hon. Speaker:** Member for Balambala.

**Hon. Aden:** Thank you, Hon. Speaker for giving me the opportunity to speak to this very important Bill.

This constitutional Bill is historic in its kind because, for the first time, it is going to bring about proper legislation on land use within the country. Coming from the pastoral areas and for the people of the coastal region of Kenya, the passage of this Bill will mean quite a lot to us.

From the outset, before I go into the depths of this Bill, one thing that struck me as I read across the stakeholders input in this Bill is the unavoidable or glaring conflict between the Ministry of Land, Housing and Urban Development and the National Land Commission (NLC). This is very unfortunate because, for the first time, we have an important stakeholder, namely, the NLC saying that this version of the Bill was developed without the participation of the public and thus, its validity can be challenged in court. Even as we consider this important piece of legislation, there was a task-force that was formed and it involved very important stakeholders in land, including private citizens out there. They developed a very good piece of legislation, which was, unfortunately, lost. Nobody knows where that piece of legislation went. I urge the Chairperson of the Departmental Committee on Lands to take a moment and look for that task-force proposal of the Bill. I am sure we will get very important input from there. I have had an opportunity to look at it. It is fine. It is well done and does not deviate much from what is here. A lot of the critical issues have been taken care of under that proposal.

Under Clause 6 of this Bill on the issue of the counties and their use of land, approval of use of land by the community before the county uses it is very important. The county cannot declare one day that it has given out a piece of land or set an area for industry. It must be understood now that all that is illegal. It is the community that owns the land that will determine what needs to be done.

Clause 7 of the Bill has two challenges. First, it says that registration of community land must be to the satisfaction of the Cabinet Secretary. What will be the yardstick that will be used to measure the satisfaction of the Cabinet Secretary? It is an area that we need to look at. Also, it says that the registration shall be in accordance with the law relating to societies. We see a weakness in this. The proposal I am going to put through is that we should consider registration as a corporate entity. A corporate entity is more recognisable in law and has a better legal foundation as opposed to a society. A group of 10 people can form a society, register a very large portion of community land and carry out transactions without the rest of the community knowing. It is risky and it cannot be done.

Clause 15 of this Bill must be deleted. It negates the spirit of the Bill because it says that the Cabinet Secretary shall make regulations prescribing the manner and procedure for registration of community land for the purpose of this Act. What is this Act for? This Act must take the opportunity to detail the clear procedures of registration and not leave the same to the Cabinet Secretary.

Clause 16 is on how the communities will manage the land. We must be clear and stipulate that there will be a community assembly, a community land management committee and things like that. These are proper structures that can act on behalf of the community and make transactions. But when we say that the registered community will do this or that, the registered community could be a membership of as many as thousands of people. What is the entity that is managing that particular land?

With regard to Clause 22, the threshold for decision-making should not be 50 per cent of members. It should be 75 per cent of the registered owners of that particular land to determine what needs to be done.

With regard to Clause 29(6) on the rights to grazing land, penalties for people who contravene the rights of the grazing land or who decide to put up a big ranch in the middle of the grazing land should be heavy and not as small as a Kshs100,000 fine or imprisonment for one year. I propose not less than one million shillings and certainly not less than two years of jail term for any person who does that.

Clause 35 of this Bill gives provision to something very serious, and I want to bring the same to the attention of Hon. Members. Clause 46 states that grabbed land prior to this Bill, by the time this Bill becomes law--- If I, Hon. Abdikadir, had grabbed a certain land, then it becomes mine. We must say no to this provision. Any grabbed community land must be reverted back to the communities that owned that particular land and the same be managed by the community.

There are a number of outstanding issues which must be resolved for this Bill to have the good intention it needs to have. A number of other legislations must be repealed. Otherwise, this Act will have no meaning. They include: The Land Adjudication Act No. 35 of 1968, the Land Consolidation Act, the Trust Land Act No. 28 of 1938, the Land (Group Representatives) Act No. 36 of 1968 and the Land Control Act. They must be repealed. That is because there is a cunning intention in this Bill which says that this will be done in consideration with the other

existing laws. Those other laws are here and they have improper manner of managing the Land Bill. If the good intended Bill is to function well, we must repeal those other Acts.

Misuse of community land by the national and county governments cannot be over-emphasised, as my good friend Hon. Katoo has put it very well. Do not just see a vast land in the pastoral areas and think that nobody owns it. We saw that problem when Lamu Port-South Sudan-Ethiopian Transport (LAPSSET) came to my constituency. The people concerned thought that, that open land was free land. I told one of guys that the day he will find his bulldozer facing a camel, he will realise that the land is owned by somebody.

As I conclude, it is important that the national Government takes time to resolve the existing boundary issues between constituencies and counties before communities start to register. Otherwise, we will have serious conflicts occasioned by communities as they run to register their land. They need to know their land because others may want to register it as theirs. The Independent Electoral and Boundaries Commission (IEBC) and the Office of the President must consider many things, including the history of land ownership by communities. The *mzungu* left us with piles of land records. He told us of every inch of land, how it was owned and it went down to the small communities. Part of those documents handed over to us form part of our laws. If only we can have time and study those existing records, we can resolve existing boundary issues between communities.

Giving communities the right to manage their own land is a good provision. If we could properly organise the structures as we have said and give them the rights and not the Cabinet Secretary (CS) to determine how to register them in what form and the structures they should have, will enhance accountability, transparency and adherence to the rights of the communities.

I know many of my colleagues would wish to speak to this particular issue. As I conclude, I would like to say that there will be many amendment proposals to this Bill and the Chairperson and Members of the Departmental Committee on Lands must be patient to listen to us as we propose.

**Hon. Speaker:** Hon. Members, for that reason, I indicated earlier that the Chairman of the Departmental Committee on Lands needs to be here throughout. I am more worried because a Bill as important as this one will have Members, during the Committee of the whole House stage, who will be opposing proposed amendments without any reason.

As far you know, this Bill is very important. We expected more Members to be present to participate so that even when amendments are being proposed to the Bill, many Members will have heard the arguments for or against. At the Committee of the whole House stage, there may not be sufficient time for those arguments to be repeated. I want to urge Members who may wish to participate in the enactment of this legislation to be present during debate. That is when you will hear the arguments for or against whatever provisions or clauses so that when we go to the Committee of the whole House, those that require to be persuaded in one way or other will then have been persuaded by the force of arguments and logic.

Member for Narok North.

**Hon. ole Kenta:** Thank you, Hon. Speaker, for giving me the opportunity to contribute. As the Leader of the Majority Party said, this Bill is important. I think it is only second to the Constitution of this country. Majority of people in this country, especially pastoralists have, for a long time, been deprived of their rights and land. This Bill is supposed to ensure that, that is never repeated.

I would like to appreciate the contribution of the Member for Balambala. It was well-informed. I think that is the way we should go as far as this Bill is concerned. I come from a community that - as it has already been said - lost a lot of its land through dubious ways. As we are speaking, there is a parcel of land going by the name “Maasai Mau” measuring about 90,000 acres. It was sold by one family to unsuspecting members not knowing that you cannot sell trust land which has not been set apart and adjudicated. I am meant to understand that the Cabinet Secretary (CS) in charge of Land, Housing and Urban Development intends to validate titles that were never there. I take this opportunity to warn him to look for a good lawyer to advise him, if the State Law Office does not advise him anymore. It will be illegal and it should not be a political issue.

Hon. Speaker, we have been told what “community” is, and the Constitution is very clear. The new Bill has left out important aspects of what a community is; one of them being the ethnic language. There is no community that does not have a language or an ethnic identity. I believe that some should be included. It should not be used to deprive anybody land, but be a safeguard to communities which are vulnerable from land grabbers and evil exploiters. As we speak, people own titles to blocks of land in Turkana and many other places. This Bill should be passed the soonest time possible to ensure that all those titles are nullified because there were titles in the first place. The land should be returned to the communities so that they can benefit from what they had before. I would like to advise the pastoralist communities and any other community because there is still community land all over the country to use legal means available to them to protect their land. Failure to do so will destroy the children from those communities forever.

Hon. Speaker, many issues have been raised. There is Community Land Bill that was done in 2014 which has the best laws for governing that land. But for reasons best known to the Ministry of Land, Housing and Urban Development--- The war between the National Land Commission (NLC) and the Ministry of Land, Housing and Urban Development will cost Kenyans dearly. I believe that NLC must exercise its rights in consultation with the CS and the county governments to protect those communities. We will introduce amendments to ensure that what was done through wide consultations is implemented.

I would like to commend the Committee because the Chairman gave us a chance to present our views. He listened to us and I think the Report is all inclusive. As you have said - and I support you - this Bill should involve all Members of this House because everybody comes from a particular community. However, it should not be a means to deprive people of their rights. Maybe, they have got rights by what we used to call “acceptism”. If people have been adopted - because it has happened in communities - they should also be taken care of. If you leave them out and they have lived for centuries amongst others, they will lose out. There is a community called “Isahakia” in Naivasha which was brought by Lord Delamare in the 18<sup>th</sup> Century. They do not know any other home. They are now like fugitives. When will they be given land? They are Kenyans like anybody else. I believe that this law should also look into the aspect of people like those.

I do not want to take a lot of time because of the other Members who would like to speak. I would like to talk about the proposed Section 7 which talks about registration of communities. I believe that it is elitist because they say they should use the Societies Act. It is going to defeat the purpose of having this Bill. I believe that the registration of ownership within the Bill itself should be independent of any other. If we do not safeguard all the people involved as members, then we are going to suffer.



In fact, I would like to take this opportunity to actually thank the National Land Commission for what they did at a place called Maji Moto Group Ranch, where members of the group ranch took thousands and thousands of acres from the people. It was such that if I came as a buyer and I said I wanted a particular piece of land, even if it is registered under somebody else, the title deed is cancelled and given to the buyer. Imagine that kind of impunity. I believe we should not have that. The National Land Commission should be given support. It should not be vilified as has been happening. We should not use the Societies Act, but the Bill itself because it should be self-regulatory.

There is the other element of Sections 15 and 16. It is actually talking about the management of community land. It is restrictive. I would like to warn the Chairman of the Committee that we are going to bring proposals in the form of Community Land Draft Bill, 2014, which was actually meant to be the Bill. It is a very important thing. We have talked about grazing rights and trespassing. One thing that Kenyans should know is that there is a moratorium as far as community land is concerned from 2010, when the new Constitution was passed. So, it is laughable to see governors inviting the so-called investors and purporting to give them huge chunks of land when they know that they do not have the powers and that, that land is not available to anybody. I take this opportunity to tell those who were cheated that there is land for investors in Narok to think twice and give back what they took from people. You will get nothing from that community until and unless the rights are registered. You can then come to the community and give them the best for their land.

My closing issue is on compensation. You do not say adequate compensation. There are values and many other very important things like minerals there. I believe that it should be based on the market value or much more than the market value. You must consider all the other things. There is a United Nations law that provides for that.

Hon. Speaker, because I would like to give the other Members a chance, this Bill must be overhauled. It must be done properly. The input of all stakeholders must be taken into consideration. The Committee did a good job, but we need to assist them in this one. We must do it.

Hon. Speaker, I would like to thank you once again for pointing the importance of this Bill. I agree with you fully.

**Hon. Speaker:** Hon Athanas, that name is not known to many Members. Hon. Athanas Misikho Wafula Wamunyinyi. You touched a wrong place!

*(Laughter)*

**Hon. Wamunyinyi:** Thank you, Hon. Speaker for giving me the opportunity to make my comments on this important Bill that is before the House. First, I have looked at the Report and I have had a look at the Bill itself. I find that it does not only seek to give effect to Article 63 of the Constitution, but it also seeks to sort out a number of challenges and difficulties that have been experienced in our country in respect of management and administration of land issues, particularly community land.

I agree with Members who have spoken before me that there are good parts of this Bill which are very positive and, if well implemented, will address the issues which have been causing us problems. But there are also some few gaps or areas which we need to point out that require to be looked into. Land is an emotive issue in our country and, as you rightly pointed out,

we must give it attention when it is before the House. It is something that affects everybody in the country. All Kenyans are affected by the issue of land and even our development aspirations are based on land and other land-related issues in this country.

Initially, when you look at the preliminary matters in the Bill, there are issues of the community. Members have made comments on the definition of “community.” This is one area which we must make amendments to, when we reach the Committee of the whole House stage. This definition of “community” is not given in the Constitution, particularly where it defines “community land”. You will find a problem when you refer to any organised group which can lay claim on land that was not theirs because they are a group as defined. This is something we will need to address.

The other important thing that I have seen is in Article 7(1), which says that a community claiming an interest in or right on community land, shall be registered in accordance with the law relating to societies. We cannot take any group registered under the Societies Act to claim for land to be associated with the issue of land. That is because any group anywhere can register as a group under the Societies Act and lay claim on any land elsewhere as a group that is registered. So, this is something we need to look at. Like the Njoguini group somewhere in Nyandarua can lay claim on any land that neither belonged to them and was never theirs. They are there as a group that is registered. We need to be careful when we are dealing with some of the provisions in this Bill.

The other issue is conversion of land. While it is important also to capture these provisions, community land cannot be converted to anything. For whatever use the community wants to put the land to, it can do so. It can put it into any use, but that does not amount to converting the community land. This has also to be made clear because the community can have ranching, grazing and whatever land use they want to put the land to. That does not amount to conversion of land. It needs to be made clear. I do not see how, when a community is using land, it amounts to change.

All land is held in trust. We have seen co-operative societies, unions and land companies holding land in trust and, sometimes, they end up transferring that land to other individuals. It is not just the use that is being transferred but also the ownership. I have seen an example of a union in Bungoma. Even in the past, municipal and county councils held land in trust or on behalf of the people and disposed it. That cannot be allowed. It has to be made clear in this Bill. There are some areas which are not very clear and could lead to conflicts again. An example is in the different governance systems at the moment. We have counties which, like my colleague said, are dishing out land for purported development by investors. We have areas like Kajiado and Narok where governors have a say over land. The National Land Commission (NLC) and the Ministry of Land, Housing and Urban Development at the national Government also have a say. These issues must be made clear so that we do not encounter conflicts in the course of administration of community land.

Western Kenya is generally referred to as the sugar belt. We have sugar factories like Miwani, Chemelil, SONY and Nzoia, which is in my constituency. Nzoia Sugar Company took 15,000 hectares from members of my community and so we consider that land as our ancestral land. It should be community land. It is because of this that we feel if this Bill is not well crafted, members of the community are likely to lose their land. I have this in Clause 46. It says that if this Bill takes effect, the registered owners at the moment will be owners of the land. That should not be allowed because we have land that was forcefully acquired. The compensation given for

that land was not adequate. It belongs to the community and that must be protected. I appeal to colleagues that we should look at this clause critically when it comes to the Committee of the whole House. We should amend it to ensure that land that was taken away illegally or forcefully and there was no adequate compensation - like the one we have in Bungoma that belongs to Nzoia Sugar Company - must be regarded as community land and nobody should take it away.

I have already made my remarks on the issue of counties. Recently, we were discussing the Transition Authority (TA). It is not part of this Bill, but I think it is partly related because as you move to the issues of the administration of community land by the county governments, you must take into account the issues that affect the community and how they are taking over. Are they going to make public the issues that have been raised? There is a lot that has happened that must be brought out, handled publicly and dealt with to the benefit of the people of Kenya.

I thank you for giving me the opportunity. I trust that we are going to work on some amendments when this Bill comes to the Committee stage.

With those few remarks, I support.

**Hon. Speaker:** I see the Chair of the Committee is still in the House. That is commendable. Listening to every Member contributing, it is obvious that there will be need for the Committee to sit with many members to look at the proposals for amendments so that it does not become too untidy. If the Committee sits with many Members, most of the proposals can be carried by the Committee so that what finally comes out is a Bill that reflects the wishes of Kenyans across the breath and width of our country.

Let us have the Member for Samburu West.

**Hon. Lati:** Thank you, Hon. Speaker, for giving me this opportunity. Land is very important to some of us. It is very emotive when we think about historical issues about land in our areas and country in general. If you take into consideration the provisions of Article 63 of the Constitution of Kenya and this Community Land Bill, we have done ourselves, as a country, a very big thing. We have moved a very big step forward in terms of making community land secure and well managed and administered. In my opinion, the combination of this Bill and Article 63 of the Constitution is a giant leap forward for community land in this country. If you were to take a step back and consider the theoretical existence of this Bill and the provisions of the Constitution in 1963 and 1911, we would be in a better place and we would be proud of ourselves as a country on what community land would have been today. Somebody was talking about the Maasai people here. Today, it is very difficult to put into perspective how much land the people who speak the Maa language, including the Samburu people, have lost in this country. The first stroke was in 1911 when Lenana signed a treaty with the white people at that time. All the Maasailand in Laikipia and many other parts of Samburu and Rift Valley was taken through a stroke of a pen. In fact, the place where the treaty was signed in 1911 is today called Ang'atapos. It is a very historical place in Kenya. Today, it is nothing else but a small garden of cabbages owned by an individual. We have lost so much that we can only forget so that we can move forward. Today, even in Nairobi, where people own land that is very valuable, there is very little that is owned by the Maasai people. If we had the provisions of this Constitution and this Bill, the Maasai would be the richest people in Africa. They would own prime land in the leafy suburbs of Nairobi.

This is a very welcome Bill. The Constitution is also very welcome. We can only improve on this Bill and the Constitution. We have that opportunity as Members of Parliament and members from those communities. The realisation of group ranches by the Constitution as

registered land that belongs to a community is, as I said, a giant leap forward in our Constitution. No matter what you say, the fact that trust lands are now held in trust by county governments--- I hope the governors and everybody else understands that those chunks of lands are only held in trust. Article 63 of the Constitution gives us some life because those governors belong to those communities.

I want to talk on the aspect of converting community land into public and private land and vice-versa. I thank the people who brought this Bill. This provision of having 50 per cent of members of a group ranch or more agreeing to convert land either way and two-thirds present is a very good thing that will provide a very strong wall against those grabbers who want to take community land.

Hon. Speaker, the issue of compulsory acquisition of community land by the Government for public use worries me. I understand that all governments in the world enjoy the doctrine of eminent domain. This principle ensures that government serves the public good, irrespective of whether land is privately owned or communally owned. However, we must define the extent to which the Government can apply the eminent domain doctrine. The Government can wake up one morning and say that there is geothermal energy in some parts of Samburu County and some oil in parts of Turkana County and decide to apply the principles of that doctrine to take away land from those communities. There are no clear guidelines on how the Government should acquire such land. We agree that the Government can take away such land because that is what happens throughout the world. However, we will bring amendments to provide for clear guidelines on how the eminent domain doctrine should be applied in this country.

A good example is found in Samburu West Constituency where I come from. There is a place called Muramu. In the early 1980s, when Maj-Gen. Nkaisery – the current Cabinet Secretary (CS) for Interior and Coordination of National Government – landed in Muramu, the people of Samburu County thought that the Kenya Army went there to only practise range so that they could effectively defend our country. However, someone in the Ministry of Defence thought that the land was vacant. He never consulted anybody in the community. They went ahead to acquire the land. Today, the Kenya Defence Forces (KDF) thinks that they own Muramu. As the people from Samburu, we are saying that, that will never happen. Even if you were to consider that the said land does not belong to the Samburu community, advance possession alone would guarantee the community ownership because they have lived there from the time Hon. Nkaisery landed there and, to date, when he is a CS. Those are the kinds of provisions of this Bill that make some of us proud and happy. We can bring such matters to the House and approve them.

On the issue of converting community land into private land, it is clear that communities are the ones who will do this through the provision on the percentages of the members present. That is clear and good. What I am yet to understand is the provision for ratification by the assembly. We need to be clear on what “assembly” is. Is it the county assembly, the National Assembly of Kenya or some local assembly of some criminals sitting to take away community land? I would prefer the “assembly” being referred in this Bill to be the National Assembly of Kenya. Those are the few amendments that I will bring.

The other thing that this Bill provides for is the usage of community land in a very clear way. For those of us who live in community land, the issue of having communities controlling grazing land is very important. It will make sure that our people are empowered economically. In some areas, lands are over-grazed because people think that land is a common asset for all. So, everybody tries to keep as many livestock as possible. Consequently, we end up having droughts

killing our livestock, occasioning losses to everybody in the community. This is a clear example of the historical tragedy of the commons theory; that, since people think that something is for the whole community, everybody tries to keep as many livestock as possible. This Bill is enabling communities to manage grazing on community lands and even control the numbers of livestock that people should keep in order to avoid the tragedy of the commons theory that has taken our communities back in so many ways.

Finally, some of us are very fearful of anything that is done by the CS. There are regulations that are supposed to be developed by the CS. I have a clear understanding that the Constitution is superior to this Bill, and that this Bill is superior to any regulations that will be made by the CS. However, given the bad experiences that we have had with CSs since Independence, we still fear and feel that some of the regulatory aspects should be taken care of by this Bill. I do not trust any CS to deal with boundary issues not because I have anything against anyone, but because we know that previous CSs pursued selfish interests on land matters. Today, if you go to Samburu County – at a place where nobody speaks Kalenjin – you will find a land parcel of 10,000 acres owned by Mr. Hosea Kiplagat, who does not even know that place. That area is prime land where we grow barley. That is the only area where you can have the best barley for brewing Pilsner Lager. It comes from my place. Mr. Hosea Kiplagat seems to know that Pilsner is good. That is why he took 10,000 acres of land. He must return that land to the Samburu people.

Hon. Speaker, with those remarks, I support the Bill.

**Hon. Speaker:** Fortunately, in 2012, this House passed the Statutory Instruments Act, which requires anybody with authority to make regulations, including CSs, to table those regulations before the National Assembly. This National Assembly has the power to even nullify portions or the entire purported regulations. That was a very good move. I commend the 10<sup>th</sup> Parliament for having done that because it gives the House the opportunity to monitor implementation of laws passed by this House.

Hon. Agostinho Neto.

**Hon. Oyugi:** Hon. Speaker, I wanted to oppose this Bill, but my very good neighbour, Hon. Oner of Rangwe, sneaked in amendments that the Committee is planning to move on this Bill. With those amendments in mind, I will be contributing in the negative, although I will be supporting the Bill.

I appreciate that this Bill is very important to pastoralist communities and people who have been having community land held in that manner. This Bill has major flaws, which take away the gains that would otherwise help such communities. Communities who have been holding land will lose it. I speak on the basis of the fact that the definition of the word “community” in this Bill is not very clear. It gives latitude to anyone else to become a community for purposes of holding community land.

I would like to appreciate Article 63 (1) of the Constitution, which talks about community land and what it ought to entail. It partly says that community land shall vest in and be held by communities identified on the basis of ethnicity, culture or similar community of interest. Unfortunately, the Constitution does not define the word “community”. The only words that we have defined in the Constitution are “community land”. The definition of what community ought to be can only precede the definition of Article 63(1) in terms of what community land is. This Bill then proceeds to fail from that very beginning. Hon. Mwiru and his Committee will try to show Hon. Oner what I think that particular amendment ought to be.

The second thing is the definition of “community of interest”. I have read the fact that Article 63(1) of the Constitution does not respect community of interest, which does not mean only interests in land. The community of interest that this particular Bill tries to seek to define only limits the definition of “community interest” as those that are inherent in land. Some of these things need to be tidied up. If the particular definitions are not tidied up, the Community Land Bill will fall on its face because people who are not communities will become community land owners. We will lose it from the word “go”.

Clause 7 of this Bill warns people to lay claim of interest. That will again go counter to the aspirations of Article 63 of the Constitution because it does not anticipate that you will have to lay claim. It only shows that you ought to be a community and have community land in the manner that is anticipated. There are several other things. I am happy that the Members of the Departmental Committee have said that there are very good amendments. However, Clause 12 makes a very interesting distinction. It explains how community land could be held as communal land, family land, reserve land or any other category. The particular Clause 15 that purports to give the CS powers in classifying and registering land takes away what the Bill has already given in Clause 12.

Clause 12 tries to distinguish what that holding ought to be. So, what is this that we are giving the Cabinet Secretary (CS) under Clause 15 to do? I think a registration regime ought to proceed from what you have defined in Clause 12. I am happy you have noted that the Committee on Delegated Legislation - which I also sit in - has the power to annul a couple of regulations that are made by the CS. But some of them have always gone ahead, done the regulations and implemented them even without the approval of Parliament! That then puts the House of Parliament at such a crazy position. So, for purposes of safeguarding those interests, it is true that the CS ought to make regulations. But I think that it is already distinguished in Clause 12.

There is something that is curious in Clause 12 of this Bill. It is giving the communities permission to plan on how they want to use their land and then take it to the county governments for approval, I thought this is a reverse. I am hoping the Member for Samburu North did invoke the principle of eminent domain and such other things. Although the community owns the land, I think in terms of user rights, user issues and how they want to deal with the land, they ought to gain approvals from the county government. Although it is trust land, you can only deal with land in a manner that you propose, but not without authority from the various organs. Otherwise, you will have various communities dealing with land in various manners and that will not be very tidy.

Clause 22 is my interest. I have heard several Members speak to the fact that conversion of land under Clause 22 is a good thing. This is my worry! The Hon. Chair of the Departmental Committee on Lands did speak to the fact that land is ordinarily in three holdings. It is either private, public or community land. The moment you start dealing with community land in a manner that is possible to convert, then you have a big problem because you have many people with interests. You will end up with little cartels or a few groups of people, especially if it proceeds in the definition of this Bill where you have a registered community which is not the ancestral community as we know it. You will have all the community land being converted in a manner that may not be very good to this community.

Clause 29 talks about grazing rights and limiting those rights. The moment you have rights being taken away in the manner Clause 29 supposes, you are denying the livelihood of a

people who believe and hold a culture, and who are supposed to be enjoying their freedom and moving around. That is why I think it ought to be community land.

So, because I had proceeded on a level that was to oppose the Bill, I will be helping in the tidying of this Bill when it comes to the Committee of the whole House, to try and arrange our thoughts in a manner that gives effect to the pastoralist communities. I am happy that the Hon. Member for Narok mentioned communities like Isahakia and a couple of other communities. People have lived for a long time without titles and have lived as squatters. They have had their land being violated. They have had their land converted to private use and thus, denying those communities their user rights.

The Community Land Bill is timely and useful. We ought to support it and make it tidy. With those few remarks, I support the Bill in its current form albeit reluctantly.

Thank you.

**Hon. Speaker:** You raised a very important point. Sitting from here, I keep wondering whether, as the administration of the House, we should not ask ourselves this: Whenever we have had serious Bills like these ones, why would the Executive not have so many of their technical people present in the House to listen to the debates and the contributions? The people clerking committees such as the researchers ought to be present to listen to these contributions because they are the ones who are clerking the committees. They should take notes and advise the Committee so that, as the Committee sits, they can consider what Members have said. They are informed by those contributions, notwithstanding the existence of the HANSARD. There are certain issues that are said here which you cannot say that everybody is going to pick the HANSARD to know what it is that Members said. That is food for thought. We have researchers attached to committees. There is need for them to come here and listen to contributions such as these ones happening in this Bill.

Thank you, Hon. Neto. For some selfish reasons, which I hope Members will not question, I give this chance to the Hon. Member for Ruaraka.

**Hon. Kajwang':** Thank you, Hon. Speaker, for allowing me to put my voice into this debate on Community Land. It is not easy to debate when many Members who are gifted in the art of speech have gone ahead of you. However, I will share experiences and ideas that I feel we should take together, particularly speaking after Hon. Lelelit has spoken and the great king of Narok, Hon. ole Kenta. Hon. Lelelit seems to come from a place where they grow those things that he really partakes of.

I cannot begin without thanking the Committee for a brave attempt at bringing legislation to enforce Article 63 of the Constitution. This is a raft of those 60 to 63 legislations that we have been waiting for to firm up the regime of land law in our country.

Hon. Speaker, picking exactly from where you have spoken, I am not so sure that the Chair of the Committee--- I can see right now that he is well engaged by the two colleagues from both sides. I am not so sure whether he is taking notes, precisely because I do not expect him to be very tactical. I do not expect him to keep tabs on very technical aspects of these things because, as a legislator, his role will be to chair the Committee and to see if the issue of policy has been harnessed.

It is the researchers, the technical people that should be here to understand where we are coming from and to see if the ideas that we come up with can be put together. I think that the Faculty of Law is doing us a disservice. This is a Bill that is going to revolutionize the teaching of land law and the land tenure in this country. I would have expected this Committee to be

assisted by a professor who, after some time, will be writing big books about the land tenure, the philosophy and jurisprudence of land law in this country. I have never seen them attempt to advise any of these committees; except to wait after the laws have been set and then they come to write those big books.

It may be necessary that committees hire the expertise. There should be a reserve from the National Assembly that allows us to hire expertise in some of these aspects to help us harness these things.

Having said that, I am concerned about Section 7. It is about what I think my colleagues have spoken about. Let me also just dramatize it in a different way. Under Clause 7, societies are the medium through which land may be registered. It says that land shall be registered in accordance with the law relating to societies.

If you are not careful, we may grow a big behemoth through which people will just appeal for land. As my colleague from Ndhiwa has said, Article 63(2) is plain and very general as it should. It says that:-

(2) Community land consists of—

- (a) land lawfully registered in the name of group representatives under the provisions of any law;
- (b) land lawfully transferred to a specific community by any process of law;
- (c) any other land declared to be community land by an Act of Parliament; and,
- (d) land that is—
  - (i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines;
  - (ii) ancestral lands and lands traditionally occupied by hunter-gatherer communities; or,
  - (iii) lawfully held as trust land by the county governments, but not including any public land held in trust by the county government under Article 62 (2).

However, the Constitution does not define what “community” is.

I hope the Chair could give an ear to this because he rose in his place and said that the word “community” has been defined in the Constitution. It is not true. I do not see any sentence which defines the word “community” in the Constitution. What I see is “community land”. Before you go to community land, you have to define “community” itself.

Clause 7 allows people to register these things through societies. About five people from the Maasai Community or the Luo Community can form a society, since the Constitution says that they must be of the same ethnicity, share ethnic interests, among other interests. I am told the Luo people have quit fishing for land. Of course, five people can share those interests. What will prevent them from forming a society and registering themselves as a community? In this legislation, they will definitely become owners and appropriate the land. It is very important that we provide for a threshold. If a community has about 1,000 people, the threshold must be a number which will make it difficult for five or 10 people to exploit that community’s land. That is one of the loopholes that will lead to a lot of ranches, game reserves and conservancies being owned by the well-to-do people in society because two or five people can come together and make a community. These must be live persons not companies. You can have five or 10 companies, who are regarded as persons in law despite the fact that they are not human beings, owning ranches and big reserves.



I have also looked at Clause 39 on State regulation of land. This is the problem we have had in Samburu and Laikipia, where the Britons did military occupation of our land thinking that the land did not belong to anybody. Even when the Constitution says that the State can intervene in the running of these things, there must be a regulation through which this should be done. Government representatives should appear before a board or a panel and explain why it is necessary for the military, in defence of State, to use land belonging to a certain community differently from the way the community uses it. Otherwise, we will end up with issues similar to the one in Laikipia where people took large tracts of community land, which then becomes a military occupation.

Clause 39 should develop criteria and regulations by which the Government can step in to regulate the use of any community land. Similarly, I have looked at the mediation provisions in Clause 40 and Clause 41(4). In many societies, the chief is the land surveyor, the adjudication officer as well as the person to whom land disputes are taken. If mediation is not organized in a proper manner, chiefs will have more authority and power. After mediation has been done by the panel as conceived in Clause 41(4) and (5)(d), the results of that process should be recorded in a register. I do not have to carry around pieces of papers that my old father carried around because of an adjudication that went to Kisii and he kept something in his bag and as a grandfather later, I have to discover what it was. I simply need to go to the registrar and get the formal document.

I have very little time, but I want to speak about conversion, disposition and re-parcelling of land in Part V. There is need for making it very difficult for people to dispose of land in a way that has not been approved by the community they pretend to preserve. There is no problem in transferring land, but there must be a yardstick by which that is done.

Finally, there is an offence in Clauses 42 and 43, which is called “people who sit on other people’s land”. The community was shy of talking about squatters. A squatter commits an offence, but that offence has not been categorised here. The punishment has also not been put here. We need to deal with squatter problem. That is what we have in Muhoroni and Koru areas where somebody simply sits on your land and you are unable to deal with him because the law has not specifically dealt on how to deal with squatters. You will take them to the Civil Court and even when you are through with them, you have to jail them through the civil processes. You find that it is untidy and you are unable to do it. So, you just give up and let that squatter be where he is. We need to say that it is an offence called “squatting on somebody’s land”, which is punishable by such an amount. This will reduce the squatter problem in this country.

With those few remarks, thank you, Hon. Speaker.

**Hon. Speaker:** Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, Hon. Speaker, for giving me opportunity to support the Community Land Bill, which is a constitutional Bill. The Bill addresses the most emotive issue in our country. To Kenyans, land is next to life. When land issues are mentioned, eyebrows are raised because many aspects come with it.

Under previous laws, land has been a preserve of the communities living on it who occupy it as their ancestral land or by any other means. Community land is land which has been hived off from individual parcels of land. Roads and other public utility lands are hived off as percentages of the other land. I endorse this Bill. The people who sacrificed part of their ancestral or individual land to contribute to community land should have a say in the way that land is used, disposed of or changes user. The community should have a say. It should not be the Cabinet Secretary (CS), the county government or the Commissioner of Lands. The owners of

the land should determine what they want to do with the land. The Bill is trying to address that aspect.

On unregistered land within any given county, the Bill provides that such land should be held in trust by the particular county government. The Government or the county government should not register land into any use without the consent of the people who will eventually own the land. In the past, it was said that what belongs to a person is a depth of six inches of the land one ploughs, but what is beneath belongs to the Government. That is an old adage and it is archaic. Presently, we have oil in Turkana County and minerals in Ukambani. As the Leader of the Minority Party said, perhaps some foreigners, backed by the Government, are evicting people to acquire their land for mining. The people whose land has been taken work in the same mines and are paid peanuts.

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

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

Therefore, I propose that this Bill gives figures of the compensation a community would get when their land is acquired for change of use, minerals have been found or the Government wants to put it into any other use. The community should get a specific percentage of the value of that land. The county government and the national Government should share the rest.

We have other public land like shrines, clan land and sacred places where people stay. In Meru we have *Njuri Ncheke* shrines. Nobody can dare take that piece of land. It is the preserve of the community. Initially, it was there by word, fear or belief of the community. If it is entrenched in the Act that the shrine belongs to the *Njuri Ncheke*, then it will be safe. Even if future generations try to hive off some of the land - now that there is a lot of land grabbing in this country these days - it will be safe under the law and not by word of mouth.

Some land is declared public land such as riparian or water catchment areas. With this law, such land will be safe and encroachment will be limited. Once land has been declared public land, let it be demarcated, beacons put and acreage noted in the title deed, so that any encroachment can be identified and the land repossessed. I have an example in mind of a piece of land in Kangeta in my constituency which was demarcated to be 36 acres where we presently have the new sub-county headquarters. When we went to establish the new sub-county headquarters, we only got nine acres. The rest are plots and buildings of other people. We have been trying to repossess the land, but it is becoming a bit tricky because buildings have been put up, people have lived there and they are invoking so many laws. This law might give us a leeway to try and repossess this piece of land.

Once a piece of land has been gazetted as public land, whatever use it is put to at any point in time should be for the benefit of the community which lives there or the community that donated the piece of land. For example, if any public land is for the construction of an institution, let it be for the benefit of the community and not individuals unless, with the consent of the community, the land is given to individuals who need it.

I have had a problem. We want to establish a university in my constituency and it has been very tricky and difficult to get documents to allow us change use of the piece of land where there was a cattle dip, a coffee factory and two primary schools. We wanted to combine the pieces of land, but I have had a lot of problems because the law is not very clear on who should

handle the issue of change of use. Should it be the county government or the Cabinet Secretary for Land or the Commissioner for Lands? I have a lot of problems. The matter is pending in Prof. Swazuri's office. When I go to the Cabinet Secretary's office, he tells me to go to Swazuri's office and when I go to Swazuri's office, he says that I should go to the county government offices. When I go to the county government offices, they tell me to come back to Nairobi. This has been a teething problem, but this law will make it clear and the problem will be resolved. Already, the community has declared that they want to change the use of the land, but the powers that process the documents are apprehensive. They do not want to be clear on who should do it. With this law, it will be easier for us and we will establish a university in our community, which will be beneficial to us all.

I support this Bill. When it comes to the Committee of the whole House, I believe we shall bring amendments to polish it further. Essentially, the Bill is good and it is welcome. Being a constitutional Bill, I urge Members to support it, so that we can pass it and move forward.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Hon. Members, now you can see the selfishness of the speaker at work. Member for Samburu North, you are on intervention. I assumed the presiding officer's seat and found that you are on intervention. What is out of order?

**Hon. Lentoimaga:** Hon. Temporary Deputy Speaker, I just wanted to be noticed in the House and given an opportunity to talk. I did not want to intervene.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Your height definitely and the sheer size of the body of the Samburu people are enough for you to be recognised. I saw your request on intervention, so I picked it as an intervention. I see your name on the request list, although fairly at the bottom of the list. Why do you not wait until you get your time to contribute?

**Hon. Lentoimaga:** Thank you.

**The Temporary Deputy Speaker** (Hon. Kajwang'): The Member for North Horr.

**Hon. Ganya:** Thank you so much, Hon. Temporary Deputy Speaker, for this opportunity to support this Bill. From the outset, I want to state that I have reservations in supporting this Bill. This is a key constitutional Bill to bring into effect provisions of Article 63 of our Constitution.

Some of my reservations have been addressed by the able Chair of the Departmental Committee on Lands when he seconded the Bill. As the Secretary-General of the Pastoralists Parliamentary Group (PPG), this is one Bill which matters so much to that caucus, which is the largest in this House with over 84 Members of Parliament. The Community Land Bill is very critical to the people we represent in this august House.

We formed a sub-committee of our caucus, chaired by the able Member for Narok North, Hon. ole Kenta and we formally engaged with the Departmental Committee on Lands. Being Members of this august House, we felt it was important for us to engage with the Committee instead of coming and opposing the Bill on the Floor. So, we made a conscious decision and had a meeting with the Members of the Committee. We even presented a written submission formally to them. We appreciate that the Chair of the Committee gave the leadership of the PPG caucus a forum to present to the Committee the kind of amendments the caucus wanted to see included in the Bill. I can assure the Chair that if those key issues are addressed, I am sure all the 84 Members will support the Bill. However, since we are debating the Bill as it is, we can understand the position the Committee is taking.

Some of the reservations I have are largely about definitions. For instance, Clause 2, which other Members have alluded to, is about definitions. I find these definitions ambiguous

and absolutely not clear. The Bill defines “community” as an organised group. Any group of people can go somewhere, form an organisation of some kind and claim their community land. We want to see a very clear definition of what “community” is. We feel ethnicity is a major attribute in defining a community. As Members of PPG caucus, “community” means a consciously distinct and organised group of users of community land who share, among others, some few attributes like common ancestry, similar culture or unique mode of livelihood, ethnicity, geographical space or geological space, socio-economic or any other common interest.

Another issue that I have with this Bill is Clause 4 under interpretation where the word “vest” is used in conferring ownership of community land. I feel the word “vest” has some element which is temporal and also of trusteeship. We want to see clear ownership of this land because the Constitution is not ambiguous. The Constitution clearly envisages absolute ownership of community land by the local communities who live there. To do away with that ambiguity, we want the word “own” to be used instead of the word “vest”. It means a lot. It could just be a three letter word, but if you look at the substance of ownership of land, we feel that community land should be owned by the communities who live there, but not vested in them.

Clause 7 deals with registration of communities. This Bill proposes the registration of community land in accordance with the law relating to societies as it is today. We feel that the existing legislative framework for registering land is very limited and it would not carry the spirit and the letter of the Constitution when it comes to ownership of community land. The Constitution clearly states that it should be owned by the communities and not by any level of Government; either the national Government or county governments. This is very important to us. I suggest that every community land should be registered in body corporate. People of North Horr, wherever they live, should have the right to register their land in corporate form either as the Community at large, communities which live in Illiret or as a location or an entity, but can never be as stated in this Bill.

Clauses 15 and 16 deal with institutional framework to manage community land. This Bill gives that role to the Cabinet Secretary to make regulations for administration of community land. Instead we strongly feel that the Bill should provide for local communities structures and we intend to propose this amendment. The community structure will be instrumental in providing guidance under extension of land in day to day administration of community land.

The community structure that we have in mind, among others, is the community assembly, which is very important. I am not talking about county assemblies, but community assemblies where every community will have an assembly which will be an ultimate organ to make decisions whenever they want to use their land in any form or even dispose it. For day to day management, we also feel that community land registration board will be very critical so that we can have a committee in place, but which gets its mandate from the entire community and the community assembly, as a structure, will have a role of ratifying the decisions of this committee to ensure transparency and accountability.

Clause 6 deals with the role of the county government in unregistered community land. This is very important to us. The Bill proposes that unregistered community land will be held in trust by the county government. However, the Bill is not clear what can be done by this county government during that period. To register all this land, for instance in North Horr which is 8 per cent of Kenya’s land mass, will take a lot of time and definitely will be tasking and for a long period, unregistered community land will be under the county government. During this period,

what role does the country government have when it comes to unregistered community land? Can it sell the land?

As I speak, using the Trust Land Act, county governments are busy transacting in community land and engaging in memorandum of understanding with investors. The Constitution is very clear that they have no mandate whatsoever to do that. The Constitution clearly states that all unregistered community land will be audited. It provides that any land which was community land by 27<sup>th</sup> August 2010 when the new Constitution came into effect will have to be audited during the transitional phase before it is registered for any other use. I hope somebody would advise these governors.

Clause 8 is on the nature of community land title deed. When this community land is registered, we need to know who it will be registered under. Will it be under individuals, officials, respective communities or any structure that we will agree on? This must be made very clear, so that we can know the nature of the title deed when unregistered community land is registered.

As, I wind up, Clause 46 is on community land that is illegally acquired. This transitional Clause in the Bill attempts to decree and regularize land grabbing in this country. This transitional clause attempts to legalise and regularise land grabbing in this country. Land grabbers should be investigated and prosecuted, but we should not use this Bill to sanitise evil deeds in this country. We must look at Clause 46 critically and ensure that we have the right amendment. The Constitution is very clear in terms of ownership of this land. As we know, I am the Member for North Horr, the largest constituency in Kenya. The 35,210 square kilometers is unregistered land. I do not know anyone who has a title deed in my North Horr Constituency. Realising that, this Bill is so critical for the people of North Horr.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you very much. Member for Turkana Central.

**Hon. Nakara:** Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill. First of all, I want to congratulate the Committee for doing a good job by making sure they consulted widely and involved stakeholders. It is one of the Bills that, if we pass, will be remembered in this nation. The pastoralist communities, as you know, still have unregistered land. The only way for us to protect these innocent Kenyans is for us to have such kind of a Bill where land can be protected for future generations.

On the issue of ownership, I want to thank the Committee for making sure that the owner of the land is the community. These people are there by God's design. For us to encourage them, we have to give them first priority to own that particular land. The county government should be a custodian.

I have few comments to make to allow other Members to contribute. The first one is Clause 6(4) on the role of the county government. That clause is a bit ambiguous. We need to bring reality. The contentious area is what the county government will do with unregistered community land. The Bill says that we must register some community land. What about the unregistered land? In the event the county government transacts and registers community land, how will they involve communities? Unless the land is registered, when we give powers to county governments to deal with unregistered land, how far will they involve the communities? We must make sure that communities are involved. How long will county governments hold unregistered community land before it gives it back to the community or registers it? We need to

give county governments some powers on behalf of the community to deal with unregistered land.

Another issue that I want to bring to your attention is with regard to Clause 29 on grazing rights. It talks about grazing rights to community land. The contentious issue is that the clause provides that a community can permit non-members to access grazing land within its land. This is a contentious area because fights between pastoral communities result from grazing issues. Even if we are not going to put regulations in the law, we need to see how communities that border each other can share those resources by having the elders from both sides come up with an understanding on how they can graze on their land or move to the other side. That is a contentious area that the Committee needs to address to avoid conflict between pastoralist communities. If we do not address this issue, neighbouring communities can move in and out of each other's land. That is an area of conflict. We expect the Committee to address that issue as soon as possible.

Another issue that the Committee should address is Clause 35 on existing rights to use and occupy community land. There are people who are currently using or occupying community land against the will of the communities. These people should not be protected, but they should first agree on a settlement with the communities before recognition under the law. Before we protect the people occupying community land by enacting this law, they must first agree on a settlement either to compensate or pay the communities for them to continue staying there. We request the Committee to address that issue to see how they can come up with a law that will make sure that those people who took land or settled somewhere by force without the community's permission are forced to compensate the community.

Finally, another issue that I want to raise is with regard to Clause 37 on benefit sharing. We need to highlight the issue of benefit sharing in the law. There is need to give communities decision-making power to accept investments of their choice on their own terms. When we say that we are going to give something back because of investment that is to be done on that particular land, we want to encourage the Committee to make sure that the decision-making power has been given to the communities. We should not force them to settle. Let the communities have a right to decide whether that investment is good or bad. In some cases, we can decide to put up an investment which later on affects the whole community. The Committee has done a good job, but we want them to consider how they can empower the community to decide whether or not to accept an investment because there are some activities that cannot match the traditions of the community. The communities should be allowed to decide.

Another issue is on direct benefit. We have said that the Government has the right to take land for a particular purpose. However, that purpose must be profitable or beneficial to the community.

Hon. Temporary Deputy Speaker, there is no use for the Government to take land without benefiting the communities around it. The purpose for which the State takes over land must go together with the needs of the community. For example, if the Kenya Barracks needs to be stationed in a certain place, the community must enjoy the benefits of that particular institution in the area. A school, dispensary or water project should be beneficial to all the communities. We need to make sure that when the Government takes over land by force, it must do it for the purpose of enriching the community.

With those remarks, I support the Bill, but with the amendments that are going to come later on.

**The Temporary Deputy Speaker** (Hon. Kajwang<sup>3</sup>): Member for Siaya.

**Hon. (Ms.) Ombaka:** Thank you, Hon. Temporary Deputy Speaker for the opportunity. First, while it has been said that the definition of “community” is not very clear, I still want to say there is an attempt to define “community land”, although it is not as comprehensive as expected. I would have wished to add a few things like “a community is a group of people who speak a similar language, have certain values and live in the same geographical area”. I am happy they have used certain words here like “clan”. A clan is a community and people within that particular region have values. There is an attempt to define “community” and maybe we need to highlight a little more and go deeper into what it is.

Historically, community land has been orally passed down from one community or clan to another and it has never been registered. It is time we thought about registration of those pieces of land that have brought a lot of conflict between people. This is because they are simply community land. People just assume that the land is reserved for a particular clan of people who have never thought that it is important to register the land. That is what we have seen over the years. Community-based land has been the centre of conflicts related to over-grazing and settlement. People have been killed in land-related conflicts. People have moved away from land and have looked for pasture elsewhere. These problems arise because registration has never been clear. Nobody is sure about who owns the land. It is just assumed to be reserved land that belongs to a particular clan.

The Bill is good because it is going to regulate the ownership of community land. It is going to spell out the uses of this land in terms of how people can develop and live peacefully with other communities. What is challenging is the fact that the Bill allows private developers to lease these pieces of land or rent the land that belongs to the community. That is where the problem begins to occur even though the Bill is good. The moment you allow developers to come in, they will come in with development that will stay for a long time. They will not move and leave that land for that group of people after many years. The moment they stay for over five years, they begin to believe that the land belongs to them. They do not realise that they need to stay there for a certain period of time, move on and leave the land to its owners. They hang on that land until they own it. The owners of the land or the community questions how they came in and it will be too late because the developer will have stayed for a long time and put in developments that are not easy to remove. Maybe they have built schools, hospitals and settled thus taking the land very indirectly.

Land grabbing has been happening in this country and sometimes, the land that is grabbed is already registered. The pieces of land have title deeds, but grabbing is going on.

Why do we register, get title deeds and at the same time somebody grabs the land?

Hon. Temporary Deputy Speaker, we should look at the power of title deeds and what we can do so that once you have a title deed, nobody should grab that land. People see land being grabbed by other people who have already registered. So, registration of land is still very challenging. Even when we put it on paper and make it official that the land belongs to somebody, another person still grabs it.

Those are the challenges that I find in land registration generally whether it is community or individual land, somebody will still grab it. Are we serious in land registration?

**The Temporary Deputy Speaker** (Hon. Kajwang<sup>3</sup>): If we go the direction of the Member for Siaya, many of us will speak. But you know that you earn by your tongue. So, you

want your tongue to wag for as long as it can take. The Member for Vihiga is sitting in an unusual place, but he is still in the Chamber.

**Hon. Chanzu:** Thank you, Hon. Temporary Deputy Speaker. I came in very early and put in my card.

**The Temporary Deputy Speaker** (Hon. Kajwang’): No. Proceed. You chose to sit there.

**Hon. Chanzu:** I found that it was a shorter thing, but it is okay. Thank you, Hon. Temporary Deputy Speaker.

I support this Bill. We have talked about reforms in this country for many years, but we have never effected them. We listened to the global trends, but we never did it. Land issues remained quite a big problem. There was the Ndung’u Report during the National Rainbow Coalition (NARC) Government. Quite a number of issues were not sorted out until the last Parliament when we came up with some law on land issues. Again, we found the records were still a problem.

The Constitution is very important. However, it could not have dealt with everything. That is the reason Article 63 is very important in this particular matter. This legislation seeks to give effect to that and it goes into the details of what is required and the various definitions of “community land.”

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Vihiga, just hold on a minute. The Member for Mavoko is on intervention. Just hold your horses for a while.

**Hon. King’ola:** Thank you, Hon. Temporary Speaker. Looking at the time and considering that we are few, I was just wondering whether I could propose that we take five minutes each to contribute to the Bill. I am just requesting Members because at the end of business, only two or three Members would be here. We are going to leave you alone.

**The Temporary Deputy Speaker** (Hon. Kajwang’): All right, Member for Mavoko, I hear you. But you know that strictly according to the Standing Orders, if we have to change the time, we need to change it just before debate not in the process of the debate.

**Hon. King’ola:** Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Kajwang’): I can see that Members have really done a lot of research and are ready to debate. So, let us have a few, but quality discussion.

**Hon. King’ola:** I stand guided.

**The Temporary Deputy Speaker** (Hon. Kajwang’): I appeal to the conscience of Members that you do not have to just fill the space for 10 minutes. You can do something for two minutes and it will be more memorable than if you spent all the 10 minutes and what we remember you for is that you were verbose or that you have repeated yourself.

Yes, Member for Vihiga.

**Hon. Chanzu:** Hon. Temporary Deputy Speaker, it is not good to criticise the Chair, but given what you have said just now, from that point of view, then that kind of guidance should have been given before you came to that Chair. It would have helped. Even if we get two more Members now, you will still have so many remaining. That should be part of the House keeping business from your point.

This Bill is very important. We have more than 42 communities in Kenya with very diverse cultural backgrounds. What they do with their land also differs. There are those who think about their land on commercial basis. Others pass their land to the young people. In the region where Hon. Kajwang’ and I come from, land has not had a lot of value. People just pass it on to their descendants. In other places, the value of land has increased because of the uses. This



Bill will help in the management of land. We are creating awareness in the minds of our people. We are also creating laws which are going to protect their interests and also protect their enjoyment of the land that they have.

The issue of ownership and tenure should be addressed. I know many places in western Kenya where people have been living on land for years with their descendants, but when you want to transact on that land, you realise that they do not have title deeds. They just live there because of community interest. This law will be of great use to Kenyans. I find Part V of the Bill very important. It consists of Clauses 22 to 27, which talk about general information relating to the conversion of community land to public or private land and vice versa. That is another important aspect. Once people understand the law, then it will provide flexibility in terms of land use. Users may find that they can make better use if they convert it to other uses. The part also provides for the setting aside of community land for public purposes. This is very important. If you compare this Bill with what has been transacted, you will find quite a number of illegal things may have been done. People do not understand. After we put in place the Constitution and set up the National Land Commission (NLC), you have seen the conflicts we have had between the Ministry of Land, Housing and Urban Development and the National Land Commission. This is still happening at the county and constituency level. The Bill is going to greatly benefit Kenyans.

A point was raised here, which I must comment on very briefly about the area around Maseno in western Kenya in Vihiga and Kisumu counties. People in this area have lived peacefully for many years. I want people to understand that some of us come from that area. Many people have migrated from where I come from to some parts of the former Nyanza Province. This is something which somebody like me, who cares about the welfare of humanity and our people, is concerned about. It should not be something that should be brought to very high levels, in the manner I have seen some leaders, for example, what the governor of Vihiga County is trying to do. The matter should be sorted out amicably.

Hon. Temporary Deputy Speaker, you are a Member of Parliament and so, you are a very good example. Hon. Kajwang', your brother, was a Member of Parliament from that area. People were living there very peacefully. This is an issue which should be sorted out through the mechanism provided by this Bill.

With those remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Thank you very much, Member for Vihiga. I do not know how to handle this request list. I do not know whether to read out the request as it comes. You should know that all of you are my friends. From wherever you are seated, I can see that you have a lot of impatience and you want to contribute. The best way to be fair is to just run down the request list and you will be sure that nobody will steal a march. This is a term we use in law to mean that nobody will take advantage of the other. Member for Samburu North, I mentioned you because I found you on the intervention list. I did not interfere with your position in the request list. So, you are there because I am following the list as I found it.

Member for Kisumu West!

**Hon. Aluoch:** Thank you, Hon. Temporary Deputy Speaker. I want to go through this Bill very quickly. I am disappointed because although the Bill has very good motives, it will be defeated by the inclusion of some very oppressive provisions that we inherited from the British colonial administration. The Bill recognises, among other statutes, the Trust Land Act which has

been used very oppressively by the colonial Government and the Independence Government in Kenya. I am afraid if this Bill does not address the historical injustices caused by the Trust Land Act, it will fail to attain its objective.

Personally, I was a victim of this Act in 1975 and 1976 when the Government implemented the Ogutu Report on expansion of Kisumu Town. In doing so, the people of Kolwa, Kajulu, Kanyakwar, Kanyamony and Kogony were asked to leave their lands and look for land elsewhere. I was one of those people. I was then a student at the Kenya School of Law (KSL). When I raised my voice against that decision, I was told that I was inciting the people and that they would make sure that I was expelled from the KSL. The net effect was that our people were moved out of their land. Right now, other people have put up flats and residential buildings on the same land that was taken from us. The same Act was used by the British colonial administration to evict the people of Kogony, where Kisumu International Airport now stands. Up to now, the people of Kogony are asking for proper compensation, which they have not received. These are some of the issues that this Bill should be struggling with in terms of how to deal with people who have been disinherited by this Act. How do you address those injustices?

Between counties and constituencies, we have had skirmishes arising from boundary disputes in many places. The Leader of the Majority Party mentioned some disputes. There is high tension between the people of Kisumu County and Vihiga County. When this happens, the National Cohesion and Integration Commission (NCIC) come in to pacify the people.

When disputes like these arise over community land and boundaries, where is the arbiter who is going to come in to resolve the disputes? Under our law, it should be the Independent Electoral and Boundaries Commission. However, it seems to concentrate more on voting rather than boundaries which is part of their component. They have forgotten about that completely and do not look at it again. This Bill should also address the issue of inter-community disputes over boundaries.

Lastly, when it can be brought to the Committee of the whole House, we should look at how we can revert grabbed community land to the people. It is happening all over this country. The House should understand that this Bill is not in the interest of pastoralists alone in Kenya only. In my view, it serves everybody who has received injustice through the Trust Land Act and other Acts. So, this Bill, as good as it looks, will have to be panel beaten by amendments at the proper stage.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You see veterans, four minutes down the line and he has made his point. Member for Narok South, follow suit.

**Hon. ole Lemein:** Thank you, Hon. Temporary Deputy Speaker. I will also try to be as brief as possible. Land as a factor of production is a very emotive issue. I thank the Departmental Committee on Lands headed by the able Chair. As stated by Hon. Chachu, as PPG caucus, we presented our views. If the interests are taken care of, we will have an easy time when it comes to the Third Reading.

My big brother, Hon. Olago Aluoch, has touched on an issue that I was so much concerned about, namely, injustices under the Trust Land Act. This Act did a lot of damage to community land. If this issue is addressed, it is going to be very beneficial to the communities concerned. This law has come at the right time. Communities have lost a lot of land and I believe this will rescue these communities. I want to emphasise Clause 46. This clause should not legalise irregularities. I know from 27<sup>th</sup> August 2010 to date, some people may have decided to use that loophole to grab community land.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. Kajwang’): We are doing very well.

Let us have the Hon. Member for Gatanga.

**Hon. H.K. Njuguna:** Thank you, Hon. Temporary Deputy Speaker. I support the Bill. I was impressed by your contributions when you were on the Floor because you raised very fundamental issues on the fact that this Bill is likely to drastically change the jurisprudence of land law in this country. It is important that for us to realise that since 1885 when we were colonised, everybody had access to land in this country. The land belonged to the community. However, with colonisation we were introduced to the English land system which is the individual titling of land. We have embraced that culture for over a century where everybody’s wish is to feel that they own it.

This is why we are saying that it is very emotive.

Issues of tribal clashes narrow down to land issues. We all agree that individualised land system in this country is so entrenched that we consider it a culture or an institution. We must also agree that society changes. In case of land in Kitengela, about 50 years ago, we would have talked about what we are talking about today. Right now, we have cultivated the culture of individual title deeds in the Kitengela area. I call it a culture because that is what everybody in this country wants to see at one particular time.

We agree it is time we did away with the English land ownership system, but even as we do so, we must accept the fact that because of the change that the Community Land Bill is introducing to the jurisprudence of the land law, we need to interrogate this further. We should get expert advice from universities and scholars. This is a culture we have had for about 100 years. We are now saying that we should revert to the land tenure system that existed before 1885, when land belonged to the community. This is a serious turn around. As much as we say that we need to move forward, we must also appreciate that new dynamics will be introduced to our land laws.

Hon. Temporary Deputy Speaker, you made a serious observation when you were contributing on the Floor. I request the Departmental Committee on Lands to look at this issue and do a further interrogation, particularly of organisations that have been dealing with land. I am a former chairman of the institution of Surveyors of Kenya where I was dealing with issues of land for the last 30 years. I know the Bill is addressing a weighty issue. The good thing is that the Bill recognises the pastoral community interests. At times, there are common goods in particular ownership of land. Sometimes, some ownership may not be economically viable. Even as we address these issues, it is important, when looking at the definition of “community”, to ensure that we do not end up disharmonising this country because we are looking forward to a community called Kenya. As a Member observed, it is important that the definition of “community” is such that everybody in Kenya feels that they can live anywhere. I may have been living in Maasai land for the last 20 years. Are you saying that I am not going to be part of that community? I may have lived in Luo land for the last 15 years. Are you saying that I am not part of that community? It is important that even as we address the issue of community land, we try to define “community” in a way that will make everybody feel like they have been embraced.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Member for Wajir!

**Hon. (Ms.) F.I. Ali:** Thank you, Hon. Temporary Speaker, for finally allowing me to speak.

First and foremost, I want to recognise the work of the Committee. They are fulfilling a constitutional mandate. This is good progress. A lot of effort has been put into this Bill. The Chairman has done a good job and we support him.

If you walk around, you will realise that pastoral areas are where community land is likely to be found. Counties that have vast land have had trust lands. The Chairman of the Committee appreciated the Report of the PPG caucus that was presented by the Member for Narok North.

I would like to confirm that during the Bomas Constitution-making process, I was in the Committee on Environment and Lands and I had serious interactions with communities who claimed that their land was trust land and group ranches.

During that Bomas process, communities gave their views in terms of aspiring to protect, manage and administer their land. They also gave a big report on their fears about land which was grabbed from them. Some of the pastoralists' land, which we are now discussing as community land, was even reported to have been used as dumping site for toxic waste. Many residents of these areas have suffered many sicknesses.

In the Committee's Report, many concerns were raised by institutions which gave their views on the Bill. These institutions include the NLC, the former CIC and various civil society organisations with serious technical expertise on community land. They all felt that the taskforce, which was very consultative and participatory, had produced an ideal report which communities associate with. The only institution that had divergent opinion in this engagement was the Ministry of Land, Housing and Urban Development, which mutilated the highly cherished and consultative report of the taskforce. I am glad the Chair of the Committee is nodding in support of my point.

The Committee's Report says that some of the areas with glaring errors include failure to define "community land" and "communities". The word "organised", which is used in the definition of "community" can be regarded as groups of individuals. It can easily be manipulated through interpretation. Trust land has experienced both external and internal manipulations from locals and non-locals. Huge tracts of land are hived off from community land by local elites, tycoons and other external wealthy and powerful groups. We need to address the issue of how we can repossess community land which was allocated to individuals in dubious and corrupt way.

An example is Wajir County where almost half of a sub-county is owned by somebody from another part of the country. We do not know how he got the title or how he was allocated the land. We do not know the process that was used to allocate a huge community grazing land to an individual. This Report does not address mechanisms to repossess illegally acquired land. We need to address that. That is a serious practice that is happening in this country. Some people own half or two-thirds of a county. We cannot ignore that kind of problem.

Another issue that is very glaring is the structure of managing, disposing, registering and administering community land in this Report. One of the consensus gaps in this Report which was raised by CIC, NLC, county governments and serious civil society groups is that there is no structure. We are talking of a very amorphous structure which denies communities opportunity to give, dispose, manage or protect community land.

The Cabinet Secretary is given enormous powers. This is the same Cabinet Secretary at the national level who has allowed massive exploitation, grabbing and dispossession of land belonging to such communities. That mandate is again given to the Cabinet Secretary who is so

removed from the communities. We need to address that. I want to plead with the Committee, which is chaired by a progressive Chairman, to address that issue. The Chairman has to do that if he wants to contribute to the history of addressing the serious challenges communities are experiencing. He needs to go on record that he created an ideal community land law. We have an opportunity. Some of us are a living testimony. Our land has been repossessed. We cannot claim that the same aspirations that we had during the constitutional-making process are helping us to address these issues. We need to help Kenyans. We need to help communities that have suffered historically.

The Bill also lacks gender implication in terms of how women should be included in decision-making. Pastoralist communities are patriarchal. They relegate women to the back seats, kilometres away. How do we bring women's interests to this Bill? Many of them are repossessed of their land through dubious and cultural systems that do not favour them.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Rangwe. Unfortunately, I only have two minutes. Use them wisely.

**Hon. Ogalo:** Thank you, Hon. Temporary Deputy Speaker. I have sat through the whole afternoon because this is a very important Bill and I am a Member of this Committee. I only have two minutes and I would like to address some of the fears the Members have raised.

In the amendments that our Committee will bring to this House in the Third Reading, we have redefined "community". We have also clearly specified how a community can be created and registered for purposes of owning community land. We have also created a fool proof mechanism on how community land is identified.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Rangwe, thank you very much for bringing up that. I heard the substantive Speaker before I came trying to advise that you need to have a meeting with Members and narrow down some of those issues which will come to the Committee of the whole House for the Third Reading.

In the Committee, you know what you have done and what you have not done. Members who are not in your Committee may not know what you have done and what you have not done. They will be meeting them on the Floor and when that happens, it will lead to very prolonged discussions over issues that could have been ironed out there. That is the point that the substantive Speaker was trying to let you know.

**Hon. Ogalo:** Actually, Hon. Temporary Deputy Speaker, I have taken my own liberty to share some of those amendments with Members. As a Committee, we have also had extensive discussions with caucuses and most of them know what we have agreed with them. I am advising the caucuses and Members who have identified clauses which they see as offending in the Bill to access the amendments that we have proposed, internalise them and assuage their fears. We have taken three steps to make this Bill capable of handling community land in this country. We have taken steps to define how transactions that took place on land between the period of Constitution 2010 and now are going to be dealt with. We have specified how adjudication is going to be dealt with.

I would like to urge Members to give the Committee the benefit of the doubt, that this Bill once it is processed will meet the expectations of very many Kenyans. We have had an opportunity to listen to very many Kenyans, including stakeholders and the Council of Governors (CoG) and the difficulties they had with the Bill have been addressed.

**The Temporary Deputy Speaker** (Hon. Kajwang'): Member for Rangwe, you will have a balance of eight minutes when this debate resumes.

**Hon. Ogalo:** I was prolonging to get that.

**The Temporary Deputy Speaker** (Hon. Kajwang'): You will definitely get that balance. I know the Member for Samburu North would have wished to speak today. I want to suggest to him to come in the Chamber tomorrow because I suppose this Bill will be on the Order Paper. We do not put a time to it, in as much as we can have all the interest of Members in place. Members for Kajiado East, Mwatate and Taita, you are all on my list. I do not know how I could have served you better, but it means that there is a lot of interest in this Bill. Please, come tomorrow when this matter will be on the Order Paper. Member for Rangwe, you will have your eight minutes except that you must be here when the Motion is called out. Otherwise, you will forfeit it.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Kajwang'): Order, Hon. Members! The time being 6.30 p.m., this House stands adjourned until Wednesday, 2<sup>nd</sup> March 2016 at 9.30 a.m. It is so ordered.

The House rose at 6.30 p.m.