

## NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 15<sup>th</sup> April, 2015

The House met at 2.30 p.m.

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

## PRAYERS

## MESSAGES

## CONCURRENCE SOUGHT ON SENATE AMENDMENTS TO BILLS

**Hon. Deputy Speaker:** Hon. Members, we are now properly constituted.

I have a message to convey. Standing Order No.41(4) relating to messages from the Senate provides that if a Message is received from the Senate at a time when the House is in session, the Speaker shall report the Message to the House at the first convenient opportunity after its receipt, and in any event not later than the next sitting day. In this regard, I wish to report that I have received two messages from the Senate today dated 13<sup>th</sup> April, 2015.

Hon. Members, the messages state:-

“THAT the Public Service (Values and Principles) Bill National Assembly Bill No.29 of 2014 and the Environmental Management and Co-ordination (Amendment ) Bill, National Assembly Bill No. 31 of 2014 as published in the *Kenya Gazette* Supplement No.112 and 114 of 25<sup>th</sup> July, 2014 respectively and passed with amendments by the National Assembly on 26<sup>th</sup> November, 2014 and 4<sup>th</sup> December, 2014 respectively, were passed by the Senate on Wednesday, 1<sup>st</sup> April, 2015 with amendments and in the form attached thereto. Consequently, the Senate seeks the concurrence of the National Assembly to the said amendments”

Hon. Members, in this regard and due to the urgency of the two Bills on account of their constitutional timelines, I direct that the House Business Committee prioritises this business for consideration at the earliest opportunity. I also urge the Departmental Committee on Administration and National Security and the Departmental Committee on Environment and Natural Resources to scrutinise the amendments made to the respective Bills so as to guide the House at the appropriate time.

Hon. Members, I now direct the Clerk to circulate the Senate amendments to the two Bills, pursuant to the Standing Order No.145. I will guide you further on the procedure to be followed during the debate when the House Business Committee slots these two Bills for consideration. I thank you.

**PAPERS LAID**

**Hon. Katoo:** Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday 15<sup>th</sup> April, 2015:-

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

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

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

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

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

The Report of the Auditor-General on the Financial Statements of the Cotton Development Authority for the 13 months ended 31<sup>st</sup> July, 2014, and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of the Brand Kenya Board for the year ended 30<sup>th</sup> June, 2014 and the certificate of the Auditor-General therein.

**Hon. (Ms.) S.W.Chege:** Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House today Wednesday, 15<sup>th</sup> April, 2015:-

The Report of the Departmental Committee on Education, Research and Technology on the Petition by the retired teachers regarding unpaid pension dues for the 1997 group.

**Hon. Kamau:** Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House, today Wednesday, 15<sup>th</sup> April, 2015:-

The Reports of the Departmental Committee on Energy, Communication and Information on:-

- (i) The Plenipotentiary Conference held in Busan, Korea from 20<sup>th</sup> October to 7<sup>th</sup> November, 2014.
- (ii) The Commonwealth Trio Communication Forum held in Taka, Bangladesh from 8<sup>th</sup> to 10<sup>th</sup> September, 2014.
- (iii) The International Telecommunication Union (ITU) Conference held in Doha, Qatar from 6<sup>th</sup> to 11<sup>th</sup> December, 2014.

**STATEMENTS****LEGALITY OF BASIC EDUCATION REGULATIONS, 2015**

**Hon. Kamau:** Hon. Deputy Speaker, I rise on a point of order to seek your guidance on the legality or otherwise of the Legal Notice No. 39, published under the Special Issue of the *Kenya Gazette* Supplement No. 37 on 8<sup>th</sup> April, 2015 regarding the Basic Education Regulations, 2015.

The management and processing of statutory instruments is guided largely by the Statutory Instruments Act, 2013. Specifically, Section 11 of the Act requires:

“Every Cabinet Secretary responsible for a regulation-making authority shall within seven sitting days after the publication of a statutory instrument ensure that a copy of the statutory instruments is transmitted to the responsible Clerk for tabling before Parliament.”

Further, subsection (4) of the section states:-

“ If a copy of a statutory instrument that is required to be laid before Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.”

Article 94 (5) of the Constitution states that:-

“(5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation”

There is contention that the Basic Education Regulations (2015), which were published in the said Legal Notice No.39 of 8<sup>th</sup> April, 2015 are *ultra vires* and did not follow the due process of the law. I therefore, humbly seek your guidance on three specific issues:-

(1) whether or not the Regulations were tabled as required by law;

(2) whether the Committee on Delegated Legislation of the National Assembly considered the Regulations; and,

(3) in the light of the provisions of the Constitution, what redress the Members of this House have in the matter.

**Hon. Deputy Speaker:** Is there a Member who wants to make a comment on this? Hon. David Pkosing, is it on the same?

**Hon. Losiakou:** Thank you, hon. Deputy Speaker. This is a very important contribution by the Member. In line with that, some of us from the pastoralist communities, or what is referred to in the Constitution as marginalised areas, also had proposals for the Equalisation Fund. It was a back and forth situation between us and the Treasury.

On the issue raised, where are the Regulations? We hear that there are some Regulations and Members were not consulted. Where are the Regulations for the Equalisation Fund? They have not been tabled or discussed. Members from the marginalised communities have not been given an opportunity to make any contribution. Where are the Regulations? Is somebody sabotaging the Constitution of the Republic of Kenya?

**Hon. Deputy Speaker:** Hon. Wamalwa, is it on the same? I will just accept a few comments.

**Hon. Wakhungu:** Thank you, hon. Deputy Speaker. Hon. Jamleck has raised a critical issue, especially in the education sector. With due respect to the Cabinet

Secretary, Prof. Kaimenyi, there is no way these Regulations can be implemented, yet this House is not seized of the matter. We have had notices for strikes by the Kenya National Union of Teachers (KNUT) and the Kenya Union of Post-Primary Education Teachers (KUPPET). These are some of the things that we can eliminate. We do not want this confrontational leadership style. It would be nice, and Prof. Kaimenyi should move with speed to have the Regulations brought to the Floor of the House for us to debate.

According to the Teachers Service Commission (TSC) Act, it is only the TSC that has the mandate to manage teachers in terms of firing, hiring, disciplining and maintaining the records. We do not know where he is getting powers to try to push to have the head teachers or the principals to report directly to him. It is important for us to debate these Regulations here.

We have been told that on 20<sup>th</sup> April, 2015, the National Police Service is going to conduct police recruitment. The Regulations on this police recruitment have not come to the Floor of the House, so that Members can also make an input. We do not want to repeat the last mistake where a court nullified the exercise. We are told that on 20<sup>th</sup> April, 2015 we are going to have a fresh police recruitment and there are new regulations. This House has not seen the regulations.

Hon. Deputy Speaker, it is important that you give direction, so that whenever the Executive is implementing regulations, they first pass through the Committee on Delegated Legislation before anything can happen.

**Hon. Kemei:** Thank you, hon. Deputy Speaker. The issues that have been raised by Hon. Jamleck are critical, particularly those touching on the education sector. We would require guidance on the same because the culture of Cabinet Secretaries just publishing Gazette notices is not in today's constitutional dispensation. We wish that Parliament is given the responsibility to scrutinise every Gazette notice before it is published.

**Hon. Deputy Speaker:** Hon. Jared Opiyo, why do you put your card in the intervention box if you are not in the Chamber? Hon. Daniel Maanzo. He is also not here. Members, you make it very difficult for us here.

**Hon. Opiyo:** Hon. Deputy Speaker, I am here.

**Hon. Deputy Speaker:** No. Jared, your turn is gone. It is not there anymore. Yes, Hon. Robert Pukose.

**Hon. (Dr.) Pukose:** Thank you, hon. Deputy Speaker. Hon. Jamleck Kamau has raised a matter of national importance. Currently, we have that tussle between KNUT and KUPPET and the Cabinet Secretary. The Cabinet Secretary is saying that they have to conform, but if they do not want to, then they can go to court. It will be important for this House to pronounce itself on the procedure. Do Cabinet Secretaries have delegated powers to gazette regulations without bringing them to the House? All regulations must be brought to the House because Kenyans out are confused. We want that to come out clearly.

**Hon. Deputy Speaker:** Thank you, Members. I know many of you want to make a point on this.

**Hon. Abongotum:** On a point of information, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Who are you informing, hon. Kamama?

**Hon. Abongotum:** On a point of information, hon. Deputy Speaker. Hon. Chris Wamalwa raised the issue of regulations on the police recruitment. I just want to confirm to the Members that those Regulations were forwarded to the Committee on Delegated Legislation and the Committee approved them. I want to confirm again that these Regulations were gazetted on Friday last week. Everything is on course.

**Hon. Deputy Speaker:** Hon. Sabina Chege, Chairperson of the Departmental Committee on Education, Research and Technology.

**Hon. Members:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order! I have given hon. Sabina the Floor.

**Hon. (Ms.) S. W. Chege:** Thank you, hon. Deputy Speaker. As the Chairperson of the Departmental Committee on Education, Research and Technology, I would like to speak on this matter. Hon. Jamleck Kamau has raised a very serious issue. It affects the education sector. We have a lot of issues within the education sector. Even the timing of the gazetting of the Regulations was not right. Time expired yesterday for Parliament to have received notice or even communication from the Ministry, which myself and the Chair of the Committee on Delegated Legislation have not received. I hope this House acts fast. We do not want our children's learning process to be interfered with when they open for second term only to hear that there is another strike. Listening to the tone of the Cabinet Secretary, I do not think he is helping. I would wish that you advise this House on the way forward, so that we can make sure that second term opens with no strikes or fights between the unions and the Ministry.

**Hon. Deputy Speaker:** Hon. Jared, what is your contribution?

**Hon. Opiyo:** Thank you, hon. Deputy Speaker. I only have two issues to raise.

The first one is with regard to what Hon. Kamama, the Chairman of the Departmental Committee on Administration and National Security, has said. He has said that some Regulations passed through a Committee of this House. I believe the Committee works for and on behalf of this House. I do not remember that Committee tabling any of those Regulations in this House for ratification.

The second issue is with regard to what is happening in the Ministry of Education, Science and Technology. The Executive is taking this House for granted. All the powers that they have to make Regulations, are delegated. They do it for and on behalf of Parliament. The Constitution requires them to bring those Regulations to this House for scrutiny and ratification. It is not right for anybody to purport to have made any Regulations without consultation with this National Assembly. You need to give us direction with regard to the pronouncements of the Cabinet Secretary in charge of Education, Science and Technology.

**Hon. Deputy Speaker:** Hon. Members, we can go on and keep asking more questions but we are not getting any nearer to having an answer. So, can we try and get done with it?

**Hon. Kipyegon:** Hon. Deputy Speaker, I also wish to request you to apply your mind, when you will be looking at this issue, to Article 94(6) of the Constitution. It states:

“An Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for

which the authority is conferred, the limits of the authority, the nature and scope of the law that may be made, and the principles and standards applicable to the law made under the authority.”

This Article was contemplated so that certain State organs, or offices, are allowed to make regulations which I do not think necessarily have to pass through this House. So, when you will be addressing this issue, look at that Article and confirm whether all the regulations made by universities, Cabinet Secretaries (CSs), Ministries, parastatals have to be brought before this House.

I do not know if you got my point.

**Hon. Deputy Speaker:** Yes. The gist of it is that they probably do not need to bring the regulations to the House.

**Hon. Kipyegon:** Yes, the gist of it is that we delegate power to some of the bodies to make regulations. Do these bodies, including the CSs and universities---

**Hon. Deputy Speaker:** Which Article have you quoted?

**Hon. Kipyegon:** Article 94(5) and (6). Thank you.

**Hon. Deputy Speaker:** Hon. Kaluma, you seem to have a point on this one.

**Hon. Kaluma:** Thank you, hon. Deputy Speaker. This matter touches on a very serious sector. I want to start by thanking hon. Jamleck Kamau for deeming it fit to bring it up in the manner that he brought it. This is a matter that is so clear in law. The people of Kenya vested this House with the power to make laws. The people of Kenya say, at Article 94(5) of the Constitution, that:-

“No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation.”

That is what invites the genre of delegated legislation. Any regulation-making authority is making that legislation on the basis of a delegated power from Parliament. This requires that we look at the Statutory Instruments Act in great detail. The manner in which regulation-making authorities make delegated legislation and the processes they go through are all there. As a matter of principle, it is clear under that Act that the Committee on Delegated Legislation is the one permitted to intervene directly in matters touching on parliamentary work without direct reference to the House.

Two things are clear to me from the Act. I would request that when you make your ruling you think through them. The idea that every delegated legislation must be tabled before Parliament is not debatable because these authorities are exercising a power of Parliament by dint of delegation. All the legislations upon gazettment, must be tabled before Parliament so that Parliament has a report on what these bodies are doing.

What the Act makes distinction about is whether Parliament is required to debate all delegated legislations or not. There are two ways. There are some which, as of necessity, an Act of Parliament conferring the authority to make subsidiary legislation will say: “This one has to be debated.” There are others on which Parliament is required to give an implicit nod through the Committee on Delegated Legislation. In such a case, you are told that upon gazettment and after the passing of a period, I believe 14 days, if Parliament, through its Committee on Delegated Legislation, does not say no, then that delegated legislation enters into effect. That is what will put us in the situation of Hon.

Kamama. If those 14 days or the number of days stipulated in the Act have not passed, that piece of delegated legislation still does not have the force of law.

Let me end by saying that it is the desire of the people of Kenya, if we look at the framework of Article 94 of the Constitution and the Statutory Instruments Act, to avoid a situation where we can continue to rule this country on the basis of Executive fiat. I want to use this occasion, even as we await your ruling, to remind all regulation-making authorities, CSs and Principal Secretaries (PSs) to take their time and read in full detail the Statutory Instruments Act. It will tell them what to do in respect of the regulations they propose to make for the good governance of this country.

I thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** The Chairperson of the Committee on Delegated Legislation, you have just walked in. I do not know whether you are seized of the matters that have just been canvassed by Members. Be that as it may, and so that we do not go into details that you might be having and we do not have, as a House, I would like to direct that tomorrow we get a Statement from the Committee on Delegated Legislation on the matters that have been canvassed here. You will tell us whether the regulations were laid or whether you had a discussion on them and their status. That is for the regulations on teachers and police recruitment. Before we make any ruling or direction, let us get a Statement from the Committee on Delegated Legislation. Thereafter, we can give a considered opinion on the matter. We can leave it at that up to tomorrow. We will allow the Committee to tell us the status of these delegated legislations.

Yes, the Chairperson, I see you want to make a comment.

**Hon. Cheptumo:** Hon. Deputy Speaker, I will oblige to that. I heard you talk about police recruitment regulations. Will I report on the two or only on this one on teachers? I want to be very clear.

**Hon. Deputy Speaker:** The request for a Statement came from hon. Jamleck. We will focus on the one on teachers. But now that the question of police recruitment has also come up in the course of contribution, you could shed some light on the same with respect to whether the procedure has been followed.

**Hon. Cheptumo:** I will do that tomorrow in the afternoon. Thank you.

**Hon. Deputy Speaker:** Thank you. We may continue to our next Order.

## MOTION

### EXTENSION OF PERIOD FOR CONSIDERATION OF PETITION

**Hon. Deputy Speaker:** Whose Motion is it? Yes, hon. Nyokabi.

**Hon. (Ms.) Kanyua:** Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker, I beg to move the following Motion:-

THAT, notwithstanding the provisions of Standing Order 230(4), this House resolves to extend the period prescribed for consideration of the Petition for the removal of the Chairperson and Vice-Chairperson of the Ethics and Anti-Corruption Commission (EACC) by the Departmental Committee on Justice and Legal Affairs, by a further ten (10) days from April 14, 2015.

The time for consideration of this Petition ran out yesterday and we have not tabled our report. We need a further 10 days to finalise our report and table it before this House.

I wish to call on Hon. Mohamed Haji of Banissa Constituency to second the Motion. Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Where is your Seconder?

*(Loud consultations)*

Where is hon. Mohamed Haji? Yes, *mheshimiwa*.

**Hon. Mohammed Abdi** seconded.

**Hon. Deputy Speaker:** Well he has bowed. Hon. Members, he has seconded the Motion.

*(Question proposed)*

Hon. Kaluma is itching to say something. Let us have about two people.

**Hon. Kaluma:** Thank you. The matter we are dealing with concerns an independent constitutional commission. It is a very serious matter touching on the Ethics and Anti-Corruption Commission (EACC). Hon. Members, you remember that the President was here a short while ago. You know the goodwill that he has against corruption and the issues that the Commission is currently dealing with. We gave His Excellency the President a standing ovation.

The investigations that we have been undertaking as a Committee have taken us through several documents and hearings. The recess also came midstream. I, therefore, support that we get extension of time. However, I am worried about a whole 10 days. This is because by yesterday what we remained with was to adopt the Report of the Committee. I think it is also a matter that we should not drag for too long. I would support the Motion that we extend time but speaking sincerely to colleagues in Parliament, we need a meeting to go and check on what the Report is, because even the decision was made yesterday. Unless there are changes, I want to request the good Vice-Chair moving the Motion that we reduce the period to five days, so that the nation can go over this issue that is keeping us at a standstill.

**Hon. Deputy Speaker:** Hon. Ichung'wah.

**Hon. Ichung'wah:** Thank you. I support the extension of time considering that the issue that is before the Committee is a very weighty. Issues to do with corruption in this country are very weighty. If this Committee as the Chair has requested is to do meaningful work and allow even the deliberations that have gone on before the Committee to have the contribution of further Members of Parliament---. There are many people who, because of the short recess that we had, never had an opportunity to share with our fellow Members in this Committee. I would beg that we support that Motion to extend time. Five days may not be enough time for us because from now five days will be next week. Give us this week and next week and allow the 10 days so that the Committee completes that very important work.



**Hon. Deputy Speaker:** Okay. Hon. Members, you also know that when we say it is a maximum of 10 days--- If you finish tomorrow you can bring the Report tomorrow. We are not saying that you must wait for the 10 days. We are saying a maximum of 10 days. I think you have mandated me to put the Question.

*(Question put and agreed to)*

## BILL

### *Second Reading*

#### THE FAIR ADMINISTRATIVE ACTION BILL

**Hon. Deputy Speaker:** Let us have the Majority Whip.

**Hon. Katoo:** Hon. Deputy Speaker, I beg to move that the Fair Administrative Action Bill be now read a Second Time.

It is National Assembly Bill No.10 of 2015. The purpose of this Bill is to give effect to Article 49 of the Constitution. Therefore, it also has constitutional timelines. It is good that the House be aware that the deadline for this Bill was supposed to have been August 27<sup>th</sup> 2014, but through the resolution of this House we moved the deadline to the timeline, to May 27<sup>th</sup> this year.

Under Article 47 every citizen is conferred with a right to fair administrative action from public authorities, judicial or quasi-judicial tribunals. The Constitution requires that all administrative action should be expeditious, efficient, lawful, reasonable and procedurally fair. Therefore this Bill, if it goes through this stage, will apply to all state and non-state agencies according to Clause 3 of the Bill in Part II. These agencies include any person exercising administrative authority, judicial or quasi-judicial function under the Constitution or any other written law.

Even if it applies to all agencies, under Clause 2 of the Bill, there are exceptions. The Act exempts disciplined forces which are defined as the Kenya Defence Forces, the National Intelligence Service, the National Police Service, the Kenya Prisons Service, the Kenya Wildlife Service, the Kenya Forest Service, the National Youth Service and any other organisation related to security which is established by an Act of Parliament.

Clause 4, according to me, gives the gist of the Bill. It is about administrative action and the reasons that an affected person should be given. This is the main issue of the Bill. This Bill sets out the goal of promoting an efficient public administration and good governance and of creating a culture of accountability, openness and transparency in the public administration.

Clause 4 (a)(b)(c) of the Bill calls for administrative action which when materially and adversely affect the right of any person and mostly in the negative way, must be procedurally fair. In an instance where rights materially and adversely affect a person, the public official must give the affected person adequate notice of his or her right to request written reasons for the action. In Clause 4 (a)(b)(c), the adequate notice should be of the nature and purpose of the proposed administrative action and there should be reasonable

opportunity to make representation in that regard and also there should be adequate notice for any right of the review or internal appeal where applicable.

The Constitution imposes a duty on the public administrators to give written reasons to anyone whose rights are adversely affected by administrative action. This is in Article 47 of the Constitution, Sub-Article (2), to be precise.

Another important aspect of the Bill is the reason for the administrative action affecting a person negatively. It is required that, in the interest of practising fair administrative action, it is the duty of the administrative officer to give reasons. This is based on three basic qualifications. Firstly, everyone is entitled to reasons. Article 35 of the Constitution on the right to access of information, basically explains it all. Secondly, a request is needed, and that need is a basic right. For general purposes, this Bill has been brought here under Chapter 4 of the Constitution, which is the Bill of Rights. Therefore, one's rights must have been materially and adversely affected.

The biggest part about this Bill is the reasons as to why an administrative action is being taken. As I said, Article 35 guarantees everyone the right to request for access to information. Why do you need reasons? I believe that the reasons for an administrative action must be given in written form, and not orally. The reasons provided by a public official, who in this Bill is being referred to as the 'administrator', must be written, and not just provided orally. I will explain my findings on why these reasons are important. It is because they are the main theme of this Bill.

The Bill seeks to establish accountability in public administration. It is one of the core values contained in our Constitution, under Article 232 (1) (e) and (f). One of the core values of our Constitution is fair public administration. It is also important to note that the Constitution prescribes the basic principles governing public administration. I believe that in the absence of reasons, there will be an impression of secrecy and arbitrary administrative action. It is, therefore, very important to provide reasons in order to facilitate a transparent and an open mode of administrative action and decision making for that matter, thereby furthering the aim of administrative accountability.

I want to take some time to explain why the public administrator must give reasons for Members to understand. This is, indeed, compatible with both the letter and the spirit of our Constitution, as provided for in the Articles that I have referred to. Provision for reasons will ensure that an affected person will accept administrative action. The affected person may accept administrative action and decision more readily. This may contribute to public confidence in public administration as it demonstrates that the decision maker has acted in a *bona fide* manner. Reasons are the crucial building blocks of not only accountability but also fairness.

The Bill has clearly, in Clauses 4, 5 and 6 explained the importance of giving reasons. Provision of reasons satisfies an important desire on the part of the affected person to know why a decision was reached; this really contributes to fairness in public administration. Let me just give examples for Members to understand what this Bill is all about. The affected person may want to know why an application for a passport was turned down. The affected person may want to know why an application for a business licence was turned down. The affected person may want to know why a permit to hold a public meeting was denied. The affected person may want to know why a disability

guarantee was terminated or discontinued, or why an application for pension was turned down, or why a residence permit application was declined.

Therefore, since these things are going to affect the fundamental rights and freedoms of the affected persons, there should be written reasons in advance explaining why such actions were taken by the public administrator. If the public official referred to in the Bill has to explain why a particular decision was reached, it will be expected that the official will have applied his or her mind in considering all the factors that relate to the decision taken. Therefore, it is important to say that fairness of the procedure and not the merits of the decision is the one being brought to the fore. It is the fairness of the procedure, and not the merit of the decision. Justice should not only be said to be done but it must be seen to be done. This is not only fair but is also conducive to public administration and confidence building in the administrative decision making process.

My last bit is still on reasons. At the realisation of the objective of accountability lies the need for a proper decision making process. It is the provision of the reasons that may have a positive effect on the decision making process in the sense that the reason may provide the evidence of proper decision making. It has to be formalised; that is why it should be written. It has to be structured and reasoned.

These are the benefits of our new Constitution. The Chapter on the Bill of Rights and the Chapter on Public Service emphasise on the need for transparency and accountability. Reasons justify the decision. Therefore, there is need to have reasons given clearly. Actually, decision-making encourages consistency and rationality. In the interest of creating a need for accountability, transparency and accessibility in public administration, the obligation created by this right is very much welcome. The reasons, and this is very important, should be given by the administrator not as a matter of grace, but as a matter of duty.

This is a very brief Bill; it is just about four pages. If you look at Clause 8, which is in Part III of the Bill, you will realize that this is about judicial review. The Bill also brings out the aspect of a person applying for review of any administrative action in the High Court, or in the exercise of the courts supervisory role. It actually sets out the procedures that the court may adopt in considering the appeal. Such orders may include declaration of orders restraining an administrator from taking the proposed action, or even an order quashing an action by the administrator.

In conclusion, this Bill is straight forward. It is a Bill that also concerns counties for the purpose of Article 110 of the Constitution. Therefore, it has to go to the Senate.

I beg to move and ask my good neighbour, the Member for Makueni to second.

**Hon. Maanzo:** Thank you, hon. Deputy Speaker for giving me this opportunity to second this Bill. This is a very important Bill. It is filling up the gaps in what was previously very common in courts and caused a lot of pain to many people. A public administrator's decision could eventually end up in court in terms of what we call judicial review. For a long time, there was no law framing judicial review. In many occasions the courts had to decide upon the procedures to be used and determine whether the matters brought in court were sufficient and brought well in court. Before we got the new Constitution, this was one area of law that caused a lot of litigation and a lot of jam in the courts, because most of the matters would be brought under a certificate of urgency. So, a person who felt aggrieved by a decision of an administrator would quickly go to court to

seek redress. It was here where one would meet a lot of files lumped together. There is also the issue of delays occasioned by the judicial officers. This law is very important and it has come at the right time.

It has been explained very well by the acting Leader of the Majority Party, that this law will really help a lot of Kenyans. There are many times when decisions are made by people in public authority and those decisions turn out not to be fair. A lot of times the arguments in court are that the administrator did not give reasons at all for his or her action, or there was lack of fairness, or that the administrators were not judicious in the process of making their decisions. It happened in a lot of cases such as denial of entry permits, denial of business permits and refusal of a permit to hold a public rally – this affects politicians mostly. So, this law intends to streamline the situation and fill the gaps. The journey started a long time ago when we started making the new Constitution.

This Bill talks of judicial review itself. Judicial review has never appeared in any Act of Parliament. It was just a term used in courts and coined by the Judiciary. A few guidelines were prepared and they are actually a subject taught in the Kenya School of Law. Prof. PLO Lumumba tried a little bit to guide the legal fraternity in this area. However, there was still the missing link which we are supposed to address here in Parliament. For a long time now, Judges have commented that Parliament needs to do something. It is good that Parliament is now doing something.

I urge Members to support this law because it is very important for our country. A lot of actions are brought to court every day. This law will help reduce the backlog of cases in our courts, because people will now be satisfied. At the time people go to court, it will be on appeal against a decision already given. The decisions will be well-reasoned.

I second.

*(Question proposed)*

**Hon. Waiganjo:** Thank you, hon. Deputy Speaker for giving me this opportunity. I rise in support of this Bill. This Bill, in as much as it looks very narrow or shallow, it is a very important one. It comes as a dictate of Article 47 of the Constitution. The framers of the Constitution knew that many Kenyans really suffer at the hands of what the Bill calls “administrators”. Therefore, this Bill is coming to regulate the actions of administrators and also to give an opportunity to Kenyans who are consumers of administrative action. It seeks to give them ways and means in which they can address administrative action where the said action is adverse to them or affects their rights.

Article 47 is very clear on expeditiousness, efficiency, reasonableness and procedural fairness of administrative action. More important, however, is the right and freedom of a person adversely affected by administrative action. Effect of administrative action on one’s legal rights really cuts across and also may affect constitutional and human rights. So, this is a Bill that enables this House to come up with legislation that will give full effect to such rights. Those rights, therefore, are canvassed at Part III of this Bill. Part II is on fair administrative actions actually shows how such actions must be undertaken. The interpretation part of the Bill states that the administrator will be a State organ, a natural person, or a juristic person who takes administrative action. Therefore, these are the institutions that we are looking at. Some of them could be public

institutions, quasi judicial tribunals, parastatals and other Government agencies that affect Kenyans adversely. They are the ones that exercise powers, authority and duties. Part II of this Bill is elaborate on that.

What I like about this Bill is in Part III and it is something on judicial review. We do have in our judicial system a whole division of our courts that deals with judicial review matters. For you to be entertained by a Judicial Review Court, you must be granted leave by the same court. Judicial review matters are only entertained by the High Court. That is the situation that obtains presently. This is under Order 53 of the Civil Procedure Code, Cap. 21 of the Laws of Kenya. This Bill, however, mandates the Chief Justice to expand the jurisdiction of the High Court in implementing this Bill, so that it can also be implemented and addressed by subordinate courts. That is why in Clause 8 the Bill states thus: "The Chief Justice shall make rules that allow subordinate courts to entertain matters on judicial review of administrative action." Therefore, it also diminishes instances where you need leave to address the judge on matters judicial review.

This is a Bill that literary takes the powers of the High Court and vests them in subordinate courts. It is very well elaborated in this Bill why you should move the court on an appeal for a review of an administrative action. For instance, if a State organ, or a natural person, exercising administrative action does something that is ultra vires his powers or goes beyond the powers that he is allowed by this Bill, or by the Constitution, then the court may review such action. The court can even go further than that. If the administrative action is unfair procedurally, then the court will review it. If it is prejudicial to rights, the court will also review it.

The court even works much better. For instance, the court will give very drastic orders in instances where an administrator, who is exercising rights of administrative action, gives orders that are completely unlawful. The court can give a declaration of rights. Therefore, you may move the court and ask it to declare your rights in a certain instance. The court can also give express orders of injunction. That is to say that if an administrator takes an action and gives an order that is prejudicial to the rights of the consumer of such action, a court may injunct, or even stay, that order. Once the order is stayed, as the consumer of that action, you are given time to act within the same mechanism. The Bill also says that you must exhaust its mechanisms before you move to court, or go to the Court of Appeal.

It is a Bill that is very elaborate, particularly in the section on judicial review. The court can also give orders of *mandamus*, or mandatory orders. If you have been applying for a license, for instance, and the administrator has not issued you with the license and he is taking you round probably waiting for a bribe, or something, you can move to court. You can also move to a tribunal. You do not need to go to the High Court. Even where you have not been given that license, or the reasons for denial of the license, you can move to the tribunal and apply that the license be issued. There will, in effect, be a mandatory order issued by the tribunal to the administrator to issue you with the said license.

For instance, the Transport Licensing Board (TLB) gives orders and bans *matatus* from using some routes. If that kind of an order is given, then you can move to the tribunal and it can quash that kind of an action. Therefore, you can get a review at the

lowest judicial entry point of our country. You can get an order from a *quasi*-judicial organ or from a subordinate court. You can also use the internal mechanisms of the Bill to get relief.

I like the Bill because it also provides for the orders of *certiorari* and prohibition. For me, it is a very elaborate Bill which exempts, on the other side, the administrators from criminal or civil liability where they are acting in absolute good faith. If we create a Bill that does not address those who administer it, it can also be a problem.

This Bill goes beyond protecting the consumer of the rights and protects the administrator himself or herself. An administrator may take action and then the consumer may want to go to the police to report an action done in good faith as a criminal offence. That administrator may use the same Bill to say that he has done that in good faith and the Bill exempts him from liability of civil or criminal nature.

This is a Bill that we should all support. Clause 110 of the Bill gives the functions of the Bill to the counties. It affects the counties and we need to support it.

I support.

**Hon. Deputy Speaker:** Hon. Michael Onyura.

**Hon. Onyura:** Thank you, hon. Deputy Speaker. I rise to support this Bill. As indicated in the Memorandum of Objects and Reasons, this is a Bill to give effect to the provisions of Article 47. Article 47 is part of the larger Chapter on freedoms and human rights. So, this is a Bill that we should all support. There has been a tendency, particularly by the people in authority, to be overbearing and not to give service to the *wananchi* as is required.

The Bill covers application and the rules. The miscellaneous part gives us a provision on immunity.

I support.

**Hon. Deputy Speaker:** Hon. Njagagua.

**Hon. Njagagua:** Thank you, hon. Deputy Speaker. I support this important Bill that has come to this National Assembly. I will particularly address myself to Clauses 6 and 8 of this Bill. Clause 6 is very clear about natural justice, that you do not condemn anybody unheard.

Once many of our administrators get into authority in this country, they act with an iron fist. They do not act for Kenyans. They imagine that once you are an administrator, that is the end of the road and you are the best thing that ever happened to this country. I want to talk about administrators in matters of liquor licensing, County Commissioners in their capacity as administrators and Land Registrars when they go to the field to look into matters of boundary disputes. More often than not, these people act with impunity. They do not know that we have a new constitutional dispensation. Kenyans are the taxpayers and these administrators are maintained through these taxes. Their salaries are paid from the taxes from the Kenyan taxpayers. They deal with Kenyans like pieces of riff raff.

Clause 8 of this Bill particularly talks about these people. Once they act in a high handed manner, you have a right to go to a tribunal or the High Court for a review of their decisions. As a consumer of their dispensation of justice, you can go to court to have their actions or decisions that have not gone down well with you set aside or reviewed.

My little worry is that we are saying that a tribunal, or a competent authority, may review an administrative action. This should be left solely to the High Court.

Clause 8 of the Bill talks of instances in, and the reasons for, which you can approach a tribunal or the High Court to have an administrative action set aside. There is a list of almost 10 of them. Some of them are talking about when such an officer acts in bias, oversteps their mandates or gives a ruling on material that was not before them when they so acted. I wonder why the issue of corruption has not been included as a reason as to why you can move to a tribunal, or the High Court, to have that set aside. I believe that at the appropriate time, we might bring the relevant amendment so that corruption will be a ground for having an action set aside. We know some of them are approached either in their offices or bars. They are compromised in such a way that when they sit to make decisions, they are biased from the word go. Their mind has been clouded by corruption.

Clause 9 talks about the procedure within which you need to approach the court for judicial review. We must appreciate one thing, when you approach the High Court to have administrative action set aside, there are certain salient issues that you must bear in mind. One of them is that he who comes to equity must come with clean hands. He who approaches equity must not be guilty of what we call 'laches'; that is unreasonable delay. He who comes to equity must do equity. In as much as you have the power and authority, and in as much as you have the right to approach the High Court, or the tribunal, to set aside the administrator's verdict which you are not comfortable with, you must again be within the realm of equity. You must also be doing equity and not be guilty of inordinate delay. In this matter, we are saying that you must approach a tribunal within six months to complain about the action that you think was not good.

This piece of legislation again gives the High Court or tribunal the right to extend time. If you realise that you are not happy with the decision of an administrator, you can seek an extension of time from the High Court, even when the six months have lapsed.

With those remarks, I support this Bill.

**Hon. Deputy Speaker:** Yes, hon. Nyokabi!

**Hon. (Ms.) Kanyua:** Thank you, hon. Deputy Speaker. I am also happy to support the Fair Administrative Action Bill of 2015, which is derived from Article 47 of the Constitution.

We are debating this Bill in the realisation and knowledge that Government services are really required by all Kenyans. All Kenyans are entitled to Government services. The language in Article 47 is extremely inspiring to our country. It provides that fair administration has to be expeditious, efficient, lawful, reasonable and procedurally fair. There is what we are seeking to comply with in passing the Fair Administrative Action Bill. There are many services that Kenyans require. I have in mind registration of companies as well as issuance of birth certificates, national identity cards and passports. All of these are matters, which if done expeditiously, efficiently, lawfully, in a reasonable manner and procedurally fair, things would get much easier for many Kenyans, who need services from the Government.

Hon. Deputy Speaker, as you see in the second part of Article 47, if you are adversely affected by any Government action, you have a right to get written reasons. We have not always been given reasons. In fact, in our country, you hardly get to know

reasons from the Government officers. Even if they do not want to serve you, they tell you to wait for somebody who has gone on leave. You are told that the person who handles that matter is not around; that he/she is not coming back and you have to come back next month or the month after. Hardly do you ever get a 'no' answer even when they have decided that they will not accept your request. The law asking them to comply and give you reasons as to why they will not undertake a certain action is a very helpful one. Sometimes what you need are written reasons which allow you to make other decisions in your life, instead of being told to go back next month and the month after, and being told that the person who is supposed to serve you is on leave. All those arguments will come to an end with this new law.

We are also looking at the testing. When you do not get fair administrative action in Government offices, you do have a chance to go to court to ask for a court order to help you access some of the answers you need. This is going to be helpful. I am happy that the Jubilee Government has set up the Huduma centres in most of our county headquarters. We are still asking that there be a Huduma centre in each and every county, where some of the administrative documents we need, like identity cards and birth certificates can be obtained in the shortest time possible.

Maybe, as we look at the operation of this law in the next three to five years, we will start debating the possibility of having one personal number. The reason as to why we suffer in our administration is because we need so many administrative steps to be taken by so many different offices. If you start your company now and you want to trade, sometimes you will visit as many as 20 offices for just the same process. You have to visit the lands, environment, operations and so many other offices. You have to visit the Kenya Revenue Authority (KRA) separately for taxation issues. To make our administration services better, we should have one personal number which serves as your identity number, elector's number, personal identification number (PIN) and a driving licence number; it will help you in most of the other services we need. This is what they have in developed countries.

As we make progress in our administration documents, these personal numbers are going to be very helpful in how security is handled. When we come to Government services, it is going to be important for our Government officers to keep records of who visits them. It is good to have records of who has visited Government offices when they come in for fair administrative services. We have a lot of other people who visit Government offices and it is not clear why some of these people visit them. That is how we have come to the problem of brokerage. With a law like this, it is often assumed that you do not need to pay any brokerage fee for a document like a title deed, or any Government document you might need.

I support the idea of notices. In the past, I worked as a lawyer for poor people. A lot of them lived in the wrong pieces of land. One of their biggest nightmares was eviction without notice. With this law in place, there can no longer be action taken by Government without adequate notice to anybody who is going to be affected. If you are going to be affected by a Government decision, it is only fair that you are notified of that. Even where we want to expand a road or railway line, and there are people living on that road or railway line, fair administrative action will require that they are given notice to



vacate, move or organise their life in a certain way. I really support the part that requires adequate notice for Government action. That is extremely important in this country.

Last but not least is the link between administrative documents and corruption. Because some of these documents have become very rare, it has become very easy for our 41 million Kenyans to resort to corruption. Sometimes when you want a passport and you become desperate, it becomes easier to resort to corruption to get it. It becomes easier to resort to corruption to get a document like a driving licence. With this law in place, you will not need to bribe or resort to any corruption. You will just need to follow the law. If you are applying for a passport, a trade licence, pension or whatever other Government service you need, there needs to be assurance with this law that if you do not get served efficiently and fast, you can question why you are not being served as fast as you should be and within reasonable time. This is what this particular law will do for our country.

I am very happy to support the Fair Administration Action Bill. I ask that we make use of the institutional framework and the Commission on Administrative Justice (CAJ) - the Ombudsman. There has been an attempt by the Justice and Legal Affairs Committee to continue supporting the CAJ, and make sure that it has sufficient resources to deal with the questions that come to them. Beyond that, there is going to be court processes. Again, if you want to question a decision, you have to do it within six months. That is what the law says.

Between the Ombudsman and the courts, I think we are going to get the answers that we deserve on fair administrative action. We hope that from now on we will see better efficiency by our Civil Service and more importantly that Kenyans agree to use this law. In countries where they have used the Fair Administrative Action law well like in South Africa (SA), Government services become very easy to access and that is what we are hoping will happen with the passage of this law.

Thank you, hon. Deputy Speaker. I support the Bill.

**Hon. Anami:** Thank you, hon. Deputy Speaker for giving me the opportunity to support this Bill. I wish to support this Bill because it blends very well with the Bill of Rights which is provided for in the Constitution. Our citizens have to enjoy the Bill of Rights as provided for in the Constitution. The opportunities like those provided by this Bill will make it easy for them to access these rights. I have in mind this issue of delayed justice. A lot of administrative decisions get delayed and you find a lot of people around the country waiting for decisions to be made. That way, people do not access development, services and they are treated very unfairly. Like in the issue of accountability, public authorities will have to be accountable for the decisions they make. This is very important because for a long time the roles have changed. You find that the boss is the servant and the servant is the boss in public offices. With this Bill, public servants will take the position of servants and appreciate that members of public are indeed the bosses who need to be served. This is very important.

Then there is the issue of approach and commitment to work. For a long time, we have experienced a casual approach to work. The provisions made in this Bill will cause public officers and institutions to be more seriously committed to their work so that we do not have a casual approach to work. As I have heard Members observe here, postponements are made over issues that should not be postponed at all.

There is the issue of notices. We have had experience of demolitions of people's properties. When you move around you see red marks put on investments that people have made over a long time and spent a lot of money on. These constructions are demolished without any notice being given to the citizens. This Bill is going to give leverage to members of the public who will have redress in case their properties are destroyed through *ad hoc* decisions that are negotiated by the so called private developers.

There is the issue of vetted officers. With the implementation of the new Constitution we have had very many people absorbed into the public service and even into high offices like those in the presidency. One wonders because now and again you find that the President is for example misadvised here and there and a Cabinet Secretary (CS) is also misadvised. We see pronouncements that are challenged every now and then in the media and all over. We have for a long time nurtured the principle of vetted officers. This Bill should also provide opportunities for vetting of officers so that we do not have people working in the public service and behaving as casuals as we experience now. That is why we have terrorism all over because the people responsible for advising the Executive are not doing so. If you look at the process of appointments and promotions of public officers you start to wonder. We are now experiencing cases where we have a lot of officers in acting positions.

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

*(The Temporary Deputy Speaker (Hon. Cheboi) took the Chair)*

People are in acting positions for a very long time and we have instances. I could give some specific instances where an acting officer is also appointed into another acting position. So, he is acting, acting so and so. We need to get rid of this if we want to enjoy smooth governance in our country.

There is the issue of awareness-raising. This Bill needs to make provisions for awareness-raising amongst the members of the public. Our youth and other vulnerable groups have the challenge of accessing justice and fairness in management of their issues. You find that every now and again they are entangled in for example the processes of getting licences for their businesses and identification cards. We now have this complication of getting a certificate of good conduct. We should have an awareness-raising provision in this Bill so that public authorities have the responsibility of educating the public on what services they can give. In this case, I really wish to support performance contracting. This should be encouraged and be actually contained in this Bill so that people are able to account for their activities and also earn their salaries and not just sit there and enjoy their time.

Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. The person on top of the list here is hon. Johana Ngeno but I realise that he has just come in. Did you leave your card as you left, hon. Ngeno?

**Hon. Kipyegon:** No.

*(Hon. Kipyegon gestured)*

**The Temporary Deputy Speaker** (Hon. Cheboi): You have surrendered your chance if you do not want to speak. I will give it to the next person.

*(Hon. Kipyegon moved towards the Chair)*

No, hon. Ngeno, you do not have to come to this direction. Do you want to speak to this or not?

**Hon. Kipyegon:** You will have to give me a minute.

**The Temporary Deputy Speaker** (Hon. Cheboi): Well, I think that is okay. I will give this chance to the hon. Member for Kikuyu then we will skip some three Members before we come back to you. Then you can have your moment.

**Hon. Ichung'wah:** Thank you, hon. Temporary Deputy Speaker. I also thank my brother hon. Ngeno for surrendering his chance to me. I will be very brief because I have noted that most of what I would have said was adequately covered by the Whip of the Majority Party, hon. Katoo.

It is important to say that with the new Constitution we also need a new way of doing things in this country. One of the areas in which we need a new way of doing things is in the running of non-government entities and parastatals in this country. I have seen a habit that was carried on from the old days in this country where Cabinet Secretaries (CSs) even to this day imagine parastatals and other Government agencies are departments within their Ministries. They want to run them as they wish. I have seen instances and what comes to mind now is the most recent instance with the Kenya Airports Authority (KAA) where a Principal Secretary (PS) walks into a boardroom where the board is holding a meeting and unilaterally forces the parastatal's board to suspend or force certain officers to go on compulsory leave without giving them any fair administrative due process of law.

Hon. Temporary Deputy Speaker, the provisions of Article 47 of the Constitution are very clear. Indeed, if we are to give our civil servants the opportunity to serve either in the parastatals or in the Government departments that they are serving - an opportunity to do that without undue influence - we must be in a position to protect them with a law. This Bill is doing exactly that. It is protecting our civil servants both at the national level in parastatals, at the county levels of government and other agencies of Government so that they feel free to exercise the powers that have been bestowed upon them by the various articles that create the entities that they are running. They should not live in fear that if they do not act to the whims of those who are above them, they may be fired without any due process being followed. Therefore, this is a good Bill and I want to support it.

The other thing I want to say is that there is right to have recourse in court. We have seen in the past officers being hounded out of offices and since they have no recourse at all maybe they end up going to court and their cases are dismissed because there was no due process followed or there were not any clear legal provisions that they

would follow. This Bill creates such provisions in instances where if I do not get justice from an administrator who is above me, then I have recourse through the courts of law; High Court, is a very good thing. It will not only protect civil servants but also the public. This Bill also speaks about instances where administrators will affect the people. It says that there also must be people participation in the process of fair administrative process. It is a great thing. It gives the people of this country back the power that belongs to them as bestowed by the Constitution.

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

**Hon. Ogolla:** Thank you, hon. Temporary Deputy Speaker. The law is an obligation placed on us by the Constitution. It is important that we look at it in a very serious way. Beyond that, it is one of the ways of how we can clearly benefit from the whole set of the Bill of Rights that is in the Constitution.

It has a background in terms of experiences that we had in the past particularly in terms of service delivery and the relationship between the Government and the citizens. This has been an exercise for some time. The Government has been distancing itself from the public unaware to an extent that citizens were complaining in terms of service delivery. The law, in my view, has limited the element of post mortal action to look at administrative actions as they happen. This is one of the many advantages that this law has brought around, that you do not wait to complain after things have happened. You can complain on the spot. In terms of looking for how some of the issues can be addressed on the spot, it has widened the scope to the extent that you can engage the administrators themselves. You can engage the commission, courts and the tribunal. It has widened areas and players that can be approached in terms of when either a right is denied or a right is getting delayed.

We have had many problems before in terms of even issues of pension alone. It is something that one had worked for but getting pension, if you look at the past records of Parliament, the number of Questions that were raised on people whose pensions were delayed or pensions could not be traced, they were all over. This is the time that this kind of law now becomes very appropriate and I want to believe that it is going to help the country in a big way. However, there are things that in view really need to be looked at in the Bill, how we can amend it and stuff like that. There is the individual and normally the communal individual. There has been this problem in the past where trustees of the people engage in actions that in the end harm people or are not very clear in the end. You want to look at for example, what the local authorities used to do before. There is the issue of Tiomin and the Yala swamp. Many of them are related to commitments that councils engaged in without the councils themselves engaging the communities. So the councils were acting on behalf of the communities but the communities did not know exactly the actions that the councils were taking to an extent that you get the councils engaging in contractual obligations that in the end harm the communities.

So, this is one area where we want to look at this legislation now. To what extent would we want to address those kinds of issues that had happened before? To what extent are we able to get back in terms of date of how to effect the kind of provision that we now have in the Bill? In Yala swamp like I had mentioned, Bondo and Siaya county councils engaged in the Dominion Group of Companies. In the process, they got into a lot of contractual obligations but did not inform the communities adequately. In the end

communities are suffering. They do not have anywhere where their issues can be addressed and some of these are happening because of some of the mistakes that were committed by the councils themselves which were not necessarily done by the communities. So that is one area where the Bill will want to look at and what happens to the communal individual. It is very easy to handle individual complaints when administrative actions affect an individual. It is much easier than when administrative actions affect the communal individual in the name of the communities. I want to believe this happened in many other areas where we had communal land.

The other thing that the Bill has to look at is in terms of the challenge of internal hierarchy. For example, an administrative action is commissioned by a junior officer or a junior level of Government or a lower level of Government but you want action to be taken vertically by the next level of Government. What kind of a provision and position do we have for a lower officer or a lower level of Government to complain to the next level when the next level does actions that are not necessarily the right actions? So, this is for purposes of internal mechanisms.

I have mentioned the issue of time. We have provisions in the National Environment Management Authority (NEMA) legislation that requires that when certain actions by certain individuals affect the environment in one manner or the other to an extent that the environment also affects the communities, there is the element of the polluter paying. To what extent can this legislation look at those kinds of directions? How do we get to have a community get paid through NEMA and that goes to the whole issue of information. How do we get this information out to the public? To what extent should the public be engaged to get to know exactly that when this happens or when it does not happen, this is the direction where I have to go. This is the next level that I have to reach and this is exactly what I expect. So in my view, there are certain things that the Bill still has to look at for purpose of particularly what I am calling communal individual.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): We will have hon. Gunga Mwinga, Member for Kaloleni.

**Hon. Chea:** Thank you, hon. Temporary Deputy Speaker, for this opportunity. I wish to say that I support this Bill. Indeed, this is a very progressive Bill. I must say that in as much as the Bill seeks to exclude the disciplined forces, it is my view that they should equally be guided by the provisions of Section IV of this Bill and whatever administrative action they take, they should do it in a very efficient, lawful, reasonable, procedural and fair manner.

I say so because we notice there are so many things that happen within our forces and if this guidance is not given, we may not be sure of what might happen in future. Having said that, I must say that for this Bill to become effective and operate well, there are certain issues that I equally need to point out.

The first issue relates to the appointment of members to the various agencies, the tribunals or the administrators if I am to put it like that. Persons appointed to these positions need to be very qualified, experienced and independent.

Hon. Temporary Deputy Speaker, I believe the very sense under which these agencies and tribunals are set is basically for them to be very independent and dispense justice in the manner expected. In these appointments, there is equally need to consider

the issue of the Leadership and Integrity Act. Members appointed to these tribunals should embrace the qualities that are desirable for them to serve in these bodies.

What is also progressive in this Bill is the provision in Section IV of the Bill. Section IV of the Bill promotes public participation. It is interesting to note that for any action that needs to be taken and that probably affects the public, it is important that the public is notified. Apart from being notified, the public is equally invited to give views on the issue. This is important and we have seen in so many occasions that decisions are made and members of a certain group have not been invited to take part and realise that these decisions affect the communities a great deal.

The third issue I wish to take up is the issue provided in Section IX of this Bill. The Bill in Section IX provides that all internal mechanisms or remedies available must be exhausted prior to any action being taken probably in court. This is a very progressive section and if it were to be done, it would probably reduce cost and would probably move towards ensuring that the parties have these disputes settled in a very amicable manner.

The last thing I would wish to touch on this Bill is the issue of funding for tribunals. You realize that we have had these institutions before and probably due to shortage of funds, most of these tribunals sit, say once in three months, and others sit once in a year. In consideration of all these, it is equally important that in the Budget making process, we should seriously look at these institutions so that they can work effectively.

For those issues, I wish to say I support this Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well, let us have the Member for Molo.

**Hon. Macharia:** Thank you, hon. Temporary Deputy Speaker. At the outset, I rise to support this Motion because I think it is the first time we are having the quasi judicial bodies being held accountable by this Bill. These bodies, for example, the Transport Licensing Board (TLB), the Land Registration and the Teachers Service Commission (TSC), some of the decisions they have always adopted have really brought a lot of suffering to people. For example, if you buy your *matatus* and you are denied a TLB, you feel that things have not been handled fairly.

Therefore, for these reasons, hon. Temporary Deputy Speaker, I rise to support this Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well, let us have hon. Wangamati.

**Hon. Wangamati:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity that I may also add my contribution to this Bill.

Hon. Temporary Deputy Speaker, I support this Bill because it brings a new approach to the administration for action. For a long time in this country, administration has let down members of the public and even in their request, it takes a long time for our people to get services from the administration all this past. Sometimes even when we complain about the entire Government, it is because of poor administration in taking action. I have been sitting here for a long time and I have listened to hon. Members contributing to this Bill. I do not want to repeat but it is good that the House is gearing towards reviving good administration in this country. This Bill once enacted will help us and our people to start getting things moving. Actually, even if we want to talk about

development, action taken by the administration takes a year or it takes six months before a decision is made. This makes us mark time on economic development.

Hon. Temporary Deputy Speaker, I support this Bill wholeheartedly.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well, let us have Member for Kajiado, hon. Seneta.

**Hon. (Ms.) Seneta:** Thank you, hon. Temporary Deputy Speaker. I rise to also support this Bill in that it gives notice to the person affected. Most of the time, our citizens lack information or a notice for the action that is being taken by any administrative person and citizens suffer.

I want to give a very good example of the National Environment Management Authority (NEMA). Most of the time they do an environmental assessment on a certain project and the public is not given any information on the action taken and when the project is going on, it is stopped and this affects people. Therefore, I really support this Bill because it encourages the administrative persons to give information and to give notice to the affected persons so that you can know the next course of action.

Most of the time for our business people, when your licence is terminated, you are not given information at the right time and, therefore, this affects your business. It gives you an extra cost and many of these people run to the court and end up spending a lot of money unnecessarily.

Hon. Temporary Deputy Speaker, I want to support this Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay, Member for Awendo.

**Hon. Opiyo:** Thank you, hon. Temporary Deputy Speaker, for allowing me to speak to this Bill.

First, when this Bill finally becomes law, we shall have made major steps towards achieving the Bills of Rights as stipulated in our Constitution.

The provisions within this Bill will go a long way in helping us deal with issues of tribalism, nepotism and other forms of favouritism that are usually practised in our public offices. I say this because it provides that members of the public are adequately given information regarding certain administrative actions taken by the administrators. For example, this Bill envisages a situation where advertisements regarding those opportunities will be made in good time. The processes leading towards recruitment and employment of individuals will be transparent. When anybody feels aggrieved, he has several avenues of making sure that his sentiments are heard, including judicial review. This now calls on the Judiciary because in the course of issues to do with administrative action, they are usually a last resort according to this Bill. It calls upon the Judiciary to start making themselves efficient so that members of the Public do not get disappointed with them. This Bill will help us deal with tenders for contracts in various offices very firmly and conclusively.

There is also the other issue of pensions that had been alluded to by one of the Members who spoke here before. Pensioners in this country have really suffered in the hands of administrators. There are pensions that are either not forthcoming or monies that have been released for purposes of paying them and never get to them because of administrators who are supposed to hold this money on their behalf. A report was submitted to this House with regard to teachers who retired in 1997. Their issues to do with pension have been outstanding for so many years. A lot of them have died. Others

are ailing and suffering yet people who are supposed to take action and make decisions on their behalf and help them get their payments are not taking expeditious action. When this Bill finally comes into effect as law, it will enable such people to find solutions to their problem either through the courts or all the other avenues that have been provided for by this law.

So, Members of Parliament should seriously support this Bill so that a lot of the issues that emerge from public service can be dealt with expeditiously and to the satisfaction of the members of the public. I support the Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): I will give an opportunity to Member for Emurua Dikirr. I had given you a chance before. I hope you are now ready.

**Hon. Kipyegon:** Thank you, hon. Temporary Deputy Speaker for giving me this chance to contribute. I also support this particular Bill which is meant to cure the provisions of Article 47 of the Constitution which talks about the right to fair administrative action. I am also a believer of the rule of law. I believe that whichever actions we take whether in our positions as State officers or anybody who is occupying any State office must always be done within the confines of law. The people who are affected by these actions must also be dealt with in accordance with the law. This Bill gives weight to how those actions are supposed to be taken.

Part II of this Bill talks about the quasi judicial functions which are normally undertaken. Members of the public usually encounter problems that have something to do with administration. Usually, they do not find places where they are supposed to address those problems. This Bill will assist the people whose rights are being trampled upon. These are people who are never given proper notification on how to get their rights.

Part II also talks about the notices which are supposed to be given to the persons who are likely to be affected by this administrative action. It is quite important because it gives the people time. It binds the people who are dispensing these administrative actions to ensure that whatever actions they are going to take, they must inform or notify the people who are concerned in good time. It is also unfortunate that there is a part which is excluding the disciplined forces. Although we believe they have their own procedures, sometimes we also need to review those administrative actions which are within the precincts of the disciplined forces so that they can also access their rights.

There are several cases which are usually not seriously looked at. The reason I am backing this Bill is that there are rights which nobody has been giving serious attention. An example I can give is the question of evictions. In the Constitution, there is a right for an eviction. If the Government wants to construct a road or build a factory, there is a right to evict that person and compensate him or her. Before such an action is undertaken, this Bill will give the right to those people who are being affected by whichever kind of eviction. They will be given the right to be heard and to decide on what they want to do or where they want to be relocated. With regard to compulsory acquisition of land by the Government, I think this Bill will cure that.

There are procedures which are followed in demarcation of communal land. We have serious cases about land. We have the Adjudication Act which gives powers to the Committee to adjudicate and allocate people land and titles in the long run. However, sometimes these procedures are delayed to a period of, say, more than 10 years. This



denies the people the opportunity to acquire land title deeds or any documents that show that the land belongs to them.

Sometimes, the procedures which are used affect the people who live in those areas. I have an adjudication section in my constituency which was demarcated 20 years ago, but due to some weird procedures which were used by the adjudication committee, most of the people lost their land. This Bill will allow the people who are aggrieved to seek administrative justice either through the courts where they can have court reviews or tribunals where those matters can be settled.

There is also another issue which has been giving us a lot of misunderstandings especially in terms of court procedures. We believe that justice must be dispensed in time that would not deny justice to the persons who are seeking their rights in those courts. On several occasions, courts have been extending the time of dispensing justice. They have been taking unreasonable time to clear the cases which are before them. The creation of these administration offices to deal with administering justice will assist in matters where members of the public have been faced with undue delays in courts and in the dispensation of justice.

I have been looking at this Bill and thought it will be an opportunity for us to cure some of the wrongs which have been done to the public. I have a situation where a court of law has delayed a case of a person who was exhumed and taken back to the mortuary. For more than seven years, the person has been in the mortuary and nobody has decided when he should be buried and where. These are issues in which we need to have other procedures which can allow the members of the public to seek either court review or judicial review, so that these cases can be dispensed with and the people allowed to bury their loved ones.

I support this Bill. I hope the implementation of this Bill will assist in settling most of the issues that are facing the public.

**Hon. Wetangula:** Thank you, hon. Temporary Deputy Speaker. I also wish to add my voice in support of this Bill. This is a progressive Bill. If passed by this House, it is going to solve some of the things that affect our people directly.

The Bill, as stated in the Memorandum of Objects and Reasons, aims at giving objectives to effect the provisions of Article 47 of the Constitution. If you look at Clause 4 of the Bill, it states very clearly that any administrative action shall be undertaken in an expeditious, lawful and reasonable manner. Sometimes, some of these Government agencies make decisions and they do not communicate the decisions to the affected persons. Somebody mentioned the National Environment Management Authority (NEMA), which does environmental impact assessment of any development and then involves the community. At the end, they do not communicate their findings to the people. You just see a development sprouting up and maybe people had objected to that development. This Bill will make sure that these agencies do not just behave the way they want.

Sometimes, some Government agencies become law unto themselves. They behave in a manner that is likely to affect people. They do not give effective communication to the people. The Bill also gives the people the constitutional right to participate in any decision making. It therefore, means that any Government or State agency that makes any decision that affects a person, persons or groups of people, must

be accountable. They must communicate effectively the information or the decision they have taken to the people.

I support this Bill. Corruption has come about because some officers or agencies exploit the ignorance of the people and refuse to release useful information that can help the people to make useful decisions.

When passed, this will be a very beautiful piece of legislation. It will help us to put an end to some of the things that have been happening. It will also put an end to corruption that has been slowly perpetuated by some State agencies. The beauty of this Bill is that it provides for judicial review. It will help the people to make reference to it. It will also help people who are affected by decisions that are taken by State agencies.

I support this Bill.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Temporary Deputy Speaker. I wish to support the Bill with amendments.

This is a timely Bill because it is one of the Bills with a constitutional deadline. I still want to put a challenge to the Committee on Implementation of the Constitution that they need to be more alert and do their work. My worry with this Bill is that the area or discipline of judicial review is a very wide area. Giving six pages of a Bill to it is not doing sufficient justice to that discipline of the law.

Having said that, hon. Kaluma, the Member for Homa Bay, has written a whole book on the practice of judicial review. I do not know if his expertise was sought because he sits on the Departmental Committee on Justice and Legal Affairs. I do not know if he would be of the same view. Six pages on the subject of judicial review sound to me like a joke. I worked at the Office of the Attorney-General for three years as a State Counsel. A lot of times, I had to defend matters relating to judicial review of administrative action and it is not one of the most exciting things to do.

As a country, we have come a long way. I am glad that the constitutional provision has provided very express provisions that now make it a mandatory right for administrative bodies to not only give information, but to act fairly where the public is concerned. Members have spoken at length about the positives of the Bill. I just want to indicate some of the areas in which I have concerns and which I would want the Justice and Legal Affairs Committee, when looking at it, to see whether they could propose amendments. If that is not possible, then I could bring amendments. I want to look at Clause 4(3)(a). Unfortunately, we do not have a report of the Committee as yet. I would have been interested to note their view on the issue of self-incrimination especially as it relates to Clause 4(3)(a), where it says that a person may appear in person, whether alone or in the company of another person or intermediary of their choice other than a legal representative. I do not understand why at that point we want to exclude a person from attending with a legal representative. Appearing with a legal representative is a matter of right under the Constitution.

Clause 5(1)(a), which is a positive provision on issues of administrative action affecting the public says:-

“...an administrator shall –

- (a) issue a public notice of the proposed administrative action inviting public views in that regard.”

We know that a lot of our officers in this country have been fairly mischievous. What a person can do is to put an administrative notice inside their office or on a very obscure public notice board and consider that as public notice. So, I would suggest that we adopt the practice we adopted in the last Parliament by saying that the public notice may be in the *Kenya Gazette* or in regular newspapers.

I am very happy that a linkage is provided with the Commission on Administrative Justice (CAJ). However, I would want to request the Departmental Committee on Justice and Legal Affairs that this is one of the areas that they probably need to look at more keenly so that the referral is not casual. The core mandates also need to be very clear otherwise you will have a clash. Indeed, some people had already called me with concern that this is a Bill that is taking over the work of the CAJ. We need to be very clear about the core mandates and possible clashes between those two bodies.

On Clause 6, I am very happy that we are talking about the right of the public to information. However, what the Bill provides is not proactive sharing of information with the public in a lot of the instances other than the clause I have referred to before. We need to be more proactive in informing the public and not just when they ask for the information.

I am happy under Clause 8 that we now have very clear standards for judicial review. However, I would want to just comment in relation to Clause 8(3), and I notice we erroneously provided for two sub-clauses (3) but that is not much of an issue. The first Clause 8(3)(a)(iv) provides that a ground for judicial review could be bias or where bias is suspected, I would want to encourage the Committee that when they are considering this--- I have worked for many years in Government Ministries and elsewhere as a consultant mainstreaming gender issues. When you leave issues like these open, the possibility of discrimination on the grounds of gender and disability is very open. So, let us provide in that clause very clearly that we are outlawing discrimination on grounds of gender or disability.

I would also want to indicate under the second subclause (3) where it talks of unreasonable delay or failure to act in discharge of a duty imposed under any written law, that it is good that we have provided on the issue of unreasonable delay. The subclause reads:-

“The Court or tribunal may entertain an application for judicial review made on the ground of unreasonable delay on the part of the administrative authority to act where it is shown to the satisfaction of the Court that—

(a) the administrator is under duty to act in relation to the matter in issue;

(b) the action is required to be undertaken within a period specified under such law.

(c) the administrative authority has refused, failed or neglected to take action within the prescribed period.”

That, therefore, means that when a period of time is not specified then you cannot go and challenge the action on the basis of unreasonable delay. I would suggest that we provide the standard of the reasonable time for delay so that even where time is not specified, the courts may use the standard of reasonableness. That will ensure we do not

have a situation where people will be hiding under the guise that no timeline is provided. Somebody might decide three or six years is not unduly long, if it is not specified. That is a very dangerous provision.

Another concern I have is that we are saying this matter or complaint must be brought within a period of six months. I wish we could extend it to one year, especially for a lot of Kenyans in rural Kenya who will take quite a lot of time to know this. Even when they know, because of challenges of resources and time, they may not be able to complain.

I can see my time is almost gone. I would want to suggest to the Committee to consider expanding Clause 10(2) where we are talking about regulations. This is where the mischief is hidden. It is a very lazy way of legislating. All the gist and core issues to do with judicial review should be incorporated here by un-packaging what this clause reads.

With those few remarks, I support with amendments. Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Was that hon. Millie Odhiambo? I think so. She was very calm and serene today. That is very unlike the Member for Mbita. I will give this opportunity to the Member for Laikipia East before I come to hon. Kaluma.

**Hon. Kimaru:** Thank you, hon. Temporary Deputy Speaker. I stand to support the Bill that is before this House. Our expectations as citizens are quite high, especially when we look up to civil servants. Many a times we are disappointed in the way they carry out their public functions, from the Civil Service to the Judiciary. At times inordinate periods are taken to execute very simple tasks. Many times omissions or commissions that contravene the civil or legal rights of citizens are there. When most of these are done, it is not because the administrators or officers who are empowered to carry out these duties do not know what they are doing, it has become part of the system. Civil Service for a long time has been lethargic. It has had to be nudged on for the longest time possible to do work. Even now when we are talking of Kenya being a newly industrialised country or heading towards that direction, we still see that lethargy prevailing in our Civil Service.

I am personally disturbed by the omission in Clause 3(2) of the disciplined forces from this fair administrative action. When we look at the police service in particular, it has been affected greatly by lethargy, inefficiency and by sleeping on the job quite a number of times. I have a case in point where cheques were stolen from the Constituencies Development Fund (CDF). We waited for the cheques to be presented because we knew who the beneficiary of these cheques was. We had the evidence and took it to the police. Six months down the line, no action at all has been taken just because somebody is giving a bribe right, left and Centre. When the disciplined forces are exempted from fair administrative action, I feel that should not be the way we should go. This is because, they have responsibilities to carry out but they abdicate them. I would propose at the Committee stage that we can do amendments that these also be made to fall under this law. I do not see any reason why the disciplined forces should be exempted from acting expeditiously and from carrying out their duties as they should. In any case, when you look at the work of policemen are they not supposed to present accused persons to court within 24 hours? That is in the Constitution. What is this other thing that

we want to exempt them from? I do not think that there is any danger in making the disciplined forces do their work as they should. If they are sure that what they are doing is right and they have been given exemptions in law where they need to take more time, they have nothing to fear. I feel that even the disciplined forces should also squarely fall under this particular law.

Away from the disciplined forces, with the kind of lethargy that we see, for example, in the lands office - having a title transferred at the registry in Nairobi can be depressing. It can take forever. It has become the norm that if you want your title to be fast tracked, you must bribe and there is no recourse. With this Bill, we are going to have a fallback position where you can go and complain and see if you can get justice.

Pensioners have had to wait for a long time to get their hard earned pension. It is evil and unacceptable for a pensioner to wait for five years. Quite a number of times you find that some of these people even die before they get their pension. They cannot buy food. They cannot carry out other duties and all along we tolerate this incompetence and injustice. I believe when this legislation comes into effect some of these injustices are going to be solved.

The Judiciary is not without blame and neither is it above the law. I have been a victim. Prior to the elections, one of my opponents went to court and accused me of hate speech. The magistrate was bribed and every other time, the case would come for mention. The elections were drawing near and I had to complain. I wrote a formal complaint. I came to Nairobi to seek justice and up to date my complaint has never received a reply. No action was ever taken, but at least by my action, suddenly the magistrate woke up and heard the matter in a day, made a ruling in another day and I was absolved of any wrong doing. Had I been an ordinary citizen, that matter would have gone on in court forever and I would have been finished. The way the Judiciary behaves today, I am not so sure if the Bill goes through whether some of their reasoning is in public good or serves any good at all. I know even in the practice of law and I have said this before, it is not just about a matter of the letter of law. We cannot be mechanical in the way we carry out matters.

I do not know whether it will be *sub judice* if I talked about the Security Bill. It has taken inordinately long to be decided. Is somebody sleeping on the job? Is somebody on a mission? This Bill is going to cure many ills that have bedevilled our society and I hope it is not just going to be just another Bill or law. We have so many good laws but how we apply them is what is sickening.

When we talk of corruption, if the laws on corruption are applied properly, this country would be clean. We are not sure whether the Ethics and Anti-Corruption Commission (EACC), is not sleeping on the job. Was the Report that was brought before this House done in good faith? Were some of the fellows who were in that list given an opportunity to be heard? Did somebody abuse the powers that they have for a certain end? So, I trust that this piece of legislation, once it comes into effect and it is applied seriously, our nation will change. Many people who have suffered injustice will be vindicated.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. We will have hon. Kaluma, who is an authority in the field of judicial review. Member for Homa Bay.

**Hon. Kaluma:** Thank you for the compliments. I also thank hon. Millie Odhiambo, my niece for recognising that there is something I have taken time to know and write about. Today is a landmark day in the area of administrative law and administrative actions in the country. Let me give compliments to a few people who have made it possible for us to reach where we can talk of a Bill.

When I left the Kenya School of Law I took a lot of interest in this subject. You will remember it was very difficult to get court decisions on administrative law or judicial review as we explicitly call it. Permit me to use this occasion to thank the hon. Justice Ringera. I am told lately he is serving humanity in the area of law somewhere other than Kenya. When I think of today and this area of law I feel very sad that when Justice Ringera sought to be appointed to the Supreme Court, some people had the temerity to say he should not serve there, but they had a wrong sense of entitlement. That is a judge who helped us nearly singlehandedly together with others to develop the area of administrative law, in terms of how we deal with administrative actions and judicial review.

Before I go to the substance of the Bill let me mourn the fact that Justice Nyamu is no longer serving in the Judiciary. I will be confirming to the House in a short while that if it were not for Judge Nyamu, the several grounds of judicial review that we are sorting here today and we are talking about would have not been developed. These are: The public law principle of fairness, the doctrine of proportionality that you see them alluding to vaguely in this Bill and issues like legitimate expectations. Those grounds of judicial reviews and court interventions against administrative actions were developed by Judge Nyamu, Justice Emukule and Judge Warsame in the Court of Appeal wherever they are. We take occasions such as this to recognise the efforts that they made to put Kenya where it is in terms of law and administrative actions.

Let me thank the people of Kenya. The area of judicial review has a long history in this country. However, if it were not for the people of Kenya putting it in Article 47 of the Constitution that an Act of Parliament specific to fair administrative action will be legislated, we would not be here.

As early as 1956, we domesticated the administration of justice system of England, as provided in the Miscellaneous Provisions Act of 1938. That is the law governing the practice of securing fair administrative actions in the country to date. Therefore, there is a reason for thanking the originator of the Motion for bringing it to the House. I see it under the hand of the Leader of the Majority Party. It is timely. Even in England, whose law we domesticated in 1956, they amended their substantive law on this subject in 1981. Of course, through court decisions, new grounds come up. The scopes of judicial review and administrative law have continued to expand there. We are still tied in Kenya, possibly up to the time we will be having this Bill, to the law as it was in England in 1938. It is a good thing to say that we will have a single law going to talk about the issues of fair administrative actions and judicial review, among other things.

Hon. Temporary Deputy Speaker, permit me to go into the substance of this Bill. The idea is good but the foundational conception of the Bill is poor. If you look at Clause 8, for instance, which makes references to the importation of the court supervisory jurisdiction under Article 165(7), it is not what judicial review is about. The supervisory jurisdiction, under Article 165(7), is not the foundation of judicial review. Judicial

review, which is essentially court intervention on administrative actions to ensure fairness, is inherent. It is natural to the High Court. It is not arising from the Constitution or the supervisory jurisdiction of the court, under Article 165(7). This was even a confusion under the previous Constitution, which made some people to think – because it also had supervisory jurisdiction – that Judiciary was arising from the then Section 65. This is not it. The power of the court to intervene on administrative action is inherent. I want to take a stride; that we have an opportunity, within the context of the Justice and Legal Affairs Committee, as individual Members of Parliament, to deal with this matter.

The definition of grounds upon which you can seek a court intervention for judicial review, beginning at Clause 8(3) going down, is also a bit narrow. These grounds have grown, and they continue to grow. This is a court-grown area of legal discipline. We will be saying that those grounds which even our court has joined the other Commonwealth jurisdictions in developing, like the ones I was talking about; the doctrine of proportionality and legitimate expectations and others, will be in the final Bill that this Parliament will pass. When you look at Clause 9, there are good provisions in terms of extension of time. Of course, Clause 9 does not specifically prescribe for extension of time but if you go to Clause 9(2), there is latitude created to extend time where, for some reason, a person is not able to institute a judicial review action within six months. This is something already happening in England, following the development of their law in 1981, and in their procedural law in 1982. This is something we are lacking in Standing Order No. 53 and Sections 8 and 9 of the Law Reform Act, which is currently the parent law on administrative law. This is something to retain.

However, there is a dangerous thing at Clause 9(3). It says that no court shall review an administrative action under this Act unless the internal mechanisms for appeal or review and all internal remedies available under any written law are first exhausted. I want to inform the House that this was actually a replication of the then Section 8(2) of the Law Reform Ordinance, which is currently the Law Reform Act. Way back in 1960, we removed these restrictions and left it open for any person who believed that there was need for court intervention to institute action, notwithstanding that you had remedies through review or appeal in court. So, really, this is taking us back the period before 1960, in terms of the history of this subject.

Hon. Temporary Deputy Speaker, a bigger contradiction is to be found in Clause 10 as read together with Clause 12. In Clause 10, they are saying that the procedure specified in Section 8 is in addition to, and not in derogation from, the rules of procedure under Order 53, as a subsidiary legislation. We cannot enact a parent law and say that, in terms of its provisions, it cannot derogate from delegated legislation. It is putting the cart before the horse. That is not how it works.

I can see that my time is running out. If you look at Clause 2, they are defining “administrative action” to be actions of public authorities and quasi-judicial tribunals. This is again taking us back. As it relates to fair administrative action, the availability of judicial review, which is the manner in which the high court intervenes in this area of law, today extend to anybody who decides or does anything affecting the rights of a person. It is no longer just quasi-judicial bodies or judicial bodies or public authorities. Everybody doing anything, even in a private enterprise; which affects the livelihood of a

Kenyan is bound to be fair in administrative action. Anybody affected by such action has the right to proceed for judicial review.

Hon. Temporary Deputy Speaker, I would have gone in great detail if there was opportunity---

**The Temporary Deputy Speaker** (Hon. Cheboi): I wish I could add you a little more time but my hands are tied at this point in time. I give the Floor to the Member for Elgeyo Marakwet, hon. (Dr.) Chebet.

**Hon. (Ms.) Chebet:** Thank you, hon. Temporary Deputy Speaker, for this opportunity. I support the Bill.

At the outset, I want to appreciate the Committee for coming up with this Bill. Overtime, we have witnessed problems whenever we approached administrative agents, as members of the public. When jargon is used in language, it sometimes becomes a barrier of communication between public servants and members of the public. They may not understand and may require an interpretation. In some cases, administration of justice is denied to the public because of lack of understanding or even where the agencies are not available or they are not willing to provide the required information. Information is very crucial for the public and if it is denied, then it means they are not going to benefit from the services of the administration.

We know about licensing of businesses and environmental impact assessment when it comes to land and environment. Sometimes members of the public do not get adequate information so that they can act accordingly. Sometimes, when they seek legal redress, unless they are represented by a lawyer, administrative justice will take forever for them to be attended to and have their cases concluded. Those are some of the things that this Bill is addressing. We know about delays from administrative agencies, having witnessed them over time. Once this Bill becomes law, it should be able to address such issues. Land issues, for example, are the common problems, in respect of which members of the public do not get justice. I want to cite the issue of compulsory acquisition of land by the Government. I have in mind the land that is currently owned by Fluorspar Company in Elgeyo Marakwet County. Forty years ago, the Government acquired that land compulsorily, resulting in the displacement of an entire community. Later on, the ownership of that land was transferred to an individual company for mining purposes. Up to now the land issue has not been resolved and the community has not been compensated. The legal instruments and the administration agencies have not been able to conclude that case. Most of the people who owned the communal land have died and there is a new generation which is trying to re-start the issue. If we had a law like this one in place, this problem would have been solved.

About pensioners, we have teachers in this country who retired about 20 years ago and yet they have not been paid their pensions because of the red tape that is in the administrative agencies. There is a lot of suffering out there. We are looking forward to this Bill being amended so that it adequately addresses the problems facing the citizens of this country. Indeed, they are suffering. We look forward to something that will give us a fair deal so that we have a win-win situation for Kenyans who are unable to access justice.

With those few remarks, I support the Bill.



**The Temporary Deputy Speaker** (Hon. Cheboi): Members, since there are only nine requests, in fact, eight requests because hon. Wangamati has spoken, I will not be balancing between the two sides of the House. I will simply proceed on the basis of the list that is before me. I will give an opportunity to hon. Mwaura followed by hon. Wanyonyi, then hon. Kibunguchy in that order. The fifth one to speak will be Gakuya, Member for Embakasi. Let us not repeat what others have said because this is a matter we need to finalize very fast.

**Hon. Mwaura:** Thank you, hon. Temporary Deputy Speaker. I rise to support this Second Reading of the Bill. If you look at the title of the Bill, you realize that it seeks to promise that, indeed, one of the challenges that we have been facing as a country is lack of fair administration. When Max Weber---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Dalmas, I notice that you are a ranking Member. I notice that you are also somewhere in the intervention. You will get your opportunity shortly. Hon. Members, I had to notice hon. Dalmas because his is one of the very senior and seasoned Members of this House.

Proceed hon. Mwaura.

**Hon. Mwaura:** If you look at invention of bureaucracy by one Max Weber, his intentions were actually to ensure that there is predictability with regard to how administrative actions are done. I do not think he intended that such an effective way of prediction of public action would otherwise be used by unscrupulous individuals to delay justice. As they say, justice delayed is justice denied and also for people to seek gain out of such delays or powers conferred to them in their mundane job descriptions---

This Bill is timely. I see a concurrence between this Bill and the provisions of Article 59 of the Constitution that, of course, creates the Commission on Administrative Justice. It is my prayer that when anyone seeks judicial review then that must obtain. We need to rid our public domain of unnecessary delays. This will enable us achieve effective administration. The reason I am saying that is if any public officer does not follow the due process with regard to the administrative action, then the citizens may seek redress through a judicial review. Of course, this in itself would amount to use of a lot of time and, therefore, delay in terms of delivery of service. In my opinion, even in that regard, a very fundamental issue arises. In the event one was to seek a judicial review, obviously, there are some costs that would be incurred. As a result of such a review, who then shoulders these costs? Would it be the person seeking such a review or would it accrue to the officer? There are serious implications with regard to this provision.

Hon. Temporary Deputy Speaker, without the hindsight of the specific provisions of the Commission on Administrative Justice Act, 2011, we may want to ask the Mover to actually consider this as a stopgap measure so that most of these issues are actually forwarded to the Commission so that they can act without necessarily clogging the courts with such issues. As we speak, there is already an existing framework within the Executive whereby committees are set under public relations in public administration officers. Following this move, officers and also the public can complain and use terms such as “in attendance”, “abuse”, “delays” and so on. Such heavy terms are used to describe such kind of maladministration. We may also want to see whether such aspects

can be captured in this Bill just to show whether they are working. As I had said earlier, the issue is also about time.

I am encouraged by the provisions of this Act that seek to ensure that any administrative action under Clause 4 should be expeditious. It is true that most actions that are relating to both State and non-State actors are not as expeditious. The word “expeditious” is not just a question of time, but it also has a cost element. It is about how we are expending with regard to attainment of such administrative action thereof. Therefore, I would also want to say that this cost element of doing such public administrative action needs to be focused in terms of any form of judicial review. This is because we have seen a situation where this is not attended to and the results are situations whereby it is like one responds to a mosquito bite with a hammer just because one put in a lot of resources to achieve so little. One then wonders whether, indeed, there was proper use of public monies.

The other issue is about efficiency. The global trend is that people are looking for a smaller State that is more effective. However, the challenge we have in this country is the tendency by public officers to empire-build. That in itself creates an urgency syndrome. People want to be pleased and to be seen to be controlling certain fiefdoms. In fact, it speaks to the big man syndrome where for people to access public offices and to be administered properly, they end up having to massage the egos of officers who are paid to do their job.

The reasonability of any administrative action cannot be gainsaid. Sometimes some of the issues that people have to go through are rather unreasonable. There are so many delays and sometimes you are told to go back after some time. Such delay would ensure that whatever end that you wanted to obtain may be overtaken by events. As a matter of procedure, we need to ensure that this Bill strengthens that aspect.

Clause 5 of the proposed Bill speaks to the issue of public participation. It says that if an issue affects any group of people, the administrator will issue a public notice of the proposed administrative action inviting public views. I hope and believe that this will also affect issues of procurement. The Government must not procure things that are not needed by the people they are purported to help.

I have gone through a similar experience as the National Coordinator of the Albinism Society of Kenya where a public entity procured sunscreen lotions that were harmful to persons with albinism. We were forced to go to court to stop the process. When we went ahead, because they had already signed a contract, we were told that corporate rights overrule human rights. We found out that our people were suffering in places like Kwale and Makeni. We found effects of such maladministration. At this point, you wonder whether the people who are involved in taking unfair administrative actions would not be held culpable.

There is a lot to speak about in this issue. It is a welcome Bill that needs to be strengthened because it is a bit inadequate.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Member for Kwanza.

**Hon. F. K. Wanyonyi:** Hon. Temporary Deputy Speaker, I want to take this opportunity to add my voice to this very progressive Bill. If this Bill is implemented to the letter, it is going to change the mindset of our people. People are still living in the old

way of doing things. I believe the passage of this Bill will change the mindset of the people. I hope there will be a way of recording change in the way people do things. A few years ago, I was in the Civil Service when we had performance contracting, which has currently lost steam.

People still do things in the old ways. Therefore, the passage of this progressive Bill will help us to change the way we do things. Recently, we were conducting the exercise of identity card (ID) registration in my area. The chief of the area, a public servant who is supposed to be exercising administrative authority, came and found the registrars and the clerks who were about to start registering the people who had lined up. Because he had not been told and informed, he called off the exercise notwithstanding the fact that some people had walked long distances. In this country, getting IDs is a big problem to our people, particularly the youth. There are some people who are over 30 years old who have not got IDs.

Just because of that authority, the chief, even notwithstanding the fact that this was a different exercise which was happening in his area, said that because he had not been informed, the exercise could not take place. That is what we are talking about. This is a colonial way of doing things. They still have got the big boss syndrome as hon. Mwaura has said. He is the boss, he has to do that and you have to respect that. With that kind of assertion to show that he has the authority and is the last person on the line, people dispersed. We are talking about over 200 innocent Kenyans who were waiting to register for IDs.

I regret that this Bill does not concern the military or the disciplined forces. We had a problem in Garissa, but because the boss had instructed somebody below him to fly to Mombasa, he flew to Mombasa notwithstanding what was happening. That has been reported. I believe there will be an opportunity for us to question that. The officer flew down to Mombasa with the police aircraft and came back later only to fly to Garissa at 10.00 O'clock. That means that he must have been obeying orders from above. The passage of this Bill will change that kind of mindset, so that we can respond to what is happening today.

Recently, we had a very practical case. Teachers refused to go back to teach in northern Kenya because of insecurity. They demonstrated in the City because the Teachers Service Commission (TSC) did not want to listen to them. They were told to go back to northern Kenya or lose their jobs. This is another syndrome. It is another old way of doing things without listening and seeing that there is a problem in northern Kenya. Therefore, our people cannot go back there because of insecurity. Somebody says that you either do it or leave and there is no negotiation. This Bill will change the mindset of our people, so that we can move at the same pace as the developed world.

We also have a problem with pension. I have had many cases in my constituency and I have filed about six petitions. If you go to the Pensions Department, people are still doing things the old way. This Bill will assist us. We have cases, as stated by the previous speaker and even in my area, of teachers who retired 15 to 20 years ago yet have never been paid their pension. This tells you that there is no fair administrative action in our institutions. These are practical cases. I believe this Bill will help us to change the way we do things. Ultimately, I hope that there will be a yardstick to see that people are moving from where they are to the next stage. We should be able to detect whether there

is a problem or not. I am not a lawyer, but an economist. I have not seen provisions in terms of how somebody who is unable to pay for services can be assisted.

We can insert such provision during the Committee Stage. I have two or three cases where somebody needed help. There was an old man who came to my residence last week. He said that his son, who was suspected to have committed murder, had been held in custody for the last six months. He had no money to get a lawyer. The man had a problem. It was actually a case which we cannot resolve. In this Bill, we should have a provision for people to be provided with essential services for their wellbeing, if they are not able to access such services. Not all of us are able to access such services. A person representing themselves in court may misinterpret the facts of the case. Such person may need a lawyer to assist them. Maybe, during the Committee of the whole House, we should introduce a provision to help people who are not able to access certain services because they do not have the financial assistance. Otherwise, this Bill is okay. Let us move to the next stage. I believe that it will provide us the yardstick with which to measure what people will be doing as compared to the things that are supposed to be done in the current century.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): The list will proceed as I had mentioned earlier. I have decided to add just one Member ahead of the pack, that is hon. Dalmas Otieno and then we will proceed back to the list.

**Hon. Anyango:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to make my comments.

I am happy you are aware that I worked so hard and for long to introduce performance contracting management in our public administration. Because of that, up to now I sit in the United Nations Committee of Experts on Public Administration. You heard one or two Members indicate that performance contracting management appears to have disappeared. This Bill is so important and will have very serious consequences in the management of our public affairs. As much as I may say that it is not adequate, it will give us enough grounds for enlarging it, make it more useful and put our public administrators on their toes. You are aware that we are in competition with the rest of the world. Our ability to compete globally depends on the quality of our administration. If administration is allowed to be lethargic, businesses will be slowed down over time. The amount of imports that Kenya continues to rely on will get bigger and bigger because national productivity is not adequately being pushed and the public administration is slowing down the entire economic and public administration system in our country.

You get the impression that the country is freewheeling downhill possibly to destruction under the forces of corruption and tribalism. It is those two forces that appear to be prime motivators of public decision-making in our economy. Unless that is changed so that we inculcate service delivery in our public administration and in all aspects of socio-economic and political decision-making systems, we will not be able to compete adequately with the rest of the world. We can be proud that Kenya is ahead. However, we could end up messing ourselves by slowing down our processes if we allow the forces of corruption and tribalism to take over as prime motivators of the decision-making processes.

The Bill does not cover what it should have covered. By putting emphasis on expeditious, efficient and fair decision-making, you presume that there is a service charter printed and published by every organ of governance. It is on the basis of such service charter that I will tell you that the cheque for my pension, on my retirement, should have been in my account within 30 days. If it is not in my account within 30 days, you have been inefficient because your own service charter says that on my retirement, my pension cheque should be in my account in 30 days. It is on the basis of the service charter that we will be able to gauge who is inefficient in public service decision-making. It is on that basis that we will gauge if it is expeditious, timely or fair within what has been acknowledged by the organ of governance as feasible and as something that is objective in decision-making in public administration.

Surprisingly, productivity is an issue which is lost. I had worked hard and long to make sure that we have a tripartite agreement among the unions, the employers and the Government to have measurable productivity in every economic sector so that we do not end up paying people more than the value addition of their contribution to our economy. Again, that has slowed down. What has made it slow down? The Ministry that was responsible for public service was expanded and is now a huge Ministry under Cabinet Secretary, Anne Waiguru. I do not even know if she has the objectives of innovations and creativity, improvement towards efficiency and fairness in public administration out of that little department now remaining in that Ministry.

I am happy that at least this Bill will lead to enlargement so that we go back to the direction towards productivity, performance, fairness, expeditious, timely performance and quality decision-making. It will not just be a matter of people expecting service and having to go to court. As it is now, the Bill seems to rely on judicial reviews as the guidance to ensure that there is efficiency, fairness and timely decision-making. There should be service charters in every Government Department, to act as the basis for motivating our public servants to be fair, efficient and expeditious in their decision-making. Unless we go back to performance management, with performance contracting backed by this Bill---

I am one of the people who insisted that the clause on fair administration must be included in the Constitution. I am happy that we succeeded in having it inserted. However, the mechanisms that will apply effectively and efficiently are not there. This Bill has just touched on it. It will be improved as time goes on.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, let us proceed back to our list.

Next is the Member for Rangwe.

**Hon. Ogalo:** Thank you, hon. Temporary Deputy Speaker. I rise to support this Bill.

As you are aware, this is a constitutional Bill. Our Constitution requires it to be enacted within a period of time. As is indicated in the Memorandum, this Bill is pursuant to Article 47 of the Constitution. If you look at Article 47(3) of the Constitution, you will appreciate that Parliament is required to enact legislation to give effect to the rights in Clause 1. That legislation shall do two things: Provide for the review of administrative

action by a court or, if appropriate, an independent and an impartial tribunal; and promote efficient administration

Parts II and III of the Bill achieve those constitutional objectives as they provide for fair administrative action and judicial review.

Hon. Temporary Deputy Speaker, so many of my colleagues have spoken very eloquently on the provisions of the Bill. What I would like to add is that we should expand the clauses to achieve the aspirations of Kenyans in all spheres at the Third Reading so that this Bill, when it is finally enacted, can change the way business is done in Kenya. I do not think that, that article of the Constitutions limits fair administrative action to public authorities or judicial and constitutional entities only. I think the article of the Constitution requires that anybody in Kenya who acts in a way that affects any other person must act in a fair manner.

Any limitation of who has responsibility under this Bill is going against the Constitution. With that I would like to enumerate why I think the provision in Clause 3(2) must of necessity be deleted when we come to the Third Reading of this Bill in the Committee of the whole House. If you look at who is listed there under “the disciplined forces” we have the Kenya Defence Forces (KDF). We should not be assuming that the only job KDF does is to go to war. They also procure, buy goods and services. We have to ensure that they do that in a fair manner. If you are a Kenyan or a Kenyan company selling boots that the army uses, you should have a fair way of being able to either supply or be denied the capacity to supply the KDF.

The others are the National Intelligence Service (NIS). The NIS does many other things and not just gathering intelligence. Even in the process of gathering intelligence, there are actions they can take which require that the person who is affected by those actions has recourse under the law. I do not think we will be doing Kenyans justice by limiting who is covered by this law. Look at the Kenya Forest Service (KFS), just the other day as the Departmental Committee on Environment and Natural Resources, we were on Gwasi Hills where we were led by my honourable brother, hon. Geni Mongare here. We found residents there complaining against KFS for having evicted them from areas which were not demarcated as Kenya Forest Service Reserve. If you look at those actions, they require interpretation on whether they were fair administrative actions or not. The Kenya Wildlife Service (KWS) hires people. You would like to know, when they hire people unfairly, whether you are able to use this Bill to seek recourse in court or in any other judicial or quasi-judicial entity.

I do not think that our preoccupation with security will push us to limit the capability of this law to reenergize or reengineer the way public institutions, public bodies, State organs or State-owned or non-state organs in this country make decisions. The reason we think this law should apply to each and every person is when you look at Kenya Power Company (KPC) for example. They decide not to give you a bill for two years then slap you with a bill to pay in two days. If you do not pay they notify you by disconnecting you from power. Kenyans should be allowed to seek redress in court on whether that is fair administrative action or not. In the Third Reading of this Bill, we need to look at it very keenly and ensure that we have expanded it in a manner that enables every Kenyan, every Kenyan company and every entity operating in this country to apply fair administrative of justice. We have seen companies in Kenya and even State

corporations, some of which are subjects of reports in this House restricting their tendering. The companies they ask to participate in their tendering are companies which do not even have the capacity when you compare them with yours. So, in such a case, will it not be possible for you to interpret that action on whether it was fair or not? In the Third Reading, I will urge my fellow colleagues that we look at this law properly and expand it in a way that manages to achieve the objectives that it was supposed to achieve.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. For avoidance of doubt hon. Members, the Members who will be speaking to this Bill before the Mover is called to respond will be as follows:- Hon. Kibunguchy immediately after this, hon. Gakuya, hon. Nderitu, hon. Obiero and hon. Suleiman Murunga. Hon. Maanzo, I notice that you have just slotted in your card. I am not going to allow you for just a very simple reason. It is fine if it is the next Order but I am not going to allow any other Member who is walking in now for just one good reason: You will probably be coming to repeat what the rest of the membership have spoken because you did not listen to them. This is what we are going to do henceforth, that Members who will be walking in halfway through the contribution of Members will not be allowed because we run the risk of repeating ourselves. Any other Members who are putting their cards, I will not allow them.

Hon. Kibunguchy.

**Hon. (Dr.) Kibunguchy:** Thank you very much, hon. Temporary Deputy Speaker. Before I go into any substantive comment on the Bill, I will just want to make two observations. One, this Bill is going to turn Kenya into an open and transparent society. A lot of things have been done in an opaque manner. The second comment I would like to make is, there is a popular saying that: "It is only a fool who does things the same way and expects different results." For a long time this country has done things the same way and we have always thought that we would get different results. Thankfully, the new Constitution has changed all that. However, the thinking of the administrators and many of the people who are in positions of making decisions has not changed as much as the Constitution has. So, my view is: Once we pass this Bill which I think we are going to do with some amendments is that all the administrators, all the people in positions, all the people that honourable Members have been talking about, the people in the Pensions Department, the people in the Lands Department, the people issuing identity cards and the people doing all that, will need to go back and have thorough retraining so that they can be able to have that paradigm shift in terms of the thinking that this Bill contemplates.

Let me just touch on two other areas. One is Section V of this Bill which talks about two important issues that we sometimes tend to forget or neglect. One of them is the issue of giving notice before anything is done and a decision is made. Because of this I will highlight one incident that has happened in my constituency of late. The County Government of Kakamega decided to expand some roads in my constituency. In the process, they brought down people's structures like gates, trees that people had planted, toilets and other structures without giving them notice. This has been very painful. If you can imagine, it is not easy to nurture a tree until it is 10 or 15 years old and one hopes that they will be able to cut down that tree and get some money to educate their children then, you find that these trees are brought down overnight without notice. That is an issue that

is there and as we stand now with this Bill, I think we shall be able to get redress for these people who are affected.

The second issue is about giving notice and like some Members have said, in this country we have a terrible disease. As a medical doctor, some people have called this disease many names. We have a terrible disease that started in the early years of Independence. The disease got worse during the time of the *Nyayo* era. We thought we were getting somewhere to curing this disease but it seems to be recurring especially with an individual in this country. People have called this disease many names but Dr. Kibunguchy will call it land *grabiosis*.

Hon. Temporary Deputy Speaker, as we sit now, there are swirling rumours in my area that this prince who is suffering from this disease is planning and plotting to take over--- This disease is manifested in many ways. One of the ways is when you see idle land. If you are afflicted by this disease, then you tend to get mental seizures like somebody suffering from epilepsy, with all due respect to people who suffer from epilepsy. There is a rumour that is swirling around that the Lugari/Likuyani Forest has already been grabbed. Let me put it on record; if this were to happen, then it is likely to precipitate war in that area of the country because we cannot allow it. We shall never allow it. As a Member of Parliament for the area, I shall never allow that to happen. This is just to put this prince who suffers from this disease on notice that he should never think of doing something like that. Otherwise, I do not want to repeat most of the things hon. Members have touched.

There is the area of public participation which is very important. There is also the area of information so that everything is transparent. Those areas have been touched. This is a progressive Bill. I will support it and towards the end we will bring in a few amendments just to make what is good better.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have hon. Member for Embakasi North.

**Hon. Gakuya:** Thank you, hon. Temporary Deputy Speaker. I rise to support this Fair Administrative Action Bill purposely for one reason. Within this capital city of Nairobi, we have realized that there are various demolitions of licensed businesses. You find that people come at night, demolish structures and in the early morning you find that the structures are not there and the materials have been taken away.

This has been an awkward situation where the affected have not been given a single right to be heard. I support this Bill purposely because it states very clearly that there is room to redress and for any administrator who might take such an action, the affected person has a right to redress in person even without being represented by a single lawyer.

I also support it in the area of evictions. We have realized that there are many evictions. You find that in Nairobi, some areas are informal settlements but you find that decisions are made to evict these people without notice. You find that those families have been displaced without being given a single opportunity to be heard. That is very rude. It is very humane to make sure that every human being is heard and given enough notice so that somebody can remove his property and move away.



Most of the administrative offices have been misusing their powers. You find that even in areas where land issues are concerned, very dubious dealings have been going on. People have lost their *shambas* using dubious decisions. Some people are not aware that their title deeds have been changed and all of a sudden they find that they have been pushed out of their farms. Most of them are people who are not well off and cannot get redress to their situation. It is very painful to those people who are less fortunate. In the same area, these particular administrators are equally misusing their powers in many areas especially on issuance of identity cards. You find that a person may apply for an ID card and for a period of one year, he has not received his ID. This is another area that is misused. You will also find that during the application process for a passport, a process that is supposed to take two weeks, takes a whole year.

I support this Bill so that administrators take seriously their duties and should be serious about serving people. They should serve the people without favour and make sure that they follow the law to the letter so that those offices can be seen to be working for the common *mwanaanchi*.

You will also find a situation in our judicial courts where there is misuse, especially in the case of court servers. You may find a situation where a court server is meant to serve a certain party but instead he fails to do so. In that case, the judge reaches a verdict which is not viable because he has not heard the other side of the party. You find some parties are harshly penalized for no reason. This is just because due process has not been followed. So, it is very important that our administrators follow the law to letter. In fact, they must work in seriousness so that the common *mwanaanchi* understands the importance of those offices.

There is also a situation where this administrative action has been misused. Operations have been conducted haphazardly without informing the affected families. These administrators use goons to frustrate the common *mwanaanchi*. So, such situations should come to an end. If it is an operation, it must be known and it must be done within the law. Each and every administrator must respect the law to the letter.

This Bill is very clear that in any case where the proposed administrative action is likely to adversely affect the legal rights or interests of groups of persons or a general public, an administrator shall issue a public notice of the proposed administrative action inviting public views in that regard. In this particular one, it is very important that at any given moment, where there is an action intended, the public participates and understands the particular intention of action that is intended.

There is no single rule that allows the administration to misuse and harshly penalizing the common *mwanaanchi* for no reason. It is important that as directed by this particular Bill they make it known. At any given moment where any action is being taken without having listened to the affected groups of persons, the administrators have to give notices and these notices should be adhered to. It has to give the affected persons time to appeal.

Lastly, the Bill stipulates very clearly that if the affected family or persons cannot get in touch with the administrator or agree with him, they have their right to redress in the normal judicial process.

With this particular one, I beg to end and support the Bill.

**The Temporary Deputy Speaker** (Hon Cheboi): Very well, hon. Member for Ndaragwa. You have to be brief because I see we are beginning to repeat ourselves.

**Hon. Nderitu:** Thank you, hon. Temporary Deputy Speaker. I would also like to add my voice in support of this Bill, the Fair Administrative Action Bill, 2015.

As my friend hon. Gakuya has ended, I know I am a land expert and he has talked a lot about the issue of land and I do not wish to repeat. Just in passing, I would like to mention the issue of fair administration of justice as far as the compulsory acquisition is concerned. To that extent, I have in mind the high transmission voltage line. This is the first project in my county where you find a firm like the Kenya Electricity Transmission Company (KENTRACO) transmitting high voltage lines that pass through various farms in my constituency. As politicians we are being forced to organize meetings for public participation because at the end of the day, the administrators in these organizations seem not to understand the seriousness of fairness in whatever they do to the community. You find very small issues like where the line passes and maybe you buried your relatives or parents there but to the administrator who is handling that issue, it becomes a land issue. As we debate this Bill, I am very sure that there are very key issues that have been ignored in our society that we should bring forth so that everybody feels that he is part and parcel of Kenya as we progress in developing this country.

Yesterday, I was prosecuting an issue where some 27 Kenya Defence Forces (KDF) were denied bail when they went to court. Initially, when the matter went to court through the normal court they were given a bail of Kshs500,000 but the matter was referred back to the Court Martial and these gentlemen were denied bail on the assertion that they deserted work. When I tried to interrogate the case, there are very many other officers who had deserted jobs but whose cases were determined differently. These gentlemen felt that there was a bit of unfairness in the way their case was looked at. For them to get fair administration of their case it became almost impossible. So, with the introduction of this Bill, it very timely and some of the cases which have been drawing us back as far as administration of justice is concerned will be handled perfectly well.

On this line as some colleagues have said, the issue of making discipline forces not to be part of the Bill also becomes a very big issue. Recently, I had a case of death due to an attack by an elephant in Laikipia. When we talk about that, people are crying for justice and fairness in the way these matters are handled, in terms of compensation. There is a clause that excludes these kinds of issues. Therefore, there is need that as we go to the Third Reading maybe we try and scrutinise this Bill line by line so that all the areas that we think can help our people are addressed.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well, let us have Member for Suna West.

**Hon. Ndiege:** Thank you, hon. Temporary Deputy Speaker, for giving me an opportunity to also add my voice to this issue. I want to say something that maybe is going to assist. The other day when the President was here, he said that he has to make changes in this country. One way of making changes in this country is by introducing this kind of law. If this can be followed, I believe we are going to move a step as Kenyans especially when we have the new Constitution. When the new Constitution was put in place, you felt that it was going to bring a lot of changes to our people but if we cannot

make laws that are going to speed up some of these issues, we are not doing something good to this country.

With this new law, we are going to make big changes. In my area I have an issue where the Judiciary has been sleeping in most cases. You will even find that a case is taking over 40 years especially when it comes to land cases. You wonder why a case can take all that period before it is determined. I know there are some people who have been in the offices and even when you want to change them, they are not willing to change. With this kind of Bill if we support it, we are going to assist this country to have a good law that is going to assist us as the people of this country.

I know there are cases of land issues. Land is a main issue. There are issues with the IDs and other issues that have been talked about.

When you look at Part III on Judicial Review, Clause 8 is going to treat so many areas and we will get services as Kenyans as fast as possible. I do not want to add much because much has been said and people have articulated them very well. Mine is just to add a voice so that if this Bill is made into law then we are going to enjoy it in the next few years.

With those remarks, I remain to support the Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Thank you, hon. Obiero. Let us have the Member for Kimilili.

**Hon. Kasuti:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice in support of this legislation. In my opinion, I think Kenyans will applaud the Mover of this legislation. We have lived in a period where our people have lived in darkness over years without being enlightened about their rights. You find situations where people go to get advice from administrators and yet those administrators do not even allow them anywhere near the administrative areas. Hon. Otieno said that he brought the charter where all the administrators in various cadres were required to let everybody know what they do in their respective areas. You find that even though the charters are placed in their offices they still do not adhere to them. So, with the enactment of this legislation, administrators especially in organisations like NEMA will be in a position to advise people in the construction industry who have problems in carrying out their constructions. NEMA normally comes in late to tell constructors that their buildings are not being constructed in accordance with the law. The owners of buildings are forced to pull down their buildings. This activity cost the owners of buildings money and time. Officers from NEMA never come to the owners of buildings when they start the construction. They leave the construction to go on only to come later on to tell you to bring the building down.

We need to ensure that such bodies enlighten people on actions they should take. We need to enact this law. It will help our people to know their rights. Therefore they will not live in darkness. They will know their rights and will be discouraged to revert to some methods where they are supposed to pay kickbacks to the administrators.

With those few remarks, I support this piece of legislation. If enacted, it will help our people, especially those in commerce who are always looking for help from administrators. This will go a long way in helping them to know their rights. They will then do the correct things at the right time.

**The Temporary Deputy Speaker** (Hon. Cheboi): We will now have the Mover to respond.

**Hon. Katoo:** Hon. Temporary Deputy Speaker, with your indulgence, I request that you allow me to donate two minutes to the Member for Kipipiri.

**The Temporary Deputy Speaker** (Hon. Cheboi): It is not allowed. Proceed, hon. Metito. I had made a ruling that Members will not be given an opportunity when they come in after most of the issues have been discussed.

**Hon. Katoo:** Hon. Temporary Deputy Speaker, in replying to this Bill, I would like to take this opportunity to thank the 30 Members who have contributed this afternoon on this Bill. They have all contributed in support of it. They have also suggested amendments that will enrich this Bill. I request them to propose those amendments at the Committee Stage. This Bill will still be looked into by the relevant Committee of this House, that is, the Departmental Committee on Justice and Legal Affairs next week on Monday. It is because the period for public participation has not ended. The National Assembly, through the Clerk of the National Assembly, invited public views through the media. Once that period ends, probably between today and tomorrow, the Bill will now go for---

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, hon. Katoo! Just to clarify so that the rest of the membership can be on board, if you finish in good time, we will proceed to the next Motion, namely, the Report on the Privatisation of the Public Sector Owned/Controlled Sugar Companies, which was adjourned. Members who want to contribute at that point can already be slotting their cards. That will allow every other Member to contribute including my good classmate who has just walked in to contribute. So, any Member who would want to speak to that will be given an opportunity if there will be time.

Proceed.

**Hon. Katoo:** Hon. Temporary Deputy Speaker, I do not intend to take much time. So, Members who would like to contribute on the next Motion will have some few minutes.

Once the public participation time ends; the seven days that the public have been notified through the newspapers, the relevant Committee of this House will pick the Bill and use the memoranda from the public, if any. Then they will bring a report by next week before we move to the Committee stage on this Bill. That is when the proposed amendments can be moved. Even individual Members, who have very positive amendments as I have heard from some Members, are welcome to do it. We will support them at that time.

Let me clarify some issues that were raised by the Members when contributing. Hon. Millie Odhiambo spoke about Clause 4(3)(a) of the Bill which provides that a person is supposed to appear in person whether alone or in the company of any person or intermediary of their choice other than a legal representative. This is a proper concern. We should not exclude the right of a person to come with a legal representative. Hon. Millie Odhiambo is a Member of the Committee. If she is not, she is welcome to bring such an amendment. She also raised the issue of how long one should wait for information to be availed after making a request. This is not clear in the Bill. It is important for this to be clarified at the Committee stage.

I have done some research and I found out that South Africa has a similar Act. In their Act, information should be availed not more than 90 days from the date a person has asked for it. Again, this brings the point that once a decision has been taken, how long should one stay, if the decision has affected him, before he can ask for the information?

Members were concerned why we should exclude the disciplined forces from this Bill. If you look at the categories of our disciplined forces as listed in the Bill, they all have specific Acts of Parliament dealing with their specific categories. Members have raised issues with procurement in the disciplined forces. However, we have a procurement law in this country which is uniform for all categories. That is why they were excluded.

The highest ranking Member of this House, hon. Dalmas Otieno, raised a pertinent issue. I fully understand and appreciate his knowledge of public affairs management and contracting. He understands it very well. He said that the Bill has not come out clearly and it talks of expeditious, efficient and reasonable management of public affairs. However, Clause 4(1) says that any administrative function shall be undertaken in an expeditious, efficient, lawful, reasonable and procedurally fair manner. If this needs to be enhanced, it is welcome at the Committee stage.

The Member for Kwanza, hon. Ferdinand Wanyonyi, was raising the issue of not having seen anything to do with cost in the Bill. Who is going to meet this cost? Clause 7(2) says:-

“The Cabinet Secretary shall, within fourteen days after the receipt of a request referred to in subsection (1) and at the cost of the relevant administrator, publish such list, as provided for in that subsection.”

It is not at the cost of the affected person. It is at the cost of the relevant administrator. In the Bill, an administrator is the concerned public officer. So, if there is more clarity required in terms of who meets the cost, it is welcome for Members to bring amendments at the Committee stage.

Let me take this opportunity to again appreciate the comments and contributions of Members that are going to enrich this Bill. I promise that we will support any amendment that is going towards that direction at the Committee stage.

I beg to reply.

**The Temporary Deputy Speaker (Hon. Cheboi):** Very well. No Question will be put for obvious reasons and we want to save time.

Next Order!

## MOTION

### ADOPTION OF REPORT ON PUBLIC SECTOR OWNED/ CONTROLLED SUGAR COMPANIES

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the Privatisation of the Public Sector Owned/Controlled Sugar Companies (Nzoia Sugar Company, South Nyanza Sugar Company, Chemelil Sugar Company, Muhoroni Sugar Company and Miwani Sugar Company), laid on the Table of the House on Tuesday, December 2, 2014.

*(Hon. Langat on 25.2.2015)*

*(Resumption of Debate adjourned on 3.3.2015)*

**The Temporary Deputy Speaker** (Hon. Cheboi): I see we have very few minutes, but I will give an opportunity to the Member for Makueni.

**Hon. Maanzo:** Thank you, hon. Temporary Deputy Speaker, for giving me an opportunity to comment on this Motion. Sugar is one of the very important commodities in Kenya. There are several companies dealing with sugar.

**Hon. F. K. Wanyonyi:** On a point of order, Hon. hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): What is your point of order, hon. Wanyonyi?

**Hon. F. K. Wanyonyi:** Hon. Temporary Deputy Speaker, without interrupting my brother here, I have presented some further amendment to this Motion. I wanted that to be taken into consideration so that the next contributor should have it in mind. I do not know whether some---

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Wanyonyi, that will be transacted more substantively when the debate resumes. You realise we have only some eight minutes. So, you better prepare yourself. I have not even looked at the amendment. It will be looked at when the debate resumes.

**Hon. F. K. Wanyonyi:** Most obliged. Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Proceed, Member for Makueni.

**Hon. Maanzo:** Thank you, hon. Temporary Deputy Speaker. Sugar being a very important commodity in Kenya and part of trade in the Common Market for Eastern and Southern Africa (COMESA) countries, it would be very important to privatise these companies so that Kenyans can participate in their management. They can be listed on the stock exchange. Some of them which have been running into debts, of which I can see the Government is assisting, can now be owned by members of the public who can inject capital into them. The public owners will be responsible. Outgrowers were proposed in this Report to be part of the owners. The regions where sugar is grown have small-scale farmers who could sell it to the main companies. They will, therefore, feel more comfortable than the situation is currently.

It would also be good for the Government to retain its shareholding in the companies so that it becomes part of the owners. Now that it is writing off some debts, the Government would continue to benefit from similar investments. This will also ensure that companies dealing with sugar stabilise. Farmers who have been suffering when these companies stagger in debts and are unable to pay them can be paid and the companies run profitably. So, I support this Report. All the sugar companies named in it should be privatised.

Thank you, hon. Temporary Deputy Speaker, for the opportunity.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. We still have a few more minutes. I realise all the Members who are seeking for an opportunity to speak

have already spoken. So, I will proceed using the list. Hon. Wangamati, you have six minutes.

**Hon. Wangamati:** Thank you for giving me this opportunity. As far as I am concerned, the Government is doing well to withdraw from commercial activities so that Kenyans can take over and manage these projects and industries. I have noticed that there is something wrong with this country which the Government should find out particularly before it goes on privatising these factories.

By the time Mumias Sugar Company was privatised for instance it had punished sugarcane farmers to the point that they decided to uproot the sugar cane. They are indebted by the factory. The factory management keeps telling farmers on an annual basis that they have made losses. This one has left me wondering whether we are doing well or the Government must put in extra effort taking into account what is happening in Mumias before we embark on privatisation.

The Government wants to move out of factories where it has many shares such as Nzoia Sugar Company where it has 95 per cent shares. The factory has about 10,000 hectares and we want to give it to investors. It means 10,000 hectares are going to be owned by private investors who will use this land to get the factory into more debts and pull out leaving the people at a loss with their land. The local county should be the custodian of this land. In as much as we support this Motion, there should be amendments.

First, the land should not be privatised. It should remain in the custody of county governments in trust. This will ensure that the land remains with the people, even if the machines and other infrastructure that the Government has invested in are privatised.

Secondly, I propose---

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, hon. Wangamati! You will have four minutes when the debate resumes.

Hon. Members, the time being 6.30. p.m., this House stands adjourned until Thursday, 16th April, 2015 at 2.30 p.m.

The House rose at 6.30 p.m.