

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 31<sup>st</sup> October, 2013

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Yes hon. Ng'ongo, you may proceed.

**Hon. Ng'ongo:** Thank you for giving me this chance. I am seeking your direction, and maybe the way forward regarding an item which had been presented to this House but has not been transacted. This is with regard to a petition to look at the conduct of Salaries and Remuneration Commission. I have an issue because of two fundamental concerns. First, this Commission's incompetence is actually stalling the activities and operations of the counties at the moment.

**Hon. Speaker:** Hon. Ng'ongo, look at the Order Paper, we are at the point of the Communication from the Chair. Is it that you are seeking the Chair's communication?

**Hon. Ng'ongo:** Yes, I thought by raising it at this moment, we would allow you time to make a communication. Ordinarily, issues like these do not find a clear-cut procedure on our Order Paper. You can see what is happening at the counties, the operations and activities are completely stalled; but more fundamentally, you remember this Commission gazetted salaries of State officers on 4<sup>th</sup> March 2013. The Salaries and Remuneration Commission has in the past indicated that this was done because of a job evaluation report from PricewaterhouseCoopers. I have evidence that the report was submitted to this Commission on 11<sup>th</sup> March, 2013. If at all the Salaries and Remuneration Commission relied on that report, how could they rely on a report which was submitted after they had already gazetted the salaries of State officers? This is a clear case of incompetence, and if that petition cannot be transacted then I think we should be allowed under Article 251 to initiate a process of removing this Commission, because it has failed Kenyans. You can see what is happening, the allowances of various commissions are completely unmanageable, they are doing nothing about it since they came to office more than two years ago.

This Commission has not done anything on allowances of the entire public service of this country. That is why they are in office. I was therefore asking the Chair to give a communication to this House on whether that petition is still open. If it is not, I think some of us should be allowed and I am ready to do it, to initiate a process of removing this Commission under Article 251 of the Constitution.

**Hon. Speaker:** I remember there was a petition; this is correct, but I think I will need to find out its position, whether it is before the committee or somewhere. Leader of Majority Party, what do you say?

**Hon. A.B. Duale:** The petition was by the Member for Igembe, hon. Linturi. The petition came to this House close to about six months ago. I am sure that must have been sent to a committee. The matter before us and the Salaries and Remuneration Commission as a country, is a matter of great national importance. Today as we sit here, parliaments in all the 47 counties have stalled, just because of a commission that does not want to engage the subjects they are supposed to deal with. I want to go to the Constitution and give the mandate of this Commission, if you allow me. Under Article 230, among the powers and functions of this Commission is the need to recognize productivity and performance.

We had a serious altercation with this Commission. Now, it is a matter of the county assemblies, their speakers and the Commission to sit down. None of the 47 county assemblies has passed the Finance Bill and Public Finance Act as per the law. Today I was shocked that some counties were raising the burial fee and the price of a coffin when they have not even passed the Finance Bill. The Finance Bill is the genesis of giving you the powers to raise taxation.

As leadership in a national assembly, we cannot bury our head in the sand when devolution and county governments are not functional; it is like parliaments have been closed. I think that petition is of great importance and not only that, the leadership of this country must come to the reality and understand which is greater between the leadership of county assemblies and Salaries and Remuneration Commission; leadership that was elected to serve the people.

I seek your direction, hon. Speaker.

**Hon. Speaker:** I want to direct the two of you; in future, for avoidance of doubt, no other person, even the Speaker is expected to be heard. The net result of that is that I have not heard anything.

Next Order.

This is the time for anybody with a petition to present it, not to question about the whereabouts of any petitions. Within the Order Paper, there will be an opportunity when you can be heard. If nobody is presenting a petition, we will move to the next Order.

**Hon. Chepkong'a:** Thank you, hon. Speaker. It is my duty and pleasure, pursuant to Standing Order 230 and 199---

**Hon. Speaker:** Maybe you should raise your voice, hon. Chepkong'a.

**Hon. (Ms.) Sunjeev:** On a point of order, hon. Speaker, Sir. We are not able to hear what hon. Chepkong'a is saying. We are just hearing mumbling. So, we would like to hear clearly. Is there a problem with the sound system?

**Hon. Speaker:** Very well. It is for that same reason that I have asked hon. Chepkong'a to raise his voice. Of course, I do appreciate this is the hour of exhibition.

**Hon. Chepkong'a:** Thank you hon. Speaker. It is unfortunate that when I bend, my vocal codes have a problem and the microphone is too low.

## PAPERS LAID

The following Papers were laid on the Table: -

Report on the Petition for the removal of Ahmed Nasir Abdullahi, Rev. Samuel Kobia, Prof. Christine Mango, Mohamed Warsame, Emily Ominde and Florence

Mwangangi as members of the Judicial Service Commission, pursuant to Article 251 of the Constitution.

*(By hon. Chepkong 'a)*

Report of the Departmental Committee on Finance, Planning and Trade on the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2013.

*(By hon. Gaichuhie)*

**Hon. Speaker:** I hope there are sufficient copies to be made available to hon. Members. This is a report of the Departmental Committee on Finance, Planning and Trade on the proposed amendment to the Insurance (Motor Vehicle Third Party Risks) (Amendment) Bill, 2013. We need hon. Members to move in tandem with the report of the Committee.

## **REQUEST FOR STATEMENT**

### **MEASURES TO AVERT UNREST AT MASENO UNIVERSITY**

**Hon. Ababu:** Thank you, hon. Speaker. I wish to request for a statement from the Chairperson of the Committee on Education, Research and Technology. On Tuesday, 29<sup>th</sup> October, students of Maseno University in Kisumu County went on strike citing the following grounds: One, poor management of the university; two, rampant insecurity in and around the university campus that has placed lives and property of the students at risk and three, poor learning environment and inadequate facilities that have seen many students take their classes in tents.

Hon. Speaker, Sir, I want to confirm to this august House that, indeed, that Tuesday morning I was travelling back from my constituency and I chanced upon this strike. Indeed, I had occasion to stop and address these students and listen to their grievances. These grievances are as communicated to me, verbatim by the students; thousands of them who were gathered outside the university that morning.

Hon. Speaker, in responding to this request for a statement, I do request the Chair of the Departmental Committee on Education, Research and Technology to clarify the following: One, whether the Ministry of Education, Science and Technology has taken note of this strike; two, whether the Ministry of Education, Science and Technology and Council for Higher Education are aware of the deplorable situation at Maseno University and what measures the Ministry is taking or plans to take to intervene and improve the situation at Maseno University.

Further, in addition to that, I am also aware that several students involved in a strike at Kenyatta University in March, 2013, have been suspended for periods ranging from one year to several years. While the Chair is responding to that question of Maseno University, I would also request that she explains or clarifies to this House the reasons for the extreme measures taken by the administration of Kenyatta University in respect of these students and, particularly noting that this university has actually been notorious in

taking very draconian and very extreme measures against students who express their disaffection in various issues of the university. I thank you.

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker. I will kindly ask the hon. Member to give the Committee two weeks so that we can get all the details.

**Hon. Ababu:** Hon. Speaker, the Chair of this Committee knows that it is very difficult to go against her wish. I would have desired a shorter period of time because this is a crisis. I can confirm to this hon. House that I am a witness to the situation at Maseno University. Given the very difficult situation that this university is in at the moment I would have preferred a shorter period. I would plead with the Chair to expedite and bring the statement next week; with your indulgence, of course.

**Hon. Speaker:** Well. Perhaps, the Chair of the Committee considered that the information may just be available from the Ministry.

**Hon. (Ms.) S.W. Chege:** Hon. Speaker, Sir, the Member asked a very detailed question. So, we will take a maximum of two weeks; it can even be a minimum. So, kindly give us a maximum of two weeks.

**Hon. Ababu:** Hon. Speaker, Sir, a maximum or minimum of two weeks is a smart way of using two weeks. I just wanted to say that these matters did not happen on Pluto or Mars. They happened right here and this information should be at the fingertips of the Ministry honchos and they should easily provide this information to the Member. So, I will take a maximum of two weeks, but the sooner the better. I will hold my very good, hon. Sabina, to that.

**Hon. Speaker:** Of course, as you appreciate, the Committee may be engaged in other matters and I appreciate that some of these requests are becoming too frequent to committees. So, as agreed, a maximum of two weeks. Chairperson, Departmental Committee on Education, Research and Technology, you were to give a response to a statement sought by hon. Opiyo Wandayi.

**Hon. (Ms.) S.W. Chege:** Hon. Speaker, Sir, I will kindly ask the Chairperson of the Departmental Committee on Lands to first give his answer as I am still waiting for my clerk to deliver the copy. As soon as she does that, I am ready to answer.

**Hon. Speaker:** What did you say? You are not ready?

**Hon. (Ms.) S.W. Chege:** Hon. Speaker, Sir, I am ready, but the clerk who keeps the copies has been keeping me waiting for the last one hour. As soon as I receive the copy, I am going to give the response.

**Hon. Speaker:** We can move to the next request.

**Hon. Shimbwa:** Hon. Speaker, Sir---

**Hon. Speaker:** You are out of order. I do not want people making noise. That is noise from whoever it is. I suspect that, that could be the voice of the Member for Changamwe. Kindly use the rules of the House. If you want to speak, you do not just speak. The Member for Changamwe, next time, you are going to be thrown out of here. You have made a habit of speaking when you are seated without permission. You have no audience.

The Chairperson, Departmental Committee on Lands on the procedure of the recent appointments in the Ministry of Lands, Housing and Urban Development that was requested by hon. Mbadi and hon. Joseph Gitari respectively. If hon. Mwiru is present, proceed.

## STATEMENT

### CLARIFICATION ON APPOINTMENTS IN MINISTRY OF LANDS

**Hon. Mwiru:** Hon. Speaker, Sir, indeed, I am present. I could not travel because of this request. I am ready with the Statement sought by the Member for Suba, hon. John Mbadi and the Member for Kirinyaga Central, hon. Joseph Gitari.

On 26<sup>th</sup> September and 17<sup>th</sup> October, 2013, the Member for Suba, hon. John Mbadi and the Member for Kirinyaga Central, hon. Joseph Gitari respectively requested for a Ministerial Statement from the Chairperson of the Departmental Committee on Lands. On 17<sup>th</sup> October, 2013, the House directed a joint committee comprising the Committee on Lands and the Committee on Delegated Legislation to look into the two issues and report its findings to the House.

Hon. Mbadi in his request had sought information on the recent appointment of the Director and Deputy Director of Survey in the Ministry of Land, Housing and Urban Development. He further sought clarification on the following:-

- (i) qualifications of the two officials who had been appointed;
- (ii) legal basis for the appointment;
- (iii) why the Public Service Commission was not involved in the appointments;
- (iv) whether the appointments were done in line with the Government policy of reducing the wage bill; and
- (v) whether the appointments were conducted in a fair, open and competitive manner and based on merit.

I beg to reply as follows:-

The Committee invited the Cabinet Secretary for Land, Housing and Urban Development who appeared before it and addressed the Members' concerns. The Committee thereafter, invited the Chairman, the National Land Commission, and the Chairperson of the Public Service Commission, who separately appeared before the Committee and submitted to the Committee the information sought by the Members. Mr. Tom Odede from the Office of the Attorney-General accompanied the Cabinet Secretary in the said meeting.

First, on the qualifications of the two officials who had been appointed, the Cabinet Secretary informed the Committee that for efficient and effective service delivery, and after consultations, the Director of Public Service Management, vide letter No.NDP/DPMSM1/3/1A, Vol.2580 dated 10<sup>th</sup> September, 2013, transferred the Director of Survey and the Deputy Director and deployed Mr. Cesare Mbaria and Mr. Julius Kiplagat Rotich to replace the former Director, Mr. Ephantus Murage and the Deputy Director, Mr. Boas Owino respectively in acting capacity. The Cabinet Secretary further outlined the qualifications of the two officers as follows:-

Mr. Cesare Mbaria, Acting Director of Survey: The Cabinet Secretary stated that Mr. Mbaria held a Master of Science Degree in computer-based information systems with a bias on GIS, best Land Information Management System and a Bachelor of Science Degree in Survey and Photogrammetry. He also held a Postgraduate Diploma in Photogrammetry and Integrated Map and Geo Information Production. He had also attended several technical and managerial programmes including Strategic Industry

Development Programme and is a registered full member of the Institute of Surveyors of Kenya.

On Mr. Julius Kiplagat Rotich, the Cabinet Secretary stated that Mr. Rotich held a Bachelor of Philosophy Degree in Surveying Technology, a Higher Diploma in Land Surveying and was currently undertaking a Master's Degree in Survey. He had attended various professional, technical and managerial programmes and is a registered full member of the Institute of Surveyors of Kenya and a licensed Lands Surveyor. The Cabinet Secretary further stated that Mr. Rotich had been honoured with the award of Moran of the Order of the Burning Spear by the President in December, 2012, and was the most experienced officer in the technical area of international boundaries.

He headed a technical team during the survey of Kenya/Uganda boundary in Lake Victoria and during the delimitation of the 200 nautical miles of the Kenya's exclusive economic zone that resulted in the proclamation of Kenya's maritime zone. He is currently in charge of very long baseline interferometry.

On the legal basis for the appointment of the Director and the Deputy Director, the Cabinet Secretary stated that the appointments were not substantive and were in acting capacity to ensure that normal operations within the department were not disrupted. Substantive appointment for the posts that were not under delegated powers could only be done by the Public Service Commission.

In that respect, the post of Director of Survey and Deputy Director of Survey are still vacant and will be filled substantively by the PSC in due course. The officers who were deployed to occupy the offices are doing so in an acting capacity.

On the reasons why the PSC was not involved in the appointments, the Cabinet Secretary stated that substantive appointments had not been done and will be done by the PSC in the normal manner. On whether the appointments were done in line with the Government policy of reducing the wage bill, the Cabinet Secretary stated that the deployment of the officers was properly done as a stop gap measure awaiting substantive filling by the PSC. The officers were still earning what they were earning before deployment and hence their deployment has not affected the wage bill.

Hon. Speaker, on whether the appointments were conducted in a fair and competitive manner and based on merit, the Cabinet Secretary informed the Committee that the positions were in acting capacity awaiting substantive appointments by the PSC in the normal manner and that they were meant for public good to ensure continuity of service to the public.

Hon. Speaker, hon. Joseph Gitari, on the other hand, had sought information on the following: Why the Cabinet Secretary revoked the appointment of Zablon Mabea; why the Cabinet Secretary appointed Mr. Peter Kang'ethe Kahuho as the Acting Director-General despite the fact that the National Land Commission faulted the move; why the Government seal was removed from Ardhi House and taken to Ruaraka survey field office; the procedure of appointment of such public officers; and lastly, why 1,700 leases prepared prior to the appointment of the new Director-General have not been signed yet.

Hon. Speaker, the Cabinet Secretary informed the Committee as follows: On why the Cabinet Secretary revoked the appointment of Mr. Zablon Mabea from signing titles, the Cabinet Secretary told the Committee that the Commissioner of Lands was appointed under the Registration of Titles Act, Cap.281 of the Laws of Kenya which was repealed

by the Land Registration Act No.3 of 2012. The new Act does not provide for the office of the Commissioner of Lands and after the repeal of the Registration of Titles Act, Cap.281, the Commissioner of Lands, Mr. Mabea was administratively re-designated to Lands Secretary.

On why the Cabinet Secretary appointed Mr. Peter Kang'ethe Kahuho as the acting Director-General despite the National Land Commission faulting the move, the Cabinet Secretary said that the Ministry was being restructured into directorates in accordance with the Presidential Executive Order No.2 of 2013 which merged the former Ministries of Lands, Housing, Nairobi Metropolitan, Public Works and Department of Urban Development previously under the Ministry of Local Government. Five directorates were created as a result, namely lands, housing, public works, urban development and support services. She had deployed individual officers to head the above directorates and, in that respect, deployed Mr. Kahuho as the Acting Director-General for Lands pending approval and formalisation by the PSC. The matter was discussed with the National Land Commission and the latter did not fault the move.

Hon. Speaker, additional information on the matter relayed to the Committee vide letter dated 23<sup>rd</sup> October, 2013 stated that the appointment was an administrative function by the Cabinet Secretary and the Ministry should be left to execute as mandated by Executive Order No.2 of 2013.

On why the Government seal was removed from Ardhi House and taken to Ruaraka survey field office, she stated that no seal had been removed from Ardhi House to Ruaraka survey field office or any other office though the seal could always be taken to any Government office where it was required.

Hon. Speaker, on the procedure of appointment of such public officers, the Cabinet Secretary stated that following the release of the Executive Order, the Ministry of Devolution and Planning, Directorate of Public Service Management issued a circular letter No.MSPSHRM/14/1/72 of 14<sup>th</sup> June, 2013 to all Permanent Secretaries directing restructuring and rationalisation of current Government ministries in line with the Order. Consequently, the Director of Public Service Management appointed a team of consultants to come up with a report on restructuring and re-staffing of the Ministry. The team came up with a draft report recommending four technical directorates each headed by a Director-General. Guided by the draft report while awaiting finalisation of the report and in order for the work to flow in the Ministry, she appointed officers to head the directorates in acting capacity. These officers included Mr. Kahuho who was a senior most land administrator to head the Directorate of Lands in an acting capacity. All the above appointments on acting capacity would be substantively filled by the PSC in the normal manner as in the offices which do not fall under delegated powers.

On why 1,700 leases prepared prior to the appointment of the new Director-General have not been signed yet, the Cabinet Secretary informed the Committee that many grants and leases had been prepared and forwarded to the former Commissioner of Lands for execution and transition provisions but was unable to sign them on health grounds. The issue of signing grants and leases was under discussion between her office and the National Land Commission and the Attorney-General.

Hon. Speaker, Sir, the Chairman of the National Land Commission, Professor Muhammad Swazuri appeared before the Committee and responded to queries raised by the Members as follows: That the appointment of Mr. Peter Kahuho as Director-General,

Lands, was discussed with the Cabinet Secretary in an informal meeting called in her office at 5.30 p.m. on 10<sup>th</sup> October, 2013. At the meeting, he advised that the *status quo* be upheld as the signing of titles, according to him, was one of the functions of the National Land Commission. He also advised that the matter be put on hold pending finalisation of regulations for the Land Acts and their approval by Parliament. Despite his reservations, the Cabinet Secretary directed the Legal Officer, Mrs. Margaret Cheboiywo, the Chief Executive Officer (CEO) of the National Land Commission, Mr. Tom Chavangi and another person in her office at the time to work on the gazette notice and that when inquiring later from the CEO at 8.30 p.m., the notice had already been drafted and sent to the Government Printer. That the delay in the constitution of the National Land Commission was responsible for the buildup of unsigned leases coupled with the moratorium placed on the processing of titles by the Government. The build up later eased following the legal advice from the Attorney-General to the effect that Mr. Zablon Mabea would continue signing titles as per the transitional clauses in the Land Registration Act. The Commission was finalizing with the regulations on the Land Acts with a view to having a stakeholders' retreat on the same before Parliament went on recess in December 2013.

Hon. Speaker, Sir, the Chairperson of the Public Service Commission also appeared before the Committee accompanied by the Chief Executive and other staff and explained the procedures followed in the PSC on transfers, appointments, acting appointments, promotion and establishment of offices and posts. From the meeting, it was clear that the appointments of Director-General, Acting Director and the Acting Deputy Director as well as transfer of officers from the Ministry was a preserve of the PSC as it did not fall under delegated powers being offices above Job Group "Q".

Hon. Speaker, Sir, Mr. Tom Odede from the Office of the Attorney-General further advised on the procedure used in processing legal notices and informed Members that the Office of the Attorney-General had to clear them before they were signed. A circular to all ministries and Government departments dated 15<sup>th</sup> February, 2002 communicated these procedures which are clearly outlined in paragraphs 19 to 24 and which every Government department was bound to adhere to. However, he informed the Committee that the Legal Notice No.13766 was forwarded directly to the Government Printer. He also informed the Committee that the matter of gazette ment had been informally discussed between the Ministry and the Office of the Attorney-General and the gazette ment was made before the Attorney-General's opinion on the matter was given. He further informed the Committee that it was an oversight on the part of the Ministry to have a gazette notice printed without quoting specific provisions of the law.

I will now go to the observations of the Committee. Hon. Speaker, the Committee noted that the PSC has appointed Principal Secretaries as authorised officers in the ministries and equipped them with guidelines and regulations that ought to be followed in all matters of human resource management. It is worth noting that communication relating to the appointments, establishments and transfers to the PSC emanated from a Cabinet Secretary and not the authorised officer appointed by the Commission.

On the establishment of offices, our observations were: The Committee noted that Article 234 of the Constitution vests to the PSC the power to establish offices or posts in the public service unless there is express provision in the Constitution or by registration to the contrary.



The Cabinet Secretary, therefore, acted in breach of the Constitution by unilaterally establishing an office and went ahead to gazette and give such functions as deemed fit in blatant disregard of the Constitution.

Furthermore, in her report to the Committee she indicated that a draft report prepared by the Directorate of the Public Service Commission established the Office of the Director-General while the draft letter sent to the Committee only recommended that the Directorate of Lands be headed by a Secretary, Job Group “U” with three divisions each headed by a Director Lands, Surveys and Mapping and Physical Planning. The Housing and Public Works directorates were however, to be headed by a Director-General each. I have the annexure that I am going to table.

The Committee was concerned that the Cabinet Secretary would establish an office unilaterally and proceed to vest powers that were otherwise provided for clearly in the transitional clauses in the Sixth Schedule of the Constitution which preserved the mandate to the Commissioner of Lands. Furthermore, the Constitution states that any rights, interests, title, power or obligation shall continue to be governed by the law applicable to it immediately prior to the commencement of this Act.

On appointment, acting appointment and promotion, the Committee noted that Article 234 (2) (a) (ii) of the Constitution gave the Public Service Commission the power to appoint persons to hold onto or even act in public offices and confirm appointments. However, the Commission has delegated powers to a vice officer, of appointment, promotion and transfer in respect of officers in Job Groups “A” to “P”, though this request ought to be submitted first to the Public Service Commission in respect to appointments, acting appointments and promotions for positions created at Job Group “Q” and above. Re-designation of public officers at Job Group “J” ought to be submitted to the Commission. The appointment made by the Cabinet Secretary of officers to hold or act in appointment was, therefore, irregular and unconstitutional as the post attracted officers of Job Group “Q” and above.

On transfers, the Committee noted that the procedure in place of transfer of public officers in Job Group “Q” and above or the present post to a post of different designation in the same or another Ministry was not adhered to.

Recommendations from the authorized officer in the Ministry were not forwarded to the Commission for determination as required. Furthermore, the Commission had to approve change of designation before the central human resource management postings committee would effect any changes.

On the legal notices, the Committee noted that the advisory from the Office of the Attorney-General governing publication of legal instruments by the Government Ministries and Departments was released on 15<sup>th</sup> February, 2002. The procedure for processing of legal notices is outlined in Paragraphs 19 to 24 and it states that all matters to appear as a legal notice in the gazette must be cleared by the Legislative Drafting Department before submission to the Minister or appropriate authority concerned for signature and cannot be cleared after the signature. A request for clearance must be made in writing with the reasons for the subsidiary legislation stated fully. A request should be accompanied by a draft of the requisite notice. In case of urgency, the Chief Parliamentary Counsel will personally consider clearance upon verbal request.

The Committee noted that the Gazette Notice No.13766 was general and did not quote the specific provisions from the Constitution of Kenya, the Lands Act and the Land

Registration Act. It was, therefore, apparent that the same notice had not been cleared by the Attorney-General's Office which would have rectified the anomaly and also provided the legal expertise required. The Committee observed that the Gazette Notice was unconstitutional and, therefore, null and void.

It is the Committee's view that the Cabinet Secretary ultimately revokes the notice on realization of its unconstitutionality. In that case, I also have the *Kenya Gazette* for revoking, but it is partial revoke. This is because it has only revoked the appointment of Peter Kang'ethe Kahuho and not revoking the Director-General's position. In view of the foregoing, the Committee noted that recent transfers, promotions, gazettelement at the Ministry of Lands, Housing and Urban Development were irregular, a nullity and devoid of merit and were not backed by any law. Furthermore, procedures laid down by the Public Service Commission for smooth management of human resource in the Public Service were grossly abused by the Cabinet Secretary who usurped the powers vested in the Principal Secretary as the authorized office of the Commission.

The Cabinet Secretary purported to appoint officers to positions and went ahead to gazette an appointment in blatant disregard of the Constitution, the Lands Act and the Land Registration Act which provide for the continuity of the Acts in force until formalization of the current ones.

The Cabinet Secretary was also not forthright before the Committee as she purported to draw her powers to appoint Mr. Kahuho as the Director-General Lands from the draft prepared by the Directorate of Public Service Management. The draft presented to the Committee, however, states that the Directorate of Lands will be headed by a Secretary, Job Group "U" and will be organized into divisions each headed by a Director and not a Director-General in Job Group "T".

She also informed the Committee that the issue of signing grants and leases was under discussion between her office, the National Land Commission and the Attorney-General while she had unilaterally gazetted an officer to sign titles against the advice of the Chairperson, National Land Commission who advised that the *status quo* be upheld until regulations were finalized and brought to Parliament.

The Cabinet Secretary further explained to the Committee that she had to take steps to replace Mr. Zablon Mabea who was unable to sign grants and leases on health grounds. The Committee observed with concern that the accumulation of leases was caused by a seven months' delay in coming into force of the Commission and a moratorium placed on signing of any leases until the Commission was on board and not Mr. Mabea's ill health as alleged.

The Committee noted that legal advice sought established that Mr. Mabea could continue signing the leases under the transition clauses. Furthermore, the Committee noted that a gazette notice could not override a written law.

On the Committee's recommendations, in the absence of constitutional legal, administrative and procedural backing for the transfers, promotions, appointments, and establishment/gazettelement under the Ministry the Committee recommends as follows:

The officers who had been irregularly and un-procedurally removed from office be reinstated and the purported transfers be revoked with immediate effect. All irregular promotions and appointments in acting capacity be reversed and that due process as laid out by the Public Service Commission be followed in all appointments, promotions, transfers and establishment of offices at the Ministry.

Lastly, the Cabinet Secretary should, as a matter of urgency, submit the regulations to the Lands Act for consideration by the Committee and subsequent approval by Parliament.

Hon. Speaker, I hereby table the annexes together with the Statement.

*(Hon. Mwiru laid the documents on the Table)*

**Hon. Speaker:** Hon. Members, as you appreciate, the report is quite detailed, and it has just been tabled. In it, there are recommendations. In order for the House to express itself on the recommendations, the report would have been tabled and a notice for debate on it given, so that you could read through and debate it, with the possible outcome of its adoption; or, we could deal with it in the usual way that this House normally expresses itself on reports of this nature. As much as this report is here by way of a Statement request by hon. Mbadi and hon. Gitari, if we just let hon. Mbadi, hon. Gitari and a few other hon. Members seek clarifications, we will not be appreciating the efforts that have been made by the two Committees in coming up with this report. This is not just a response to a Statement. It is more.

I can see that hon. Mbadi is burning to seek clarification. I am wondering whether I should allow him or we should go the route that I am advising, so that all of you can have an opportunity to read the report and debate it. This report needs to be debated.

Hon. Mbadi, do you want to say something?

**Hon. Ng'ongo:** Hon. Speaker, you have made a ruling that I may not really contest. This report is as a result of a statement I had sought, with my colleague, hon. Gitari. One of my concerns would have been how the recommendations in this Statement would be enforced. However, listening to your ruling, the route you have suggested would address that concern. If the House does not make a resolution, it would certainly not be easy to enforce the recommendations contained in the Statement because it is just a statement. Having said so, there is only one issue that needs to be addressed, which regards the signing of titles because even as we speak, title deeds should be signed. As we speak, there could be other officers who may have signed title deeds. Considering how valuable title deeds are, some action needs to be taken urgently.

I would especially expect communication from the Government as we wait to debate this report. I would, therefore, urge that this report be debated quickly so that this matter can be clarified. I am raising this point because title deeds are very important. The matter of signing title deeds is not very clear right now. The Lands Registration Act provides that there should be a Chief Lands Registrar but, because of this confusion from the National Land Commission and the Cabinet Secretary, there is need for this country to be clear on who is supposed to sign title deeds, so that financial institutions do not decline to honour them as collateral for loans.

Thank you, hon. Speaker.

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

**Hon. A.B. Duale:** Hon. Speaker, I totally agree with you that this is a report which has far-reaching recommendations. The Statement request has been turned into a report, with recommendations. The practice of this House is that we deal with Committee recommendations through report. Therefore, I would go the route of hon. Mbadi. With your permission, we can bring this report to be debated on Tuesday, next week because

the issues contained therein are constitutional. Therefore, in order for those matters to be rectified urgently, and in order for the Constitutional Implementation Oversight Committee to pick up the matter from where the House will decide on the recommendations and forward the same to the Executive for action, I would ask that we give the report the first priority on Tuesday in order for it to be discussed.

**Hon. Speaker:** Yes, hon. Midiwo.

**Hon. Midiwo:** Hon. Speaker, so that nobody thinks that the Committee is doing something un-procedural, there is need to clarify to the House and to the nation that the offence that the Cabinet Secretary is being accused of touches on constitutionality. Therefore, it goes without saying that this matter should get precedence over any other debate in this House. The land issue is the cause of 98 per cent of the problems in this country. Some of us are of the opinion that nobody should be above the National Land Commission (NLC). The NLC should have been left alone to handle land matters. You being a lawyer, what I am saying may eventually make sense.

Hon. Speaker, I appreciate the suggestion by the Leader of Majority Party that we deal with this matter next Tuesday. Since the matter was raised a long time ago, I was of the opinion that it should have been dealt with in less than a week's time from the day it was raised. Now that we are here, everything should be suspended, so that we can move the Motion, through your order, and discuss this matter. As we speak, some unauthorized people have signed titles. It is not the name of the Cabinet Secretary that will be talked about badly; it is the name of the country and the President, the Cabinet Secretary's appointing authority. We also need to be magnanimous sometimes to protect and help the President to manage this country well. We have to do these many times even though we are in the Opposition.

Therefore, we want to request that you provide us with the way forward since this is a matter touching on the sovereignty of this State. I want to request you to guide us by way of the provisions of the Standing Orders that would stop us from debating this matter today, so that we deal with it right away. Why do we have somebody committing a crime still being an office holder?

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

**Hon. Ng'ongo:** Hon. Speaker, I just wanted to add to what hon. Midiwo has said. Even though there are no clear provisions in our Standing Orders as to whether this matter can be debated now or not, this House deliberately created Standing Order No.1 to allow the Speaker to use his discretion. As I indicated earlier on, the issue of title deeds is so important to this country that we need, as a House, to take a decision on how to proceed. That decision can be taken today. Therefore, I would urge you to invoke the provisions of Standing Order No.1.

Thank you.

**Hon. Speaker:** No! Hon. Members, this is not a complicated issue. Hon. Alex Mwiru has actually tabled his report but because the matter came to both Committees by way of requests, given its gravity, the two Committees held sittings and have presented a report.

Hon. Members, we are well past the time for laying Papers and giving Notices of Motions. However, I will exercise my discretion to allow hon. Alex Mwiru to give Notice of Motion to debate this report at the earliest opportunity which is Tuesday, 5<sup>th</sup>

November, 2013. Therefore, I direct that hon. Mwiru gives Notice of Motion for the House to debate the report tabled by the joint Committees.

Yes, hon. Mwiru.

**Hon. Wakhungu:** On a point of order, hon. Speaker, Sir.

**Hon. Speaker:** Hon. Chris Wamalwa, even when the Speaker is speaking, you---  
Yes, hon. Mwiru.

## NOTICE OF MOTION

### ADOPTION OF REPORT ON APPOINTMENTS IN MINISTRY OF LANDS

**Hon. Mwiru:** Thank you, hon. Speaker, Sir. I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Joint Committee on Lands and Delegated Legislation, laid on the Table today, 31<sup>st</sup> October, 2013.

**Hon. Speaker:** Very well. It is, therefore, directed that the Motion on that report will appear on the Order Paper on Tuesday, 5<sup>th</sup> November, 2013. In the meantime, I encourage hon. Members to get copies of the report so that they can debate it from a position of knowledge and information. This includes the young turks who have taken over.

There was a Statement from hon. Sabina Chege. Hon. Sabina Chege, before you rise to make your Statement, let me give guidance on some business that has been conducted before. That is the business relating to the petition whose report has been laid before the Table by the Committee on Justice and Legal Affairs. I direct that in terms of Standing Order No.230(5), it is required that the House shall resolve whether or not the petition discloses a ground for removal under Article 251(a) of the Constitution.

If you recall, that is the petition seeking the removal of six Commissioners of the Judicial Service Commission. The report by the Committee has been laid and, therefore, the House must resolve one way or the other whether to adopt or accept it, in which case the law requires that I should submit it to the President.

In terms of Article 251, again, if you resolve otherwise, the matter will end there. Therefore, I direct that, that Motion on the report be also placed on the Order Paper for debate by this House on Wednesday, 6<sup>th</sup> November at 2.30 p.m. This is because the requirement is that you must resolve one way or the other within 10 days from the day that the report is tabled.

*(Applause)*

There should be no worry because the House must continue to do what it must. We are exercising our mandate under Article 95 of the Constitution. So, the report will be debated here on Wednesday, 6<sup>th</sup> November, 2013.

Yes, hon. Sabina Chege.

*(Resumption of Statements)*

EXPULSION/SUSPENSION OF KENYATTA UNIVERSITY STUDENTS

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker, Sir. Pursuant to Standing Order No.44(2)(c) of the National Assembly, hon. James Opiyo Wandayi, the Member for Ugunja Constituency requested for a Statement from the Leader of Majority Party regarding the suspension of 12 Kenyatta University students. I would like to present the response.

The case of the suspension of 12 Kenyatta University students started when the Independent Electoral and Boundaries Commission (IEBC) requested to use the Kenyatta University facilities for the following purposes:-

- (i) to train the electoral officers and other personnel involved---

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, let us allow the Chairperson to make her Statement. Consult in low tones.

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker, Sir. The IEBC requested to use the Kenyatta University facilities for the following purposes: - One, to train the electoral officers and other personnel involved in election exercise; two, simulation of the electoral process and; three, tallying centre for Roysambu Constituency.

Subsequently, the Kenyatta University management approved the request and five rooms were allocated to the IEBC at the Business Student Services Centre (BSSC).

The electoral body moved to the campus on 22<sup>nd</sup> February, 2013 and chose BSSC Room 14 for the storage of the electoral materials and equipment, the amphitheatre for tallying votes and the other rooms as offices. Consequently, a notice written "out of bounds" was fixed on door of Room 14 which served as a store for the election materials. The IEBC was supposed to observe both the training and simulation and undertake elections and the tallying of all votes, including presidential votes were done smoothly.

After the conclusion of the tallying exercise, the IEBC was meant to hand all rooms, except Room 14 which had served as a store for electoral materials and equipment, back to the university. They explained to the university that they had to organize for transport from the IEBC Headquarters to pick the materials and in the process it could take some time which the university obliged.

On 15<sup>th</sup> March, 2013, about 10 days after the conclusion of the election exercise--

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*(Loud consultations)*

**Hon. Speaker:** Hon. Members, there must be order in the House. I appreciate that you must move from corner to corner but do it in an orderly way. You must consult in low tones so that we can transact the main business.

Proceed, hon. S.W. Chege.

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker, Sir. On 15<sup>th</sup> March, about 10 days after the conclusion of the entire election exercise, the Roysambu Returning Officer, Mr. Maureen Kareri Oraro and a staff arrived in Kenyatta University at 10.00 a.m. to pick the electoral materials that they left behind in Room 14. She explained that the delay was

due to unavailability of transport from the headquarters. When the IEBC officials were seated at the centre, rumours started circulating amongst the student fraternity from as early as 12.30 p.m. that the presidential results were being tampered with in BSSC Room 14. The rumours were intensified through the use of social media platform and later students went on rampage, broke the door of Room 14, stole IEBC equipment/materials and burnt the IEBC vehicle. They also destroyed university property, looted and stole goods at the Business Centre and the Nyayo Kitchen. The destruction went on until the early morning of 16<sup>th</sup> March, 2013. The cost of damage was estimated by the university at Kshs1,957,462. The university investigations started.

It is, therefore, against this background that the Vice-Chancellor formed a committee on 18<sup>th</sup> March. The committee was meant to investigate what led to the occurrence, determine the extent, the cost of damage, identify those who were involved in disturbance and spreading rumours and finally recommend the way forward.

In order to unravel the circumstances of this incident, the committee used the following methodology: Video clips from media houses were used. They interrogated the social media, they used the information from the Kenya University security networks and finally they interviewed the IEBC staff, Kenyatta University staff and students who witnessed the events as they unfolded. Interview was also done among the students who witnessed the destruction of the university.

The committee further interrogated all the above sources and narrowed down to 35 students. The 35 students mentioned in the course of the above interrogation were invited to appear before the committee for further investigation on 25<sup>th</sup>, 26<sup>th</sup>, 29<sup>th</sup> and 30<sup>th</sup> April, 2013 and continued on 6<sup>th</sup> and 16<sup>th</sup> May, 2013 and 26<sup>th</sup> June, 2013.

Following the above investigation, 19 students out of the initial 35 students whom the Committee felt had a case to answer were recommended to appear before the Students Disciplinary Committee to answer charges leveled against them. The students were met by the Committee on 7<sup>th</sup> and 8<sup>th</sup> of August, 2013. Students disciplinary matters of the university are handled by the committee referred to as Students Disciplinary Committee (SDC) which is a senate committee and is chaired by Deputy Vice-Chancellor, Academics. The Senate is one of the governing organs of Kenyatta University. The SDC has the following mandate:-

- (i) To consider matters of disciplinary nature affecting the students and report to the Senate the action taken, provided that the disciplined students may appear to the Vice-Chancellor; and
- (ii) to recommend to the senate serious disciplinary cases that may require suspension or expulsion and to formulate and review, from time to time, the code of conduct of university students.

The composition of disciplinary panel varies from individual students depending on their degree. We have an attachment on who was in the disciplinary panel. There is also an attachment on all detailed disciplinary proceedings where students gave oral submission and the verdict of the committee, including their signatures. The documents are hereby forwarded to this House.

Hon. Speaker, as provided by the university statutes, the affected students have a right to appeal to the Vice-Chancellor against the decision of the SDC. On the outcome of police investigation, other than the explanation given by the police spokesman on television on 15<sup>th</sup> March, 2013, the university is not privy to any other information.

I wish to lay on the Table the attachments and the Statement.

*(Hon. (Ms.) S.W. Chege laid documents on the Table)*

**Hon. Speaker:** Who requested for the statement?

**Hon. Wandayi:** Thank you very much hon. Speaker, Sir. Even though the Chairperson was fairly inaudible, I have been able to get a few issues from her response. The matter of Kenyatta University is so serious that I would have preferred that the Vice-Chancellor appears before the Departmental Committee on Education, Research and Technology and therefore, have the opportunity to face her personally. Unfortunately, this never happened.

Hon. Speaker, Sir, be that as it may, I was very categorical when I was requesting for the statement. I have not seen the hard copy of her response and assuming that she has not provided the names of the students who were either expelled or suspended--- If her list is correct, there is no fundamental issue.

Hon. Speaker, Sir, you will recall that on 15<sup>th</sup> March, 2013, 11 days after the 4<sup>th</sup> March Elections there was spontaneous riot by the students of Kenyatta University. Anyone who has passed through a university system in this country and more so a public university will agree with me – this is now the next issue I want to raise. It is not conceivable or practical that a spontaneous riot can be done by students of a university that has got thousands of students, but in the final analysis, those found to have participated in the riot narrowed down to 12 students. It is not possible that only students from one ethnic group were culprits in a university of thousands of students who went on strike spontaneously over an issue that is of concern to everyone.

Hon. Speaker, if I am allowed I can read the names, just to confirm what I am saying because I have a constant interest in this matter. This is a very serious matter and I urge my fellow colleagues to pay attention.

Hon. Speaker, one of the 12 students affected is Dan Oluoch Owino, he was a fourth year student and was expelled. He was remaining with only one semester to conclude his undergraduate studies. Dan Oluoch Owino is a poor son of a peasant farmer, who is my constituent. There are other 11 students who were suspended for two, three or four semesters. The names are as follows: Arthur Ogweno; suspended for two semesters with a fine of Kshs30,000; Odera Anyango Beatrice; Omondi Jilali Ochieng'; Odhiambo Justus Onyango; Steve Rundu Olweny; Timothy Otieno Odeny; Hillary Amolo; Geoffrey Onyango; Onyango Collins; Mark Owuor and to do some spicing, they threw in the name of George Makau.

Hon. Speaker, Sir, this is a serious issue and I would want the Chair of the Committee to make a follow up with the Kenyatta University Administration. This university has been known for its draconian measures, particularly under the current Vice-Chancellor. If we start politicizing an institution of higher learning such as a university which is funded by taxpayers' money; we try to politicize the management of a public university by introducing tribal politics, we are sowing seeds of rebellion.

**Hon. Speaker:** Hon. Wandayi, as you will well appreciate in terms of your Standing Orders, you are merely required to seek clarifications. Now, since you have gone on and on to address I will deem that there is no need for any response because we must do other real business. In as much as I sympathize with the point you are raising,



you must do it in a way that allows the other hon. Members to participate. If you take the whole time to yourself, then the rest can be spectators. I am sure, during this hour of exhibition, they do not want to just be spectators or to be seen as passengers in a bus that is driven by hon. Opiyo Wandayi.

**Hon. Wandayi:** Most obliged, but just give me two minutes to conclude.

**Hon. Speaker:** Not two minutes, thirty seconds.

**Hon. Wandayi:** What I want to ask, therefore, is about my earlier request---

**Hon. Abongotum:** On a point of order, hon. Speaker, Sir. Is it in order for my good friend, hon. Wandayi, to cast aspersions on the person of Prof. Mugenda; a lady who is known for her impeccable credentials and performance at Kenyatta University? I want to speak with authority because I used to be an Assistant Minister for Higher Education, Science and Technology in the previous Parliament. The lady managed to catapult that university until it was graded number one. In terms of certification, the university was rated number one.

Is he in order to cast aspersions on the performance and the integrity of Prof. Mugenda?

**Hon. Wandayi:** Hon. Speaker, Sir, I will obviously ignore that because I have not done anything near what he is alleging I have done. I would want the Chair of the Committee to find out the rationale behind turning Kenyatta University; a public institution, into an arena for perpetuating political witch-hunt. Lastly, to find out if it is correct or legal for the university administration to embark on an exercise which can only be equated to ethnic profiling and indeed, ethnic cleansing?

**Hon. Speaker:** Hon. (Ms.) S.W. Chege, you may wish to ignore the areas about politics and the rest. Just deal with the issue which was raised. The hon. Wandayi has had his fair share of exhibition.

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker, Sir. I would like to just bring to the attention of the Member that he questioned the methodology and it is clear that the university used video clips that were sought from the media. There was also interrogation from the social media platform and information from the Kenyatta University security networks. There was finally the interview with the IEBC staff. I would like to bring to his attention that the one, Dan Owino, was found guilty of causing mayhem that damaged the university property. He was found in possession of stolen IEBC jackets and election materials. He was also in the clip burning the IEBC car and he was also the one who conducted the Press conference.

I would also like to bring to the attention of the House that it is not only one tribe as the Member purported before the House. If I go to student No.7, his name is George Kamau Maathai. I would like to ask the Member to go through the report. It is quite large and if he has any further objection, he can raise it and then we can do a follow up.

**Hon. Speaker:** Hon. Members, it is not debate time. We now must go to business. There was yet another Statement request, but we have overshot the time for Statements and non-business. So, we must now go to business. Refer to the Order Paper. We are still on Order No.7 and the last item will be the Statement by the Leader of Majority.

BUSINESS FOR WEEK COMMENCING 5<sup>TH</sup> TO 7<sup>TH</sup> NOVEMBER, 2013

**Hon. A.B. Duale:** Hon. Speaker, Sir, pursuant to the Standing Order No.44(2)(a), on behalf of the House Business Committee, I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 5<sup>th</sup> November, 2013.

The HBC met on Tuesday this week at the rise of the House to give priority to the business of the House next week. On Tuesday next week, the House is expected to consider the Second Readings of the following Bills:-

- (i) The Wildlife Conservation and Management Bill, 2013
- (ii) The Marriage Bill, 2013.
- (iii) The National Police Service (Amendment) Bill, 2013.

The HBC will also give priority for the Second Readings of those Bills whose debate may not be concluded today. These Bills include:-

- (i) The Election Campaign Financing Bill, 2013.
- (ii) The Media Council Bill, 2013.
- (iii) The Truth, Justice and Reconciliation (Amendment) Bill, 2013.

I further wish to notify the Members that the following Bills are before the House and have been read a First Time.

- (i) The Protection Against Domestic Violence Bill, 2013.
- (ii) The Kenya Qualification Framework Bill, 2013.
- (iii) The Kenya Heroes Bill, 2013.

The Bills are already committed to the respective Committees. I wish to urge Committees through the Speaker to keep within the requirements of Standing Order No.127(4) and (5) and adhere to your guidance on the committal of Bills and legislative proposals before Committees. Finally, the HBC will meet on Tuesday, 5<sup>th</sup> November, 2013, at the rise of the House to consider the business for the rest of the week. I now wish to lay the Statement on the Table of the House.

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

**Hon. Ng'ongo:** Hon. Speaker, Sir, I listened keenly to the Statement by the Leader of Majority Party and I was expecting that by any chance, I could hear the petition by hon. Mithika Linturi regarding the issue of the Salaries and Remuneration Commission. This is a matter of grave importance to this country because as I speak, all the 47 county assemblies are not transacting any business because of the incompetence of this Commission. This Commission has even gone ahead to tell the public that it based its decision on a report from a consultant, which was delivered to the Commission on 11<sup>th</sup> March, yet it gazetted the various salaries and allowances of various State officers on 4<sup>th</sup> March. Therefore, this Commission has literally misled this country. It is almost fighting devolution. It is affecting the operations of our counties.

Given that it appears this petition is not coming any time soon and hon. Linturi is not around and the Committee cannot tell us the position, I would seek your guidance if we can override that petition under Article 251 of the Constitution and ask the President to form a tribunal to look into the competence of this Commission. We have to act. We

cannot sit as the National Assembly, yet all the county assemblies have stalled because of just one Commission which cannot deliver.

**Hon. Speaker:** It is true, hon. Mbadi, that hon. Mithika Linturi presented his petition on 2<sup>nd</sup> May, this year. Computation was referred to the Committee on Delegated Legislation to look at that particular petition, but unfortunately, it appears, from a report that was filed by that Committee, that they dealt only with the issue of the legality of the Gazette Notice. It is not dated 4<sup>th</sup>, but 1<sup>st</sup> March, purportedly a special issue, the substance of what you are canvassing. I do not seem to see the Chair of the Committee on Delegated Legislation, because they are the ones to whom that petition was referred. To the extent that they may have gone beyond the time allowed by our Standing Orders, we may want to hear from the Chair or the Leader of Majority Party as to how we should proceed. We could actually go the route that hon. Mbadi is suggesting because the 60 days requirement period is over.

**Hon. A.B. Duale:** Hon. Speaker, first I want to apologise because Hon. Mbadi and I took your role. Communication from the Chair is only the preserve of the Speaker or whoever is there. So, we want to apologise. It was not intentional. If I remember on 2<sup>nd</sup> May when hon. Linturi brought the petition, he read some very serious charges against the Salaries and Remuneration Commission (SRC) – charges that have never been read in any court of law in Kenya, maybe only in the International Criminal Court (ICC). Up to today, those charges have not been confirmed or otherwise.

Hon. Speaker, the matter now is more serious and I think this House and this leadership should solve it because we represent those counties. Those county assemblies are part of the leadership of this House. There is a complete breakdown of the parliaments in the 47 counties just because of one Commission. Article 230 even says that part of their work is to recognise productivity and performance. Today, the Finance Bill has not been passed in all the 47 counties despite the rates we see from Kiambu County which are very outrageous. If you are from Kiambu county and you are in this House, when you are about to die you better leave there because if you die in Nairobi and you are transported there, your family will pay a lot of money.

Hon. Speaker, it is very serious to see that nothing is moving in the country and through your leadership and through this House I think that petition can solve something. Somebody somewhere must ask: “Why are the county assemblies – the fundamental and critical organs of devolution – not functioning for three months just because of a dispute with the SRC?” I urge that the Chair, Vice-Chair or the membership of the Committee on Delegated Legislation owe this House an explanation and the country as to why that petition has not been acted on.

So, hon. Speaker, we need your guidance not only to save the business of the House as far as our petition is concerned but even to save the 47 counties and devolution in that manner. So, we want your direction on what happened to the petition on the SRC.

**Hon. Speaker:** Hon. Midiwo.

**Hon. Midiwo:** Thank you, hon. Speaker. I want to weigh in on this. First of all, let me say that I think I want to agree with hon. Duale and hon. Mbadi to the extent that they say that we need to know where the petition is. I think it is the right of the petitioners. I want to disagree a little bit with hon. Mbadi about the disbandment of this Commission because I think sometimes, we have to talk the truth. The paralysis in the county assemblies is not because of money. Who are the Members of County Assemblies

(MCAs) striking against? Are they striking against the people who elected them or against the SRC? The MCAs owe services to the people of this country. They can negotiate and do all this while they are working and they cannot intimidate the electorate. We can deal with SRC but the MCAs must understand as elected leaders of people that we owe a duty to the electorate. It would be a travesty if this Parliament one day wants remuneration and we go on strike and stop legislation.

Hon. Speaker, this is a new order and because it is a new order, all of us have to work with the challenges. The MCAs deserve proper remuneration but I disagree that that remuneration should come through some intimidation of the electorate. Thank you.

**Hon. Ng'ongo:** Hon. Speaker, I rarely disagree with hon. Jakoyo. I just wanted to clarify that probably hon. Jakoyo was away for a few days. I am aware he was not within the country. The SRC had refused to meet the MCAs deliberately in order to negotiate with them. In fact, she was using the Press as she was using the Press against us to communicate to them. How then do you communicate to a Commission that has refused to see you and is asking you to avail yourself for some re-evaluation?

Hon. Speaker, because of this strike by the county assemblies and to strike is a right of everyone, it has now forced the SRC to at least attend a meeting organised by the Senate. So, for me, I do not think the MCAs were wrong to go on strike because they were dealing with a body that is not ready and willing to negotiate with them. Negotiation would be the best route, but if the other party is not willing to sit down with you, then what do you do? Thank you.

**Hon. Speaker:** Hon. Members, I think to be fair so that we do not go to the debate about MCAs and SRC, we revisit the petition by hon. Mithika Linturi. He has not been around and I am not too sure that I have seen any request for permission from him to be away. Perhaps, he might also attract the wrath of the House or the Speaker because he has not been in the Chamber for some time now. However, more importantly I think it is to want to appreciate whether the petition was couched under the provisions of Article No.251 in which case then there would be timelines attached to it. So, I will need to see that. Maybe the Clerk's office will avail the contents of the petition to me so that by Tuesday next week I can give proper directions as to how it should be dealt with. This is because we cannot debate it now because it is not here and the Chair of the Committee on Delegated Legislation is also not present. The Clerk's Department is redirected to avail the copies of that petition so that we see whether it was seeking the removal of commissioners under Article 251 because then it will be governed in terms of procedure by our own Standing Order No.230. If that will be the case then, it means that it may have been spent because they have not acted as required and tabled a report. So, they may escape if our own Committee did not act in terms of Standing Order No.230. If the petition sought the removal of those commissioners, then the Committee ought to have proceeded under Standing Order No.230. So, there is a possibility that the matter maybe spent, in which case hon. John Mbadi would be at liberty to revive it because as you note it came quite some time back on 2<sup>nd</sup> May. It is quite some months ago. Next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

IN THE COMMITTEE

*[Hon. Chairlady (Dr. Laboso) took the Chair]*

THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL

**Hon. Chairlady:** Hon. Members, we are now in the Committee of the whole House to consider the Kenya Information and Communication (Amendment) Bill. Leader of the Majority Party, I hope you are aware this is your Bill? We need you to concentrate.

*Clause 2*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, Clause 2 be amended in paragraph (c)—

(a) by deleting the definition of the term “Cabinet Secretary” and substituting therefor the following new definition—

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for information, communication and technology”;

(b) by inserting the following new definition in its proper alphabetical sequence—

“Media Council” means the Media Council of Kenya established under the Media Council Act.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Clauses 3 and 4 agreed to)*

*Clause 5*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, Clause 5 be amended by deleting the proposed new Section 5 (c).

Hon. Chairlady, we indeed wanted to make amendments here. Clause 5(c) talks about the Cabinet Secretary issuing authority---

The fact that this particular body is going to be an independent one, the feeling is that we need to protect its independence and, therefore, the reason for deleting Section 5(c).

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 5 as amended agreed to)*

*Clause 6*

**Hon. Kamau:** Hon. Deputy Speaker I beg to move:

THAT, clause 6 be amended in the proposed new section 6(1) by deleting the word “There” appearing before the word “management” and substituting therefor the word “The”.

Hon. Deputy Speaker, even this one is actually a typographical error. It talks of “their management”. We want to remove “their” and replace it with “the”. It is just a typographical matter.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place therefor be inserted, put and agreed to)*

*(Clause 6 as amended agreed to)*

*Clause 7*

**Hon. Kamau:** Hon. Deputy Speaker, I beg to move:

THAT, clause 7 be amended—

(a) in the proposed new section 6B—

(i) by deleting subsection (1) and substituting therefor the following new subsection—

“Not later than sixty days prior to the occurrence of a vacancy in the office of chairperson or a member of the Board, the Cabinet Secretary shall, by notice in the Gazette and in at least two newspapers of national circulation, invite applications from qualified persons”;

(ii) by deleting subsections (3) and (4) and substituting therefor the following new subsections—

“(3) The Cabinet Secretary shall, within seven days of expiry of the period given for receiving public comments, consider the public comments received under subsection (2) and—

(a) in the case of the chairperson, forward three names to the President; and

(b) in the case of any other member, nominate seven persons for appointment and submit their names to the National Assembly for vetting.

(4) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (3)(a), nominate a person for appointment as the chairperson of the Authority and submit the name of the nominee to the National Assembly for vetting.

(5) If the National Assembly approves the nominees submitted under subsections (3)(b) and (4), within fourteen days after receiving the notification to that effect—

(a) in the case of the chairperson, the President shall appoint the nominee as the chairperson of the Authority; and

(b) in the case of any other member, the Cabinet Secretary shall appoint the nominees as members of the Board of the Authority.

(6) If the National Assembly rejects a nominee submitted under subsections (3)(b) or (4), the President or the Cabinet Secretary, as the case may be, shall submit a new nominee and the provisions of this section shall apply with necessary modifications with respect to the new nominee.

(7) Subject to subsection (8) if, after expiry of a period of thirty days from the date the nomination of a person under subsection (3)(b) or (4), the National Assembly has neither approved nor rejected the nomination of that person, the nominee shall be deemed to have been approved by the National Assembly.

(8) In reckoning time for purposes of subsection (7), the period the National Assembly is in recess shall not be taken into account.”

(iii) by renumbering subsections (5) and (6) as subsection (8) and (9), respectively;

(b) in the proposed new section 6C, by—

(i) renumbering the existing provision as subclause (1);

(ii) by inserting the following new subclause immediately after the renumbered subclause (1)—

“(2) The renewal of the term of office of the chairperson or member of the Board under subsection (1) shall not take effect unless that chairperson or member has been vetted and approved by the National Assembly prior to taking office for another term”;

(c) in the proposed new section 6D, by—

(i) deleting the expression “subsection (3)” appearing in subsection (2) and substituting therefor the expression “subsection (1)(c)”;

(ii) deleting the words “Cabinet Secretary” appearing in subsection (2) and substituting therefor the words “National Assembly”;

(iii) deleting the words “Cabinet Secretary” appearing in subsection (3) and substituting therefor the words “National Assembly”;

(iv) deleting the expression “subsection (3)” appearing in subsection (3) and substituting therefor the expression “subsection (1)(c)”;

(v) deleting the word “his” appearing in subsection (3)(a) immediately after the word “recommendations” and substituting therefor the word “its”;

(vi) deleting paragraph (b) in subsection (3) and substituting therefor the following new paragraph—

“(b) submit the resolution of the National Assembly to the Cabinet Secretary in the case of a member of the Board”;

(vii) deleting the word “and” appearing immediately after the word “chairperson” in subsection (4) and substituting therefor the word “or”;

(viii) deleting the phrase “set out in Article 47 of the Constitution” appearing in subsection (4);

(d) by deleting the proposed new section 6E.

Hon. Deputy Speaker, this one is a question of the appointment procedures. We realized that the existing procedures could be subject to abuse. We thought it important for us to have the National Assembly participate in this by approving the same.

*(Question of the amendment proposed)*

**Hon. Mwaura:** Hon. Chairlady, I am just concerned about the proposal submitted by the Committee concerning the membership as proposed by this amendment. It talks about seven other members and I am wondering whether it is prudent to just have seven members without them defining what they represent in this organization. I am, of course, informed by the constitutional provisions that require certain quotas be attained progressively, for example, for persons with disabilities and so on. I do not know whether that can be addressed here substantively. We also have issues around the youth and women. I find it a bit arbitrary to confer such powers on the appointing authority without necessarily guiding the membership to this Council.

**Hon. A.B. Duale:** Hon. Chairlady, the issue hon. Mwaura is raising, we have already passed it. I believe it is under Clause 6. It is about the Board. We are now debating Clause 7.

**Hon. Chairlady:** Could you clarify that hon. Mwaura? Were you addressing yourself to Clause 6 or Clause 7?

**Hon. Mwaura:** Hon. Deputy Speaker, I am addressing myself to Clause 7 as has been proposed. This is because if you look at (ii)(b) it is stated that--- Sorry, if you look at (i)--- I think that is where I have a problem. That is where I have a problem. It is under Clause 7 and not Clause 6. Clause 6 has a very minor amendment.

**Hon. Chairlady:** Maybe the Chairman of the Committee could clarify.

**Hon. Kamau:** Hon. Chairlady, I think that the issue that the hon. Member is raising relates to qualifications for appointment. If you look at the Bill it talks about one being a citizen of Kenya, holds a degree from a university and so on. Paragraph (d) actually satisfies the requirements of Chapter 6 of the Constitution. I guess what the hon. Member is saying is that, perhaps, the issue of the marginalized could have been left out. However, I guess when these appointments are going to be made the Constitution will definitely be followed.

**Hon. Deputy Speaker:** The Constitution will be followed. You cannot spell out everything in the statutes. Some of them may not be captured in the statutes.

**Hon. Mwaura:** Hon. Deputy Speaker, this should also be seen as an enabling legislation of the Constitution. Already there are provisions in the Constitution, but would



you measure progression of, say, Article 54(2) on the five per cent for persons with disabilities if you do not expressly provide that at least one of the seven members appointed under this proposed amendment will be a person with disability? To assume that the Constitution shall be followed is to leave too much leeway to the appointing authority. Because of the competition and interest that arises from such appointments some of these things fall through. I think it will be good to have such delineations---

**Hon. Chairlady:** Okay. Allow hon. Eng. Gumbo to contribute.

**Hon. (Eng.) Gumbo:** Hon. Deputy Speaker, while I have no intention whatsoever of demeaning what hon. Mwaura is talking about surely, five per cent of seven is less than half a person. Sometimes we have to look at these things and have faith that the people we have entrusted with responsibility will look at these things. If we were to build all these things--- If we gave, for example, one person, as he says, that is more than 10 per cent already.

It is good that as leaders of this country we have faith in people we have put to manage institutions. But if you want to say that out of the seven people five per cent must be people with disability, really you cannot have half a person. I do not mean to offend, but that is the reality. We have to have faith in people who run institutions.

**Hon. Kamau:** Hon. Chairlady, let me appeal to my good colleague, hon. Mwaura that what is, first and foremost, being considered is qualifications. Irrespective of whether one is disabled or not, what comes first are qualifications. It does not mean that if a disabled person has all the qualifications they should be left out. The first thing is qualifications and the others follow, as we move on. So, hon. Mwaura, I would really like to appeal to you. At the end of the day, these issues will come to this House. If the quotas that are assigned by the Constitution, including that for persons with disabilities, are not there, the matter will be addressed by the House.

**Hon. Chairlady:** Hon. Mwaura, really, we cannot spend too much time on just one clause. I allow you a last comment.

**Hon. Mwaura:** Thank you, hon. Chairlady. Some of us are here to represent such interests. While I agree, I know very well that, that kind of approach is responsible for the non-compliance with some of these provisions. Where the clause says “five per cent”, it says “at least”. I think there would be problem to say “at most---”. This is the totality. Today we have an opportunity to legislate so that we correct that which we may think was done wrongly before. Therefore, I find it an omission. There are general qualifications that we can delineate for whatever public office we create by law. It is because of historical marginalisation of some sections of society that we delineate. That is why the Constitution provides for this kind of arrangement. Therefore, I would want to imagine that the Constitution, as read together with these other enabling legislations, has express provisions that guarantee that kind of representation.

**Hon. Chairlady:** Okay, the point has clearly been made. As you said, since it is in the Constitution, when it comes to the actual appointment of members, you will find that everybody will refer to the Constitution. Hon. Members, I want to put the Question.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted*

*in place thereof be inserted, put and agreed to)*

*(Clause 7 as amended agreed to)*

*Clause 8*

**Hon. Kamau:** Hon. Chairlady, I beg to move:-

THAT, Clause 8 be amended by deleting paragraph (b).

Hon. Chairlady, this is simply a question of re-numbering. It is just a matter of making sure that the numbers follow each other. So, we just wanted to delete that clause completely.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Clause 8 as amended agreed to)*

*(Clauses 9, 10, 11, 12, 13, 14, 15, 16 and 17 agreed to)*

*Clause 18*

**Hon. Kamau:** Hon. Chairlady, I beg to move:-

THAT, Clause 18 be amended by deleting the proposed new section 50 and substituting therefor the following new section—

Designation  
of public  
postal  
licensee.

50. The Authority may, by notice in the Gazette, designate a postal licensee to be the public postal licensee.

Hon. Chairlady, again, this is just a question of wording. We just wanted to make it clear that the Authority may designate a postal licensee as a public post licensee.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 18 as amended agreed to)*

*Clause 19*

**Hon. Kamau:** Hon. Chairlady, I beg to move:-

THAT, Clause 19 be amended by deleting the words “one per centum” and substituting therefor the words “zero decimal two per centum”.

Hon. Chairlady, again, in this case, there was the feeling that two per cent was too much considering that the maximum could come to Kshs1.2 billion as fine. So, as a Committee, we thought that this would be excessive and settled for zero decimal two per cent as what is reasonable. The stakeholders also agreed with us.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 19 as amended agreed to)*

*(Clause 20 agreed to)*

#### *Clause 21*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, Clause 21 be amended in paragraph (c) by deleting the proposed new subsection (2) and substituting therefor the following new subsection—

“(2) The Authority may make regulations with respect to cyber security”.

Hon. Chairlady, the Committee found it important to leave the Authority as independent as possible. Therefore, the Authority itself will be mandated to make regulations with respect to cyber security.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause as amended agreed to)*

#### *Clause 22*

**Hon. Kamau:** Hon. Chairlady, I beg to move :-

THAT, Clause 22 be amended by deleting the word “five” appearing immediately before the word “million” in the proposed new subsection (3) and substituting therefor the word “ten”.

Hon. Chairlady, this is to do with the penalties. The Committee felt that a penalty of Kshs5 million for a person who has actually attempted to access unauthorised and protected systems is too lenient. So, the Committee decided to review this penalty to Kshs10 million. However, the jail term remains 10 years.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 22 as amended agreed to)*

#### *Clause 23*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, Clause 23 be amended by deleting the word “one” appearing immediately before the word “million” in the proposed new section 83U and substituting therefor the word “five”.

Hon. Chairlady, again, this is a question of fines. In this case, we also thought that interfering the systems to alter authenticity or integrity of such systems is a serious offence. We thought that a fine of a million shillings is too lenient. Therefore, the Committee suggests that we provide for Kshs5 million and retain the jail term of five years.

*(Question of the amendment proposed)*

*(Question, that the word to be left out be left out, put and agreed to)*

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 23 as amended agreed to)*

#### *Clause 24*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, clause 24 be amended by deleting the proposed new section 83V and substituting therefor the following new section-

Regulations 83V, The Authority may make regulations under this Part

Hon. Chairlady, this is also a question of regulations and making sure that the Authority remains as independent as possible. Therefore, we are providing for the Authority to have powers to make regulations under this part.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 24 as amended agreed to)*

*(Clauses 25, 26, 27, 28, 29 and 30 agreed to)*

#### *Clause 31*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, Clause 31 be amended by deleting the proposed new subsection (3) and substituting therefor the following new subsection-

“(3) The Authority may make regulations with respect to infrastructure sharing”.

Hon. Chairlady, this amendment talks about regulations with respect to infrastructure sharing. We thought that this is extremely important and the Authority requires independence. We thought that the Authority will be better placed to do it.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 31 as amended agreed to)*

*(Clauses 32 and 33 agreed to)*

#### *Clause 34*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, clause 34 be deleted and replaced with the following new clause—

Repeal and replacement of section 102 of No. 2 of 1998.

34. The principal Act is amended by deleting section 102 and substituting therefor the following new section—

Establishment of the Communication s and Multimedia Appeals Tribunal.

102. (1) There is established a tribunal to be known as the Communications and Multimedia Appeals Tribunal (hereinafter referred to as “the Tribunal”) which shall consist of not more than seven members, as follows—

(a) a chairperson nominated by the Judicial Service Commission, who shall be a person qualified for appointment as a judge of the High Court of Kenya and who shall also possess experience in communication policy and law;

(b) at least four persons possessing knowledge and experience in media, telecommunication, postal, courier systems, radio communications, information technology or business practice and finance, and who are not in the employment of the Government, the Media Council or the Authority.

(2) Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of a member of the Tribunal, the Cabinet Secretary shall—

(a) by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Tribunal, and invite applications from qualified persons; and

(b) convene a selection panel for the purpose of selecting suitable candidates for appointment as members of the Tribunal.

(3) The selection panel referred to in subsection (2) shall consist of five members drawn from the following organisations—

(a) the Ministry for the time being responsible for information, communication and technology;

(b) the Media Council;

(c) the Telecommunications Service Providers Organisation of Kenya;

(d) the Courier Industry Association of Kenya; and

(e) the Authority.

(4) At its first meeting, the selection panel shall appoint a chairperson and a vice-chairperson who shall be of opposite gender.

(5) An application in respect of a vacancy declared under subsection (2) shall be forwarded to the selection panel within seven days of the publication of the notice.

(6) The selection panel shall, subject to this section, determine its own procedure and the Cabinet Secretary shall provide it with such

facilities and other support as it may require for the discharge of its functions under this section.

(7) The selection panel shall consider the applications, shortlist and publish the names and qualifications of all the applicants and those shortlisted by the panel in the Gazette and in at least two daily newspapers of national circulation, within seven days from the expiry of the deadline of receipt of applications under subsection (5).

(8) The selection panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of short-listed applicants under subsection (7).

(9) After carrying out the interviews, the selection panel shall select three persons qualified to be appointed as members of the Tribunal, for each vacant position, and forward the names to the Cabinet Secretary.

(10) The Cabinet Secretary, shall, within seven days of receipt of the names, by notice in the Gazette, appoint a member or members to the Tribunal.

(11) Upon receipt of the notice of rejection under subsection (11), the selection panel shall submit fresh nominations and the procedure set out under this section shall, with necessary modifications, apply.

(12) Despite the foregoing provisions of this section, the Cabinet Secretary may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding fourteen days.

(13) In selecting, nominating, approving or appointing the members of the Tribunal, the selection panel and the Cabinet Secretary shall—

- (a) ensure that the nominees to the Tribunal reflect the interests of all sections of the society;
- (b) ensure equal opportunities for persons with disabilities and other marginalized groups; and
- (c) ensure that not more than two-thirds of the members shall be of the same gender.

(14) The selection panel shall stand dissolved upon the appointment of the members of the Tribunal.

(15) The members of the Tribunal shall hold office for a period of three years, but shall be eligible for reappointment for one further term for a period not exceeding three years.

(16) The office of a member of the Tribunal shall become vacant—

- (a) at the expiration of three years from the date of appointment;
- (b) if the member accepts any office the holding of which, if he or she were not a member of the Tribunal, would make him or her ineligible for appointment to the office of a member of the Tribunal;
- (c) if he or she is removed from the membership of the Tribunal by the Cabinet Secretary, on recommendation of a selection panel comprised of representatives of the bodies identified in subsection (3), for failure to

discharge the functions of the member's office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour; and

(d) if he or she resigns the office of member of the Tribunal.

Complaints.

102A. (1) A person aggrieved by—  
any publication by or conduct of a journalist or media enterprise; or  
anything done against a journalist or media enterprise that limits or interferes with the constitutional freedom of expression of such journalist or media enterprise, may make a written complaint to the Tribunal setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(2) A complaint under this section may be made—

(a) orally, either in person or by any form of electronic communication; or  
(b) in writing, setting out the grounds for the complaint, nature of the injury or damage suffered and the remedy sought.

(3) Where complaints are oral, the Tribunal may require them to be reduced in writing within seven days, unless it is satisfied there are good reasons for not doing so.

(4) A complainant shall disclose to the Tribunal—

(a) the complainant's name and address; and  
(b) other information relating to the complainant's identity that the Tribunal may reasonably require.

(5) Despite subsection (4), the Tribunal may—

(a) keep information provided by a complainant confidential if there are special circumstances to do so, or the Tribunal considers it is in the complainant's interests to do so; or  
(b) accept an anonymous complaint concerning an issue of public interest or where no clearly identifiable person or group is affected.

(6) The Tribunal may require a complainant to provide more information about the complaint within such reasonable time as the Tribunal may determine.

(7) The Tribunal may, at any time, require a complaint or information provided by a complainant to be verified by the complainant by oath or statutory declaration,

(8) Without prejudice to the functions of the Authority or the Media Council, the Authority or the Council may take up a complaint on its own initiative, and forward the same to the Tribunal for determination where in its opinion the complaint has public interest implications.

Procedure upon  
complaint.

102B. (1) Upon receipt of a complaint, the Tribunal shall notify, in writing, the party against whom the complaint has been made, within fourteen-days of receipt of the complaint, stating the nature of the complaint, the breach, act or omission complained of and the date on which the matter shall be considered by the Tribunal.

(2) The notice referred to in subsection (1) shall require the person



against whom the complaint is made to respond to the complaint in writing or appear before it at the hearing of the complaint.

(3) After considering each party's submissions, the Tribunal shall then conduct a preliminary assessment to determine the admissibility or otherwise of the complaint lodged within fourteen days.

(4) The Tribunal or any of its panels may, after conducting a preliminary assessment of a complaint, and being of the opinion that the complaint is devoid of merit or substance, dismiss such complaint and give reasons thereto.

(5) A party may, within fourteen days from the date of dismissal, apply for review or variation of the Tribunal's decision under subsection (4).

Proceedings by  
the Tribunal.

102C. (1) The Tribunal shall sit at such times and in such places as it may appoint.

(2) The proceedings of the Tribunal shall be open to the public save where the Tribunal, for good cause, otherwise directs.

(3) For purposes of hearing and determining any cause or matter under this Act or the Media Council Act, the chairperson and four members of the Tribunal shall form a quorum.

(4) A member of the Tribunal who has a direct interest in any matter which is the subject of the proceedings before the Tribunal shall not take part in those proceedings.

(5) Any person who is a party to proceedings before the Tribunal may appear in person or be represented by an Advocate before the Tribunal.

(6) Except as expressly provided in this Act, the Media Council Act, or any regulations made thereunder, the Tribunal shall regulate its own procedure.

Attendance  
before the  
Tribunal.

102D. (1) The Tribunal may—

(a) make such orders for the purposes of securing the attendance of any person at any place where the Tribunal is sitting, discovery or production of any document concerning a matter before the Tribunal or the investigation of any contravention of this Act or the Media Council Act, as it deems necessary or expedient;

(b) take evidence on oath and may for that purpose administer oaths; or

(c) on its own motion summon and hear any person as witness.

(2) Any person who—

(a) fails to attend the Tribunal after having been required to do so under subsection (1)(a);

(b) refuses to take oath or affirmation before the Tribunal or, being a public officer refuses to produce any article or document when lawfully required to do so by the Tribunal;

(c) knowingly gives false evidence or information which he knows to be

- misleading before the Tribunal; or
- (d) at any sitting of the Tribunal—
  - (i) wilfully insults any member or officer of the Tribunal;
  - (ii) wilfully interrupts the proceedings or commits any contempt of the Tribunal;
  - (iii) fails or neglects to comply with an award, decision, order, direction or notice confirmed by the Tribunal commits an offence under this Act;
- (e) fails or neglects to comply with an award, decision, order, direction or notice confirmed by the Tribunal commits an offence under this Act.

Decisions of the  
Tribunal.

- 102E. (1) The Tribunal may, after hearing the parties to a complaint—
- (a) order the offending party to publish an apology and correction in such manner as the Tribunal may specify;
  - (b) order the return, repair, or replacement of any equipment or material confiscated or destroyed;
  - (c) make any directive and declaration on freedom of expression;
  - (d) issue a public reprimand of the journalist or media enterprise involved;
  - (e) order the offending editor of the broadcast, print or on-line material to publish the Tribunal’s decision in such manner as the Tribunal may specify;
  - (f) impose a fine of not more than twenty million shillings on any respondent media enterprise and a fine of not more than one million shillings on any journalist adjudged to have violated this Act or the Code of Conduct for the Conduct of Journalism set out in the Media Council Act, where upon such a fine shall be a debt due to the aggrieved party and recoverable as such;
  - (g) in its reasons for its findings, record a criticism of the conduct of the complainant in relation of the complaint, where such criticism, is in its view, warranted;
  - (h) recommend the suspension or removal from the register of the journalist involved;
  - (i) make any supplementary or ancillary orders or directions that it may consider necessary for carrying into effect orders or directives made.

(2) The Tribunal may make any or a combination of the orders set out in subsection (1).

Appeals to the  
Tribunal.

102F. (1) Unless otherwise expressly provided in this Act, the Media Council Act or any other law, where this Act or the Media Council Act, empowers the Media Council or the Authority to make decisions, such decisions may be subject to an appeal to the Tribunal in accordance with such procedures as may be established by the Tribunal for that purpose.

(2) Any person who is aggrieved by an action or decision of the Media Council, the Authority or a person licensed under this Act, may within sixty days after the occurrence of the event or the making of the

decision, against which he is dissatisfied, make a claim or appeal to the Tribunal.

(3) Upon any appeal, the Tribunal may—

- (a) confirm, set aside or vary the order or decision in question;
- (b) exercise any of the powers which could have been exercised by the Media Council or the Authority in the proceedings in connection with which the appeal is brought; or
- (c) make such other order, including an order for costs, as it may consider necessary.

Appeals from  
decision of the  
Tribunal.

102G. (1) Any person aggrieved by a decision or order of the Tribunal may, within thirty days of such decision or order, appeal against such decision or order to the High Court.

(2) No decision or order of the Tribunal shall be enforced until the time for lodging an appeal has expired or, where the appeal has been commenced until the appeal has been determined.

(3) The decision of the High Court on any appeal under this section shall be final.

Assessors.

102H. The chairperson of the Tribunal may appoint any persons with special skills or expert knowledge on any issues which are the subject matter of any proceedings or inquiry before the Tribunal to act as assessors in an advisory capacity, in any case where it appears to the Tribunal that such special skills or knowledge are required for proper determination of the matter.

Remuneration  
of members of  
the Tribunal.

The chairperson and members of the Tribunal shall be paid such allowances as the Salaries and Remuneration Commission may determine.

Liability of  
Tribunal  
members.

102I. The chairperson or other members of the Tribunal shall not be liable to be sued in a civil court for an act done or omitted to be done or ordered to be done by them in the discharge of their duty as members of the Tribunal, whether or not within the limits of their jurisdiction, provided they, at the time, in good faith, believed themselves to have jurisdiction to do or order the act complained of, and no officer of the Tribunal or other person bound to execute the lawful warrants, orders or other process of the Tribunal shall be liable to be sued in any court for the execution of a warrant, order or process which he would have been bound to execute if within the jurisdiction of the Tribunal

*(Question of the amendment proposed)*

*Question, that the words to be left out be left out,  
Put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 34 as amended agreed to)*

*New Clause*

**Hon. Kamau:** Hon. Chairlady, I beg to move:-

THAT, the following new clause be inserted immediately after clause 34—

Renumbering  
of section  
102A of No.  
2 of 1998.

34A. The principal Act is amended by renumbering section 102A as section 102J.

This Clause had a lot of issues and we had to consult widely. Finally, we reached an agreement with all the stakeholders. We thought that coming up with a new autonomous body, that is the Multi-Media Appeals Tribunal, would be the way forward. The Committee agrees with that.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*(Question, that the new clause be read a Second Time, proposed)*

*(Question, that the new clause be read a Second time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill, put and agreed to)*

*Clause 35*

**Hon. Kamau:** Hon. Chairlady, I beg to move:-

THAT, clause 35 be amended—

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph—  
“(a) by deleting subsection (2)”;
- (b) by deleting paragraph (b);
- (c) in paragraph (d)—
  - (i) by deleting the words “the Cabinet Secretary, in consultation with” appearing in the proposed new subsection (5)(b);

(ii) by deleting the proposed new subsection (7) and substituting therefor the following new subsection—

“(7) Not later than sixty days prior to the occurrence of a vacancy in the office of chairperson or a member of the Council, the Cabinet Secretary shall, by notice in the Gazette and in at least two newspapers of national circulation, invite applications from qualified persons”;

(iii) by deleting the proposed new subsection (9) and substituting therefor the following new subsections—

(9) The Cabinet Secretary shall, within seven days of expiry of the period given for receiving public comments, consider the public comments received under subsection (8) and—

- (a) in the case of the chairperson, nominate one person for appointment; and
- (b) in the case of any other member, nominate eight persons for appointment, and submit their names to the National Assembly for vetting.

(10) If the National Assembly approves the nominees submitted under subsection (9)(a) and (b), within fourteen days after receiving the notification to that effect, the Cabinet Secretary shall appoint the nominees as chairperson and members, respectively, of the Council.

(11) If the National Assembly rejects a nominee submitted under subsection (9)(a) or (b), the Cabinet Secretary shall submit a new nominee and the provisions of this section shall apply with necessary modifications with respect to the new nominee.

(12) Subject to subsection (13), if, after expiry of a period of thirty days from the date the nomination of a person under subsection (9)(a) or (b), the National Assembly has neither approved nor rejected the nomination of that person, the nominee shall be deemed to have been approved by the National Assembly.

(13) In reckoning time for purposes of subsection (12), the period the National Assembly is in recess shall not be taken into account”;

(iv) by renumbering subsections (10) and (11) as subsection (14) and (15), respectively;

This Clause deals with the appointment of Universal Service Advisory Council Members. The old laws were talking about appointment by the Cabinet Minister and the Attorney-General. So, we were deleting 2 and then part “b”.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 35 as amended agreed to)*

*(Clause 36 agreed to)*

*Clause 37*

**Hon. Kamau:** Hon. Chairlady, I beg to move: -

THAT, clause 37 be amended by inserting the following new paragraphs immediately after paragraph (a)—

“(aa) a person who was a member of the Board of Directors of the former Commission shall be deemed to be a member of the Board of the Authority for the unexpired term of that person;

(ab) a person who was a member of the Universal Service Advisory Council shall remain a member of the Council for the unexpired term of that person”.

Hon. Chairlady, this one deals with the issue of the transition. The Bill talks about the former Commission and we need to allow the former directors to operate until the new Board is formed. It is just a transitional clause.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted, put and agreed to)*

*(Clause 3 as amended agreed to)*

*(Clauses 38, 39, 40 and 41 agreed to)*

*(Schedule agreed to)*

*New Clause 10A*

**Hon. Kamau:** Hon. Chairlady, I beg to move:-

THAT, the principal Act be amended by inserting the following new sub-part immediately after Section 27.

Hon. Chairlady, here we are talking about SIM card registration. We wanted to make it illegal for someone to have an unregistered SIM card. The penalty is there. That is why we came up with this amendment.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*Question, that the new clause be read a Second Time, proposed)*

**Hon. Chairlady:** Hon. Irungu, did you have an intervention?

**Hon. Kang'ata:** Hon. Chairlady, Clause 27---

**Hon. Chairlady:** We are on New Clause 10(A). If we have passed a clause, we do not go backwards.

**Hon. Kang'ata:** Hon. Chairlady, I wanted to seek a further clarification on the justification for Clause 27(A) because it is under 10(A). Maybe, the Chairman can explain to us this. If a telecommunications operator sells a SIM card to a person taking into account the kind of details that person is supposed to furnish the operator with, will that entail production of an ID, a birth certificate or something else? It appears it will be mandatory. If that will be the case, what is the practicality of that requirement? Will it be practical? Will it entail diminishing the extent to which these entities can log more people with SIM cards into their systems?

**Hon. Kamau:** Thank you, hon. Chairlady. Let me make it very clear to my good friend from Murang'a County. Here, we are saying that we need every person to have their full names, their ID card number, their date of birth, their gender, whether male or female and their physical and postal addresses clearly put, so that every telecommunication operator can see and know the person who is using the SIM card, where he comes from and all that kind of detail. This will really help.

You remember the case of Westgate Mall attack some people were using SIM cards which were not known. We want to make sure that this does not happen.

**Hon. A.B. Duale:** Hon. Chair, even if this amendment is vital, it is for the intelligence community and security agent. In case like what happened at Westgate Mall, it will make it easy to trace a person through his name, physical address and everything else. This is what happens everywhere in the world. Even when we go abroad and we want to get a SIM card, these are the forms we fill in.

**Hon. Mwaura:** Thank you, hon. Chairlady. I am just concerned about the provision for national identity cards. That is a little bit restrictive for certain categories of people. For instance, if you are a foreigner and you are working here in the country, maybe you have a permit and a local number; obviously, you will not have a national identity card. Is it possible then to include a passport to add to this list because a national identity card is only for citizens?

**Hon. Kamau:** Hon. Chairlady, what about this identity card number? An identity card can be anything, a passport, or whatever it is. When we go out of the country and, maybe, you need a SIM card, you have to produce your passport so that you can get that number. That is your identity document for that particular purpose. So, it can be any document.

**Hon. Chairlady:** Use of either a passport number or an identity card number should be okay. Any number that identifies you and it is yours alone is okay.

*(Question, that the new clause be read a Second Time,  
put and agreed)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill,  
put and agreed to)*

*New Clause 14A*

**Hon. Sakaja:** Hon. Chairlady, I beg to move: -  
THAT, the following new clause be inserted immediately after Clause 14—

Amendment of  
Section 46I of  
No. 2 of 1998.

14A. Section 46I of the principal Act is amended by inserting the following new subsections immediately after subsection (2)—

“(3) A broadcaster licensed to distribute radio or television programme services shall ensure that at least sixty per cent of the programmes broadcast on radio or television on any given day comprise local content.

(4) The programmes containing local content referred to in subsection (3) shall be broadcast between 6 a.m. and 10 p.m. on any given day.”

**Hon. Sakaja:** Thank you, hon. Chairlady. The objective of this amendment is to create jobs for our young people who are involved in the film and entertainment industry because we know a lot of viewership on television and what we have on radio is comprised of foreign content.

If you look at other jurisdictions, for example where they have very vibrant film industry, we have 60 per cent local content mandatory and 80 per cent on radio. Therefore, this is to make sure that we have 60 per cent local content and the amendment further specifies that this local content must be broadcast during the day. Once you do this you will be able to make the industry improve in terms of quality of production and content.

Hon. Chairlady, I have discussed also with the Committee and it has proposed a further amendment to the amendment. Maybe, hon. (Eng.) Gumbo can raise it.

**Hon. Chairlady:** Is there concurrence with the Committee that this amendment has to be further amended?

**Hon. Sakaja:** The Chair is in concurrence; also the Leader of Majority Party should also be involved.

**Hon. Chairlady:** Okay. So, there is further amendment. Hon. Members, before hon. Gumbo comes in, I want to propose the Question.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

*Question, that the new clause be  
read a Second Time, proposed)*

**Hon. (Eng.) Gumbo:** Thank you, hon. Chairlady. We have discussed with the Committee and the Mover of that amendment. I wish to propose a further amendment that the proposed amendment by hon. Sakaja be amended further by deleting the word



“sixty” and substituting therefor the words “forty five” and inserting the words “and advertisement” after the word “programmes” in the third line.

There is a further amendment, hon. Chairlady to the provisions of Sub-Clause 5; the provisions above will take effect within 18 months of enactment of this Bill.

**Hon. Chairlady:** Could you then explain the import of your amendment?

**Hon. (Eng.) Gumbo:** Hon. Chairlady, the import of this further amendment is that much as we want to create jobs for our youth, we are also alive to the fact that the reason for 45 per cent is that there are also commercial interests that the broadcasting houses already have. But on why I have added Sub-clause (5), it is because we are aware that these broadcast houses already have existing contracts that are ongoing. So, we are giving them time to effect changes, so that at least, these changes do not take effect immediately. We give them 18 months within which to make sure that they comply with this new provision. Therefore, I should, probably, read the Clause as amended. It goes:-

“(3) A broadcaster licensed to distribute radio or television programmes services shall ensure that at least 45 per cent of the programmes and advertisement broadcast on radio or television on any given day comprise local content.

(4) The programmes containing local content referred to in subsection (3) shall be broadcast between 6 a.m. and 10 p.m. on any given day.”

(5) The provisions above will take effect not later than 18 months of the enactment of this Bill.

**Hon. Chairlady:** I want to see the concurrence of the Chair of the Committee.

**Hon. Kamau:** I am okay with it, hon. Chairlady.

**Hon. Chairlady:** You are the owner of the Bill.

*(Question, that the new clause be read a Second Time,  
put and agreed)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added to the Bill,  
put and agreed to)*

*New Clause 34A*

**Hon. Kamau:** Hon. Chairlady, I beg to move:-

THAT, the following new clause be inserted immediately after clause 34—

Renumbering

of Section

102A of No.

2 of 1998.

34A. The principal Act is amended by renumbering section 102A as Section 102J.

**Hon. Kamau:** Hon. Chairlady, on the New Clause 34A, yes, while talking about the Multi-Media Bill Tribunal as proposed by the Committee I think I explained the purpose of this new clause.

*(Question of the new clause proposed)*

*(New clause was read the First Time)*

*(Question, that new clause be read  
a Second time proposed)*

*(Question, that the new clause be read a  
Second Time, put and agreed to)*

*(The new clause was read a Second Time)*

*(Question, that the new clause be added  
to the Bill, put and agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. A.B. Duale:** Hon. Chairlady, I beg to move that the Committee doth report to the House its consideration of the Kenya Information and Communication (Amendment) Bill, 2013, and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL**

**Hon. (Dr.) Laboso:** Hon. Speaker, Sir, I beg to report that a Committee of the Whole House has considered the Kenya Information and Communication (Amendment) Bill, 2013 and approved the same with amendments.

**Hon. A.B. Duale:** Hon. Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**Hon. Kamau** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Speaker, Sir, I beg to move that the Kenya Information and Communication (Amendment) Bill, 2013, be now read a Third Time.

**Hon. Kamau** seconded.

*(Question proposed)*

*(Hon. Simba crossed the Floor without bowing at the Bar)*

**Hon. Speaker:** Hon. Arati, you have no authority to cross from one side to the other. You must go back to the door, please.

*(Hon. Simba went back to the Bar and bowed to the Chair)*

**Hon. (Eng.) Gumbo:** Hon. Speaker, Sir, I thank you for giving me the chance. I want to thank our Committee and Leader of the Majority for working on this Bill. The highlight of this Bill is that we are now attempting to look at particularly the quality of service. In the past, we have had a blanket fine of Kshs500,000 which was pocket change to most of the network corporates. Personally, I would have liked that the penalty be kept at one per cent, but after being convinced, I think the 0.2 per cent provision is good enough. This is a good Bill, and it is going to improve telecommunications in the country. I support the Bill.

**Hon. Kamau:** Hon. Speaker, Sir, let me also take this opportunity to thank the Members of my Committee who worked tirelessly. This is a very difficult Bill and we really spent a lot of time on it. I really give them a lot of thanks, because they did a good job. We had to go through very difficult times in this Committee. We had various discussions with various stakeholders. Finally, we came together as stakeholders, the Committee and all other people who were interested in this Bill and built consensus, which is what we have presented before the House today. I really want to thank the media, which has been very kind to us. I want to ask them that we should be sorting out issues this way. We can sit down together as members of this nation when things are not going well, rectify them and move on in the right direction.

I beg to support.

**Hon. Mwaura:** I rise to support the amendments, and also to say that communication is a very critical aspect of persons with disabilities. In fact, their lack of participation in development is largely because they are not able to get information. This is in terms issues of, for example, the deaf and the digital format. Articles 6 and 7 of the Constitution require that we have such provisions. It is my prayer that whatever structures have been established by this amended Bill are going to be responsive and even compel, for example, media houses to communicate in a manner that will also have information being accessible to persons with disabilities.

I also support the Bill. For the first time in the history of this republic, we have captured a very important aspect to ensure that it is mandatory now to be registered when one gets access to communicate using SIM cards. I support.

**Hon. A.B. Duale:** Hon. Speaker, Sir, this is a very good Bill that sets up a body that is free of the stakeholders, the media, the Government and politicians. It is a body that will regulate both the media and all other stakeholders. I want to thank the Committee and your office for making sure that a consensus is reached to make sure our intentions are achieved.

More fundamentally is the amendment in the new Clause 10A on the SIM card registration. It is something that will help this country in the war against terror. You remember the people who did that heinous act in Westgate had SIM cards and were calling people. Their SIM cards were not registered. This law now makes sure that anybody in this country who sells a SIM card without following the due process of the law will be liable.

Again, with a light touch, this is a very controversial but good law, but only a few Members are here. The majority of the Members are not here. I want to thank those who are here especially Members of the Committee. However, this House should have been full when a Bill like this one is being passed. I want to tell my colleagues that this is the kind of law that promotes the functions of Parliament. I support.

**Hon. Mulu:** Thank you, hon. Speaker. I am not a member of the Committee and I want to thank this Committee for work well done. Initially when discussion on this Bill started, most of the stakeholders were very skeptical of the Bill. I want to thank the Committee for the level of consultations which have taken place before we got to where we are. So, I think this is really setting the pace in terms of how to come up with Bills and enact laws after bringing on board all the stakeholders, so that the kind of laws that this House enacts are laws which are going to serve Kenyans effectively.

Hon. Speaker, I want to say a lot of thanks to this Committee. I think that all the other committees should actually emulate them, so that we bring on board all Kenyans when enacting laws.

Thank you, hon. Speaker.

**Hon. Sakaja:** Thank you very much, hon. Speaker. I would like to thank the Committee and Members present very much, especially for accepting the amendment that I brought. That amendment is the highlight of this Bill; it marks a new day for Kenyans involved in the film, arts and entertainment industry. We know our young people in this country have immense talent. We have seen them. We have seen some of their shows. We watch them on Churchill Show and I am sure even in the constituencies and villages we have seen what young people can do. However, for a long time these young people have not been able to access coverage, whether on television or radio.

Hon. Speaker, now the Bill that we have passed explicitly provides that at least 45 per cent of the content that will be aired by a licensed broadcaster must promote local talent, and that local talent must be broadcast between 6.00 a.m. and 10.00 p.m. We know that for a long time, a lot of local content is broadcast after midnight. During the rest of the day we are only watching *Alejandra* or *Nollywood* movies. I am confident that with the talent in this country, Kenya will compete ably with *Nollywood* and *Riverwood*. We can even use this to actually showcase the culture of this country.

Hon. Speaker, in many other jurisdictions like in Canada, Philippines, Mexico and Nigeria they have 80 per cent local content in radio and 60 per cent on television. The same applies to Israel and South Africa and that has attracted a lot of investment. It has even made their film and arts industry grow so much that South Africa has become the destination of choice for international movie makers. I think from this point onwards we will be hopeful that Kenya will become the destination of choice. We have a lot more to show and our young people can get employed and make a living out of the talents and skills that God has given them.

Hon. Speaker, I would also like to point out that even the few local productions that have been making it have had the highest ratings. So, those who had fears that due to commercial interests media houses would not want to show local content, if you look at the ratings it shows that *Churchill Show*, *Papa Shirandula*, *Tusker Project Fame(TPF)*, *Tujuane* and *Tahidi High* actually have the highest ratings. If you look at the young men and women who participate in these shows, their lives have actually been changed. Some of them are now driving vehicles. They are earning salaries and a livelihood; really, we are growing the culture of this country.

Also, hon. Speaker, I would like to point out that in economics most times we say supply credit is on demand. Once this quota of 45 per cent is assured, the media houses will actually invest in the industry – invest and co-produce with young people to make sure that actually we have good quality. This is because the issue of quality might come up and people might say we do not have the right quality. Indeed, this is the first step and I know that within the next 18 months we will have had enough investment in the music industry and film industries. Our young people will be able to walk with their heads high.

Thank you, hon. Speaker.

**Hon. Kang'ata:** Hon. Speaker, we are happy that today we have passed this Bill and one of the reasons is that every customer who buys a subscriber identity module card will be supposed to register it. It is now a legal requirement. Also, the Bill does away with the notion of hawking of SIM cards. We have seen for instance in this country Kenyans suffering as a result of emerging crimes like terrorism, and particularly in Murang'a County where we have situations where Kenyans, or even people in my county, are taken hostage. We have several instances where people have been abducted and communication on phones has been one of the key factors making that emerging crime to really escalate.

So, with this enactment it is now legal for the police to go and request a service provider to disclose information relating to a communication. Also, criminal proceedings may compel a service provider to disclose information to an entity that is investigating crime. That is something that is very new in this country.

Hon. Speaker, another important issue concerning the new law is the introduction of a fund into which various service providers are supposed to put part of their earnings. I can foresee that fund being used by the Government to foster new communication entities. Therefore, I am very happy today we have been able to go through this Bill, which is now on its way to becoming a new law.

Thank you.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

Hon. Speaker: Next Order.

## MOTION

### ADOPTION OF PIC SPECIAL REPORT ON SUPPLY OF MAIZE

THAT, this House adopts the Special Report of the Public Investments Committee on the contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited for the supply of white maize, laid on the Table of the House on Tuesday, 22nd October 2013.

*(Hon. Keynan on 29.10.2013)*

*(Resumption of Debate interrupted on 29.10.2013)*

**Hon. Speaker:** Hon. Gichigi was on the Floor at the time of the adjournment of the House. He has a balance of seven minutes. If he is present he can utilise his seven minutes. Being absent, or not desiring to be present, any other Member can contribute. Yes hon. Mbadi.

**Hon. Ng'ongo:** Thank you, hon. Speaker for giving me this opportunity to contribute to this Motion. I took my time, and I thank God that I asked for extension of time to debate this report. I took my time to look at this report over the weekend and during the better part of this week. It surprises me when Kenyans are involved in road accidents and then you see people rushing and instead of helping the injured, or saving them from that accident, they get busy removing money from their pockets. You understand why.

Hon. Speaker, in 2004 - this is something that occurs after every 10 years - we had a serious famine in this country. We had serious famine in 1994. We also had serious famine in 1984. Instead of the people put in positions ensuring that Kenyans have enough food to feed on, they see an opportunity to loot from the taxpayers. I want to congratulate the Public Investments Committee (PIC) for carrying out this special investigation and preparing this special Report.

What was the genesis of this Report? Reading through the report you will realise that there were about seven firms, out of 81 which had picked the bid documents, which finally responded and out of them Erad had the highest quotation. Out of all of them, Erad had the highest quotation. Despite that, five firms were awarded a tender to deliver approximately 40,000 metric tonnes of maize. Did they deliver? You realize that Erad Supplies, first of all, did not even have technical capacity. More interestingly, even the financial capacity to be able to supply to the National Cereals and Produce Board (NCPB) was lacking. Even though they lacked financial capacity to supply maize, having shown that their net worth was only Kshs665,000 and in the negative - this also brought question as to the going concern - still the people who were doing the tender evaluation did not see anything wrong with this.

Erad Supplies could not even afford to secure a bid bond. Still those who were doing the tender evaluation went ahead and awarded them the tender. There was a requirement that for any firm to be awarded this contract, there was need to show, at least, three years experience in the tender document. This was not proved. Actually, Erad did not have that. Even in terms of personnel--- But where was the source? All the other firms quoted South Africa as the source of the white maize. Interestingly, Erad Supplies quoted Ethiopia. This is something that was open plan to loot from the Kenyan public. This House can only do justice to protect NCPB by passing this Report.

Hon. Speaker, I know there have been questions as to the rule of *sub judice* and there are questions as to if the courts give award, as a House, would we still go ahead and recommend that the Government should ignore. There is a possibility, yes, that in the event that the Court of Appeal will rule in favour of Erad Supplies, then the Executive will have difficulties in implementing this Report.

Hon. Speaker, to that effect, I seek to bring an amendment to this Report. I want to disclose that I have actually spoken to the Chairman of PIC and we were in agreement that this would be a good amendment to avoid putting this Parliament in conflict with the Judiciary. If you allow me, hon. Speaker, I will move the amendment :-

“THAT, the Motion be amended by adding the following words after the figure “2013”, “subject to insertion of the words “in the event that the Court of Appeal rules in favour of NCPB in invalidating the entire transaction, the arbitral award and the resultant court decree” before Paragraph 17 of the conclusion on Page 94 and paragraphs six and seven of the recommendations on Page 96 of the Report.”

The import of this is to recognize that this matter is in the Court of Appeal and also to show that this House respects the separation of powers. It respects the courts and the Judiciary. If this amendment is carried, in the event that the Court of Appeal rules against or does not rule in favour of NCPB, then those provisions which would require the Executive to behave in a manner that is defined on Page 94 and Page 96 then become not tenable.

Hon. Speaker, I beg to move and ask this House that in order to avoid conflict between Parliament and the Judiciary, we have this amendment carried so that it is very clear that in the event that the Court of Appeal will rule in favour of NCPB in invalidating the entire transaction then that payment should not be made and that, the amounts so far paid should be refunded by the recipients of the money.

I want to conclude by saying that this House has a duty to protect NCPB. As we talk, the accounts of NCPB are frozen. Today all the assets of NCPB have been attached. That is very serious. I have just mentioned the cyclical nature of farming in this country. We need to start thinking about this seriously. We know that 2014 will be 10 years after the greatest famine of 2004. How will we help the disadvantaged members of this society who will be hard hit by famine if NCPB is brought to its knees by greedy individuals in this country?

I beg to move that amendment and ask hon. Keynan to second it, just to show that actually, the Chairman of the Committee is in agreement with me.

**Hon. Speaker:** Unfortunately, because of your own rules, hon. Keynan being the Mover of the Report has already spoken. He is only allowed to speak in reply.

**Hon. Ng’ongo:** Fine, hon. Speaker. I thought this was--- Hon. Eng. Gumbo is ready to second, but I thought this was an amendment.

**Hon. Speaker:** The same rules apply. Hon. Eng. Gumbo is the one seconding. Is that so? The rules are that in this case, hon. Eng. Gumbo does not lose his chance to contribute to the main Motion because now he is only seconding the amendment.

**Hon. (Eng.) Gumbo:** Hon. Speaker, I second.

*(Laughter)*

**Hon. Speaker:** Hon. Members, before I propose the Question, I needed to see this Report because hon. John Mbadi proposes that the Motion be amended by adding the following words after the figure “2013” but does not say on which page. So the Motion will now read as follows:-

“THAT, this House adopts the Special Report of the Public Investments Committee on the Contract between NCPB and M/s Erad Supplies and General Contracts Limited for the supply of white maize, laid on the Table of the House on Tuesday 22<sup>nd</sup> October, 2013, in the event that the Court of Appeal rules in favour of NCPB invalidating the entire transaction, the arbitral award and the resultant court decree before Paragraph 17 of the conclusion in Page 94 and paragraphs six and seven of the recommendation on Page 96 of the Report.”

That is the proposed amendment. I hope hon. Members are able to follow.

Hon. Members, because there is a little bit of a technicality, including the reports by our media houses, it is important that we appreciate the point that was made by hon. John Mbadi, especially as the proposed amendment relates to recommendation numbers six and seven, on page 96 of the Report. The recommendations read as follows:-

“6. M/s Erad Supplies and General Contracts Limited and the individual directors namely Mr. Jacob Juma, Hon. Maj. (Rtd) John Waluke and Grace Sarapay Wakhungu should fully compensate the Government of Kenya through the NCPB an amount of Kshs313 million and any other monies received following the execution of the arbitral award and litigation in line with Sections 51 and 54 of the Anti-Corruption and Economic Crimes Act, 2003 and any other relevant laws and principles of law including that of equity.

7. The Government should not pay M/s Erad Supplies and General Contracts Limited or any of its directors namely Mr. Jacob Juma, Hon. Maj. (Rtd) John Waluke and Grace Sarapay Wakhungu any money arising from the alleged breach of contract by NCPB.”

Hon. Members, this amendment is to the effect that, in the event that the Court of Appeal rules in favour of NCPB, invalidating the entire transaction these recommendations will take effect.

**An hon. member:** It is automatic!

**Hon. Speaker:** It is automatic but it is important that I make it clear. I do not think it is obvious to everybody that it will be automatic. It will be the automatic consequence, should the appeal go in favour of NCPB. Obviously, all monies paid so far will have to be recovered. That will be the net result. However, in the event that NCPB loses the appeal, this recommendation will not hold sway.

Hon. Members, I hope that we are clearer.

**An hon. Members:** Yes, we are.



**Hon. Speaker:** So, can we have a few more contributions on this amendment or can I put the Question?

Yes, hon. Ali Wario.

*(Question, that the words to be added be added, proposed)*

**Hon. Wario:** Hon. Speaker, I am lost. I thought, through Standing Order 89(3) (d), I tabled a court decree proving that this matter is before a court of law. I am asking for your indulgence, through Standing Order No.1. Is this amendment not a clever way of going round the ruling that I am waiting from you? This is because the purpose of this amendment is to pre-empt the ruling by the court. Do we, first, get a ruling on the concern I raised yesterday and then proceed with the amendment or do we proceed with the amendment and then wait for your ruling?

**Hon. Speaker:** We contribute to this amendment.

Yes, hon. Mohamed.

**Hon. Diriye:** Hon. Speaker, the import of the whole Report is to find out persons and companies that have been deemed culpable. The import of the amendment is to say: "Having said all that you have said, because the matter is in court, let us make no recommendations as regards the company and the persons." In fact, it is as if we are saying: "Let us do nothing." So, what are we debating?

**Hon. Speaker:** Yes, hon. Shidiye.

**Hon. Shidiye:** Hon. Speaker, the amendment is not in tandem with the thinking of the House. We were basically expecting debate – debate that is going to take in the High Court or the Appeal Court. So, I am not sure---

**Hon. Speaker:** Hon. Shidiye, I am sorry, there is nothing like that in our rules. There is nothing like anticipating debate in a court of law and in some funeral. Let us deal with what is here. There is nothing about us anticipating debate in a court of law. Courts of law are not venues for debates.

**Hon. Shidiye:** Hon. Speaker, the amendment that has been moved by hon. Mbadi is speculative. The amendment says that if the Court of Appeal rules one way, we will follow a certain route; and that if it decides the other way, we will follow another route. This means he is not aware of what is going to happen in the Court of Appeal. So, it is not in the interest of this House to debate the amendment. I think it is out of order for us to do so.

**Hon. Speaker:** Hon. Shidiye, I have not heard what you said.

**Hon. Shidiye:** Hon. Speaker, I am saying that hon. Mbadi is anticipating debate in the Court of Appeal. He is saying that in the event the Court of Appeal decides whichever way, the recommendations contained in our Report will be followed after the court has made its verdict. So, it is not in the interest of this House to debate the amendment because we are anticipating debate in a court of law. So, it is *sub judice* and out of order.

**Hon. Speaker:** Let us hear hon. Midiwo.

**Hon. Midiwo:** Hon. Speaker, I thought you were very clear in your explanation. The controversy that was raised by hon. Ali Wario in the last few days was that we seemed to be telling the court something. We were saying that the Government should not pay, against the wishes of the court, and we were very uncomfortable. My

understanding of your explanation is that we are not telling the court what to do anymore. What we are saying is that should NCPB win the case at the Court of Appeal, instead of this Report coming back to us, the people who have been paid some monies should pay it back to NCPB. To me, it is that simple. We are not asking the courts to make any particular judgment. You have also said that should the Court of Appeal uphold the ruling of the lower court, nothing will happen because it is none of our business since the courts are free to do what they do. To me, that is satisfactory. We are dealing with colossal sums of money. We are doing our duty as Parliament. We need to say that if somebody is found culpable, he must pay the public.

That was my understanding, hon. Speaker.

**Hon. Speaker:** Precisely! Hon. Members, we know for a fact that it does happen. We cannot just bury our heads in the sand. It is quite possible. It happens from time to time in the Government. Government agencies would win cases but they would not even bother to follow up for compensation. So, what Parliament is telling the NCPB is: "Should you win, you have an obligation. We do not want to re-visit this matter. Make sure that you get back that money."

This is to ensure that our Committee on Implementation follows up that money. So, once the NCPB wins the appeal, whatever monies have been paid out must be recovered. So, it is not a matter that has to come back to Parliament. That is the net effect of this amendment. Is it understood? I also wish to draw the attention of the House to the fact that hon. Ali Wario has a number of proposed amendments. Therefore, as soon as we dispose of this one, we will listen to his proposed amendments as well, so that we can go back to the main Report as either amended or in its original form.

What is your point of order, hon. Junet?

**Hon. Junet:** Hon. Speaker, I want your guidance on this matter. Even though the amendment by hon. Mbadi is trying to cure the issue of what happened after the court ruling, our debate also confirms that we are discussing a matter that is before a court of law. From records, there is confirmation that it is a dispute that it is before a court of law. So, I want your guidance on the basis of the rule of *sub judice*.

**Hon. Speaker:** I will also guide you. We are also alive to some reports that somebody purports to even hijack Parliament from what we are doing. We cannot fail to do that. We will not discuss the substance of the case.

(Applause)

In any event, I do not think that anybody has the copy of the memorandum of appeal on the various allegations contained in the memorandum. This is just to acknowledge that there is a case involving this. That is all. It is not the merits or demerits.

Yes, hon. Wario.

**Hon. Wario:** Ahsante sana mhe. Spika. Nasimama kuchangia marekebisho ya Hoja yaliyoko mbele yetu. Tumetoa miezi sita kwa PIC. Kamati hii imeenda na ikatuletea Ripoti. Kwa masikitiko makubwa, imeamua kwamba kampuni fulani isipewe kazi na nyingine ipewe kazi. Baada ya sisi kusema kwamba hii ni kazi ya mahakama, tunaletewa marekebisho ili korti ikiamua kwa manufaa ya NCPB, jambo hili lifanyike. Swala nyeti ni moja. Je, korti itakapoamua kwamba Erad imeshinda, marekebisho haya yatakuwa na

maana gani? Kwa nini tunapoteza muda wa Wakenya? Hii ni kwa sababu haya ni masuala ya mahakama.

Tunaambiwa kwamba ikiwa korti itatoa hukumu kwa manufaa ya NCPB--- Je, maana ya marekebisho ni gani kama korti haitatoa hukumu?

*(Applause)*

Nguzo tatu za Serikali ni Bunge, Mahakama na Utawala. Bunge linatunga sheria, Utawala unatekeleza sheria na kama kuna ugomvi, Mahakama inatua huo ugomvi. Leo Bunge litachukua hukumu la utunzi wa sheria, litatoa hukumu kati ya Erad na NCPB--- Naona tunavuka mpaka na tunazungushwa hapa. Wanaopiga hesabu hii wanajua wanafanya nini. Miezi sita, sisi tumetarajia Ripoti ambayo itatupatia mwongozo na walioandika Ripoti hii ndio wanakuja kuikosoa. Ikiwa wenyewe wanaikosoa, sisi tuna wajibu wa kuikataa kwa sababu wenyewe hawana imani nayo.

*(Applause)*

Mhe. Spika, mwisho---

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

**Hon. Speaker:** Let him finish. He is opposing the amendment. It is also good to hear the other side.

**Hon. Wario:** Mhe. Spika, mwisho, kuna mzozo kati ya NCPB na Erad mbele ya Bunge la Kenya, na Bunge haliwezi kuangalia sehemu moja. Mahakama inaangalia haki ya Erad na NCPB. Lakini hapa tunapewa mwongozo. Jiulize swali moja. Kampuni ambazo zimeletwa mbele yetu ni saba. Hizi kampuni zingine ni za nani? Tumeambiwa Erad ni ya nani kwa sababu wenyewe wametajwa.

Mahindi yaliyoletwa ni metric tonne 70,000 na *Letter of Credit* imetiwa sahihi. Saa hii hatutaki kusema kwamba tunaweka hii chini. Tunambiwa shetani mkubwa ni Erad. Bunge lina haki kuangalia haki ya kila Mkenya. Wajibu wa kuangalia haki ya Erad na NCPB ni wa mahakama na si Bunge. Kamati isitufanye sisi hapa kuwa korti ndogo.

Kwa hayo, nasimama kupinga mapendekezo haya.

*(Question, that the words to be added  
be added, put and agreed to)*

**Hon. Members:** Division! Division!

**Hon. Speaker:** Hon. Members, those in opposition must be 30. Just count yourselves and see whether you meet the threshold. You are 21 and, therefore, you do not meet the threshold. So, the amendment is carried.

Hon. Members, you have not met the threshold because you are 21 and you are required to be 30. So, the amendment is carried.

**Hon. Simba:** Hon. Speaker, Sir---

**Hon. Speaker:** Hon. Arati Simba, I know you are very active but, please, utilize that energy in the other business of the House. So, we will go to the Motion as amended. In order that we resolve all issues relating to amendments, I want to give this chance to hon. Ali Wario to proceed and move his amendment.

**Hon. Wario:** Hon. Speaker, Sir, I beg to move that the Motion be amended as follows:-

THAT, the Motion be amended by adding the following words after the figure 2013, "subject to deletion of recommendation "b" on page 12 of the Report, all recommendations on page 14 of the Report, recommendation "a" and "c" in paragraph 5.4 on page 54---

**Hon. Speaker:** Just a minute, hon. Wario. Did you say page 12? That is the one dealing with SGR trustees.

Yes, hon. Wario.

**Hon. Wario:** Yes, on page 54, hon. Speaker. Recommendations numbers 12, 13, 14 and 15 on pages 97 and 98 of the Report. If you look at page 12 of this Report, the recommendation reads:-

"(b) The Strategic Grains Reserve (SGR) Trustees in their individual and collective capacity to take a decisive action to instruct the Managing Director to terminate or execute the contract fully should also be investigated. The Trustees Messrs. Joseph Kinyua, Mahboub Mohammed and James Ongwae should be held accountable for the negligence of duty in the management of the contract between the National Cereals and Produce Board (NCPB) and M/s Erad Supplies and General Contracts Limited."

Hon. Speaker, Sir, when the Mover of this Motion was moving it yesterday, he shared with us a letter annexed to the Report - that is Annex 11.

That, if it was not for the intervention of Mr. Joseph Kinyua, the situation could have worsened. On one hand, he is commending Mr. Joseph Kinyua for interventions and on the other hand, in the body of the Report, he is asking that action should be taken against Mr. Joseph Kinyua, Mahboub Mohammed and James Ongwae.

Hon. Speaker, whom do we trust and how do we go forward because the Leader of Majority Party and the Mover of the Motion and many other hon. Members raised concerns that Mr. Joseph Kinyua wrote a very good letter stopping SGR members from opening Letters of Credit (LCs). If we have to go by what the Mover of this Motion was saying yesterday, we need to expunge paragraph 12 from this Report.

Hon. Speaker, Sir, on paragraph 14, recommendation (a), the trustees of SGR, Messrs. Mahboub Mohammed and James Ongwae to be held accountable for failure to perform their collective responsibility under the agency agreement. I do see how because the agency agreement it between SGR and NCPB.

The process of developing a tender to the exclusion of that particular tender, with all the technicalities is the responsibility of NCPB. The role of SGR trustees is merely an advisory arm. They have signed an agency for NCPB to implement the tendering process of grains on behalf of SGR. How do you again go back and hold the trustees responsible for the actions of NCPB. Messrs. Joseph Kinyua, Mahboub Mohammed and James Ongwae were not in the technical evaluation Committee neither were they in the tender committee.

Hon. Speaker, Sir, we know where the mistakes occurred and who did the blunder. How do you go back and hold the people who were only there giving advice responsible? If you go to part (b):-

"The Trustees should be held accountable for failure to plan for the resources to execute the project contrary to public procurement regulations."

Hon. Speaker, we got a letter from the Permanent Secretary, Finance, stopping the SRG trustees and cautioning them that Government money was lost before and they should take care.

Secondly, this is not a normal Government budgetary allocation. This is a drought intervention. It is a crisis. It is like when your house is on fire then somebody will ask you to bring a plan of putting out the fire instead of doing so. It will not work. This is not normal Government budgetary allocation; it is an emergency or disaster response. For that purpose, the trustees cannot be held responsible.

Finally, on paragraph (C), Page 14;

“The Trustees in their individual and collective capacity should be held accountable for their inaction to render advice on the termination of the contract or settlement of the matter when it was apparent that M/s Erad Supplies and General Contracts Limited lacked the capacity to deliver, after the expiry of the contract delivery period and further, when it was also apparent that there would be no further available funds for maize importation.”

Hon. Speaker, Sir, the role of terminating the tender was purely an NCPB role. Those are the trustees or the advisory board. They are not the ones who were executing that tender. They cannot interfere with a legal binding contract between NCPB and any of those companies. How would you again hold the same trustees responsible?

Let us go to page 54 of the Report. The Committee recommends that:-

- (a) “The Ethics and Anti-Corruption Commission (EACC) should investigate the trustees of SGR for contravention of Section 45 (2) (C) of the Ethics and Anti-Corruption Act as read with Section 48 of the same Act.”

Hon. Speaker, Sir that section tells us that if you engage in a project without clear planning--- That is the same argument I had. Nobody was anticipating drought or disaster. If you ask us today to use Section 45 (2) (c) of the EACC Act, the Head of State has declared a national disaster, are you fair to the advisors and the trustees of SGR? This is beyond them because nobody was anticipating the drought or the disaster.

With regard to Recommendation (c),

“The trustees should be held accountable for failure to plan and ensure that adequate resources are availed to NCPB to facilitate maize importation, contrary to the provisions of Section 17(6) of the procurement regulations which are replicated in Section 45 (3) of the Anti-Corruption and Economic Crimes Act, 2003. “

We are talking about a whopping Kshs4.9 billion and the whole tendering project was done within one to two months. You have seen the letter from the PS, Finance. How do you expect those three gentlemen to put together Kshs4.9 billion in three months? This is the responsibility of the Government.

Hon. Speaker, Sir, there is an observation made there that they be held responsible simply because of declaring drought a national disaster. That is recommendation number 13. The prerogative of declaring a disaster as a national issue is the preserve of the Cabinet and the President. Those gentlemen were merely implementers. They only implemented what the Cabinet decided.

Hon. Speaker, Sir, I can now quickly move to recommendations on page 97 - that is Recommendation no.12.

It is the same thing which I was arguing about earlier on.

“The EACC investigates Eng. Mahboub Mohammed and James Ongwae for breach of sacrosanct duty of care owing to their positions as trustees of the Strategic Grain Reserve, in contravention of Section 45(2)(c) of the Ethics and Anti-Corruption Act as read with Section 48 of the same Act.”

Hon. Speaker, Sir, Recommendation 13 reads:-

“The EACC should investigate the circumstances leading to the declaration of drought as a national disaster at the instigation of the Ministries of Agriculture and Special Programmes.”

Hon. Speaker, Sir, nine years ago, the responsibility of declaring drought of a national disaster was the responsibility of the Cabinet and the President. Why are we victimizing three innocent people?

Recommendation 14 states that:-

“The trustee should be held accountable for failing to plan and ensure that adequate resources are availed to NCPB to facilitate maize importation contrary to the provisions of Section 17 (6) of the procurement regulations.”

Resources were availed, but not the required amount. But they were availed. It is the responsibility of the Government to put in place the entire amount required. We cannot victimize two people who were advisors simply because there were no enough resources to intervene at times of disaster. Those are only three people who are only advisors. This should have been the role of the Cabinet. It should have been the role of the Government. Why are we now segregating and picking three figures out of the entire Government and victimizing them? Some of them wrote letters. For example, Mahboub Maalim, Kinyua and Ongwae wrote letters warning and this is the best way to intervene in this particular issue. My request is that we need to expunge this proposal which is touching on SGR Trustees. Those are innocent civil servants, who were there to perform their role to help this country.

Thank you, hon. Speaker, Sir, I beg to move. I ask hon. Shidiye to second.

**Hon. Shidiye:** Hon. Speaker, Sir, I have the gut feeling and I get worried---

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, let us just listen because it is important.

**Hon. Shidiye:** Hon. Speaker, Sir, I have a gut feeling and I get worried when we have senior civil servants who have put their careers for over 40 years in public service. As I speak, Mr. Kinyua is the Head of Public Service and Secretary to the Cabinet. Eng. Mahboub is an Ambassador for Intergovernmental Authority on Development (IGAD) and Mr. James Ongwae is the Governor for Kisii County. Those people had good careers and have been very clean people. When they were acting as trustees, they were just policy makers and not policy implementers. They did not run the day to day activities of NCBP. They did not do the tendering. When we have a disaster, like the Westgate, we saw what happened. The military ran there, the police, the General Service Unit and everybody went there to help and ameliorate the situation.

When we have about three million people waiting to be fed---

*(Loud consultations)*

Hon. Speaker, Sir, I seek your protection.

**Hon. Speaker:** Order, Members! Allow hon. Shidiye to make his point.

**Hon. Shidiye:** Hon. Speaker, Sir, when you have 3 million people who cannot wait and want food like yesterday; when you want to provide food to 3 million people who are facing the pangs of hunger, you have to move fast. Those officers had to move very fast and support the Government. The Government declared the drought a national disaster and that is why in the thick of things, they moved very fast and asked NCPB to fast-track the tendering process. They had the goodwill and were initiating a process.

When you look at the letter written by Mr. Kinyua and Mr. Mahboub on 6<sup>th</sup> October---

*(Loud consultations)*

Hon. Speaker, I wish to seek your protection. There is too much noise.

**Hon. Speaker:** Order!

**Hon. Shidiye:** Hon. Speaker, Sir, Mr. Mahboub wrote to the Permanent Secretary, Treasury and said please, suspend the opening of LCs until due diligence was done. Mr. Kinyua also wrote a letter and he was very categorical. He wanted the smooth running of the Government machinery and the right procurement procedures. He said that systems must be followed. He was very categorical. He does not sit at the Board of NCPB or in the procurement committee. He does not do the day-to-day activities of the Board. When you condemn those people unheard, you want to finish their careers.

One philosopher said that in the interest of---

**Hon. Ichung'wah:** On a point of order, hon. Speaker, Sir. I rise under Standing Order No.89 that talks about deliberately misleading the House. Is the Member in order to deliberately mislead this House that the SGR Trustee, Mr. Mahboub Maalim is being condemned by this Report unheard? He is not a member of this Committee and the Members of the Committee and other Members of this House know that, indeed, Mr. Mahboub appeared before the Committee and adduced evidence. Further, this Report has not in any way condemned any of those trustees. All that the Report has done is to ask the legitimate bodies under our Constitution that are mandated to carry out investigations to do so. We have only recommended that those legitimate bodies like EACC investigate the culpability or otherwise of that trustee or any other. He is, therefore, deliberately misleading the House that we have condemned any of those trustees. We have not.

**Hon. Shidiye:** Hon. Speaker, Sir, I know what happened in that Committee. We know what has been going on.

**Hon. Member:** Divulge the information!

**Hon. Shidiye:** Hon. Speaker, Sir, I will not divulge the information. The Members know better. One philosopher said---

**Hon. Midiwo:** On a point of order, hon. Speaker, Sir. I am on a point of order to request that we be civil about this debate. I know you have been guiding us so kindly and so orderly. Is it in order for hon. Shidiye to say that he knows what has been happening in that Committee and, in fact, to impute improper motive on the Committee without substantiating? What is it that has been happening, so that we can know? We want to be told. For those of us who want to debate soberly, there are words being thrown around here away from your ear that this is a Luo affair and that we are trying to victimize

people. We have read through the Report. Is it possible that we can just argue on the facts on the Report? Could hon. Shidiye just explain what has been happening? We want to know because the name of Parliament will be put to question. You are the head of this institution.

**Hon. Speaker:** Hon. Shidiye, perhaps, you may wish to clarify what you meant by saying that you know what happened in the Committee because in, itself, that is weighty.

**Hon. Shidiye:** Hon. Speaker, Sir, one philosopher said that---

**Hon. Speaker:** No! Not a philosopher.

**Hon. Shidiye:** I am coming to the point.

**Hon. Speaker:** Hon. Shidiye, you used the words “know what happened in the Committee”.

**Hon. Shidiye:** I withdraw and apologise.

**Hon. Speaker:** Yes, what about the philosophy? Just second the Motion. About philosophy, that can be something for another day.

**Hon. Shidiye:** Hon. Speaker, Sir, one philosopher said that between a strong Judiciary and a strong Parliament, you would rather have a strong Judiciary. That is the point that I wanted to make.

**Hon. Speaker:** You made your choice consciously to belong to this arm.

**Hon. Shidiye:** Hon. Speaker, Sir, there is separation of powers. We do not want to muzzle the powers of the Judiciary and the Judiciary should not muzzle the powers of Parliament.

**Hon. (Eng.) Gumbo:** On a point of order, hon. Speaker. I have sat here listening to the argument of hon. Shidiye for whom I have immense respect. But will I be in order while listening to his trend of argument, to request the Chair to ask him to declare if he has a personal interest in this matter?

**Hon. Speaker:** Hon. Shidiye.

**Hon. Shidiye:** Hon. Speaker, Sir, I have a personal interest and I want to declare it. I have a personal interest in the sense that innocent Kenyans are being victimized by a Committee in the name of PIC. I find it very odd. That is my personal interest, hon. Speaker, Sir. I want to declare that as my personal interest. Having said that, when Erad went to court, they won the case. That is why the matter is still pending in the Court of Appeal. I know very well that when this matter goes to the Court of Appeal---

*(An hon. Member interjected)*

Forget about that my friend. Hon. Speaker, Sir, when Erad went to court--- If Erad was wrong, they would not have won that case. I am standing here because I find innocent Kenyans are being victimized. I think that something should be done.

With those few remarks, I beg to second.

**Hon. Speaker:** Even as I propose the Question, it is important that I remind ourselves what is “personal interest”, so that you do not rise to make general statements and claim that they are personal. Personal interest in terms of Standing Order No.90 (2) is:-

“Personal interest includes pecuniary interest, proprietary interest, personal relationships and business relationships.”



So, hon. Shidiye and the rest of us, we are, accordingly reminded that, that is what constitutes “personal interest”. I must propose the Question because the amendment has been seconded. These are the procedures of the House. I will ask the clerks to prepare the earlier amendments so that I can read. Now, the Motion as amended reads as follows:-

THAT, this House adopts the Special Report of the Public Investments Committee on the Contract between the National Cereals and Produce Board and M/s Erad Suppliers and General Contracts Limited for supply of white maize laid on the Table of the House on Tuesday 22<sup>nd</sup> October, 2013 in the event that the Court of Appeal rules in favour of NCPB invalidating the entire transaction, the arbitral award and the resultant court decree.

The further proposed amendment is: The Motion is now further amended to read:-

“That, subject to the deletion of the following:-

- (i) Recommendation number (b) on page 12 of the Report;
- (ii) All recommendations on page 14 of the Report;
- (iii) Recommendation number (a) and (c) in paragraph 5.4 on page 54;
- (iv) Recommendation numbers 12, 13, 14 and 15 on pages 97 and 98 of the Report.

*(Question, that the words to be added be added, proposed)*

**Hon. Keynan:** Thank you, hon. Speaker. I appreciate the sentiments of hon. Members. First of all, in our criminal jurisprudence, criminal responsibility is individual. It is not communal. To that extent, when you are a public servant or a State officer, you carry that individual responsibility on any transaction that you undertake. To that extent – and, in fact, somebody should have appreciated the fact that somebody who has been a civil servant or in a high position is obligated to apply prudence at the maximum and apply all rules as required by regulations, statutes and the Constitution. The import of this particular amendment is to shift the responsibility--- What the Committee has done is to propose further investigations by specialized Government agencies. That is none other than the Ethics and Anti-Corruption Commission. This Report was not done in isolation. I do appreciate that. Sometimes we say common sense is not so common.

Hon. Speaker, Sir, I want to read the recommendations of none other than the Office of the Auditor-General. I want this to inform those who are proposing these amendments. This Report is already with the EACC. These are the findings---

**Hon. Wario:** On a point of order, hon. Speaker, Sir.

**Hon. Keynan:** I beg that--- I have not said anything anyway!

**Hon. Speaker:** Let him proceed on a point of order.

**Hon. Wario:** Thank you hon. Speaker, Sir. You have heard hon. Keynan say that the criminal responsibility--- Which court of law proved that the three trustees have criminal responsibility? I am standing under Standing Order No.87(3). He is using offensive language against innocent civil servants.

**Hon. Keynan:** Hon. Speaker, Sir, again, this is an issue of understanding. I am not in any way saying that somebody is culpable. As you sit here, I am saying this: Should you do anything, whether you are hon. Keynan or hon. Wario, you carry that

individual responsibility. I did not say that anybody is culpable at this stage. These are the findings of Auditor-General. This Report is with EACC. The Report is available in Room 8 and it will form part of our Report. The first finding is:-

The procurement of maize was initiated and carried out without establishing the availability of funds to finance the huge budget. The trustees he has mentioned are the individuals who commenced the process without ascertaining whether there were adequate funds. That is the first thing we want to investigate. We want to find out why they authorized procurement of maize when they knew there were no adequate funds. That is from the Auditor-General. The second one is:-

To finance the huge budget in part of Part IV Section 17 (6) of the Audit and Exchequer Act---

**Hon. Speaker:** There is another point of order from hon. Simba Arati.

**Hon. Simba:** On a point of order, hon. Speaker, Sir. If I heard well from hon. Keynan, I remember the other day he spoke of one of the trustees; how good he is. He glorified one Kinyua but, today, he is telling us that, indeed, those people committed those sins. Where do you stand?

**Hon. Speaker:** Hon. Simba Arati, you cannot purport to be rising on a point of order to ask questions. You know it is never done like that in the National Assembly. This is the National Assembly of the Republic of Kenya. It is never done that way.

**Mr. Keynan:** Hon. Speaker, Sir, I also appreciate that English has also a lot of foreign ingredients. Those were three trustees. It is good to appreciate. I said the trustees. If it is one, I would have said it is a trustee. If there were two, I would have said trustees. If there were more, the same applies. I think this is something that we need to appreciate. Just, please, listen to why that informs the debate. I beg hon. Members to listen so that they can see what the Auditor-General has said and compare the same with what we are saying. It says:-

The procurement entity shall ensure, itself, that sufficient funds are set aside in the entity's budget to pay for any amounts due under the resultant contract. The above regulation was not considered during the process of the procurement. That is the first. Therefore, the report recommends that, that aspect---

*(Hon. Wakhungu interjected)*

Hon. Speaker, I believe that hon. Wakhungu should be asked to remain calm and listen. That is because I really want hon. Members to appreciate---

**Hon. Speaker:** Hon. Chris Wamalwa Wakhungu!

**Mr. Keynan:** Hon. Speaker, this is what the Auditor-General says. The Accounting Officer of the three trustees was the Permanent Secretary, Special Programmes, Mr. Mahboub Maalim. The others were board members. What they did was to commence a process of procurement when they knew that there were no funds.

Hon. Speaker, the other day we said that if you look at the tendering process and all the documentation, the end desired was: Go ahead with the procurement process, give a tender, provide for a breach of warranty and contract and eventually when you learn that there is nothing, ask the same individuals to invoke the same provisions of the breach of contract. That is exactly what happened.

Secondly, the auditor questions: How come you commenced procurement process without having adequate funds? They required Kshs5.8 billion and yet they had only Kshs2.4 billion.

**Hon. Ng'ongo:** Hon. Speaker, I would like to inform the Chairman of this great Committee PIC that, apart from the fact that the trustees are actually the people responsible for determining the sufficiency of funds to start the procurement process, it should also be understood that Joseph Kinyua held two responsibilities here; one, as the Permanent Secretary. Now, as the Permanent Secretary, he acted very well. That is because he informed the procurement entity that they should not issue letters of credit. So, there he did a good job. However, as a trustee, he failed to do his job and that is why there is a recommendation that the trustees need to be held responsible.

So, I want to clarify that because it was sought from the Mover of this amendment. He was asked: How come the Committee praised Joseph Kinyua, the Permanent Secretary who did a good job by the way? However, as a member of trustee of the Strategic Grain Reserve, he failed to do a good job. If the Committee found that to be wanting, then it had a right to raise that matter. There is nothing wrong with that.

**Hon. Keynan:** Hon. Speaker, the second recommendation of the Auditor-General states that the bid bond submitted by Erad Supplies was not valid. This is the Auditor-General and not PIC or anybody else. This is the most respected audit entity in the Republic of Kenya. Therefore, they said that this should be investigated.

Hon. Speaker, further, they said that there was no evidence of due diligence having been carried out on financial ability of Erad Supplies to supply maize before the tender was awarded. This is evident that all the components did not follow due process. This includes the trustees, the Board of NCPB, the tender committee and the technical committee. So, how do you remove the trustees from the process?

Hon. Speaker, fourthly, it says that the whole procurement process appears to have been carried out hurriedly, without allowing the Board sufficient time to confirm information provided. Again, there is correspondence here to show that, indeed, the trustees, headed by Mr. Mahboub used all mechanisms to ensure that this process was executed within the shortest time possible. How do you remove the trustees?

I appreciate and must declare pursuant to Standing Order No.90 that Mr. Mahboub is a Somali like myself, but that does not waive responsibility. He comes from northern Kenya and to that extent, I am obligated to clear the name of Mr. Mahboub. How do we clear? I really want the name of Mr. Mahboub to be cleared. Covering and removing further investigation is not the way to assist Mr. Mahboub because this will remain part of Government record.

It also says that NCPB did not take into account the financial ability of the bidder. Again, this should be investigated. Further, the Report says that the approving authority for the purchase of maize was not provided with complete and accurate information. Again, this came from the trustees. The NCPB did not comply with the Exchequer Act. This should be investigated. The poor and unprofessional manner in which the whole procurement process was carried out leaves a lot to be desired. This should also be investigated.

In conclusion, that person says that in all these issues, transparency and accountability goals of the Government were not followed and this should be

investigated. The NCPB did not carry out due diligence in documentation. The NCPB did not invoke provisions of the contract to even apply for breach of contract.

The Ministry and the three trustees formed an inter-agency tender committee which they had an oversight role. As a result, NCPB was forced, to some extent, to reach decisions which if they were allowed time, they would not have gone through.

With regard to the amendment suggested by hon. Wario, if I were in the shoes of hon. Wario--- Maybe, he has not also declared his interest on this matter other than him being a Member of Parliament and he has a right. This will give an opportunity to the trustees to clear their names. If you say that they should not be investigated and this Report is public, I am going to read another one from the Inspectorate of State Corporations. So, you are then buying time for the wrong reasons. It is good to have this issue investigated by the EACC. Let me confirm that EACC was one of the agencies that appeared before the PIC. They gave us very useful information. They have been investigating this for the last one-and-a-half years. The same way PAC investigated the issue of IEBC and brought a report and ensured that there is action, this is the same thing we are trying to do. We are in the process of doing that. We are only being fair.

I want to plead with hon. Wario that suggesting that the trustees should not be investigated does not assist the individual. Until these allegations are proved by EACC, these individuals are not culpable. Why do you not allow them to subject themselves to the rule of law and be investigated? If they are found not culpable, I am sure somebody will say that they have not committed any criminal offence and, therefore, they are clean. If, however, they have committed a crime, and this is against the people of Kenya--- Let me declare that 87 per cent of my constituency relies on relief food that comes from NCPB. I believe the same applies to hon. Wario and hon. Shidiye. If there is a part of Kenya that requires a vibrant and functioning NCPB, then it is North Eastern Province. We should be the last people ever to suggest or side with cartels which are out to grind to a halt the activities and operations of NCPB.

**Hon. Speaker:** Time! Time! Are you opposing or what is your position?

**Hon. Keynan:** I, therefore, stand to strongly oppose this amendment by hon. Wario. However, I accept information from Hon. Makali.

**Hon. Speaker:** There is no time. He cannot inform you and you have no time. Is there anybody wishing to speak to the amendment?

**Hon. (Eng). Mahamud:** Hon. Speaker, I stand to support the amendment. I have listened carefully to what hon. Keynan has said and also to the amendment by hon. Wario. The NCPB contracted Erad to supply maize, but it failed to do so. Erad failed to get the performance bond as is required. The question here before us is not whether money was there or not to pay Erad. I do not agree with the argument that because contracts were awarded before the money was available, we are where we are now. Erad supplied nothing. So, it is not actually the issue of budget here.

Hon. Speaker, the parties to this contract are Erad and NCPB; all others could be advisory or something else. I personally do not see how, in terms of contracting, the trustees were involved in contracting for that maize.

I remember in 2004 when the drought was very severe, the president declared it an emergency. The relevant Ministries were tasked to put these things together. The Ministry of Finance was supposed to avail the funds, but the people who were contracted did not have the performance that was required. What we have before us is that, due to

lack of LC, a company took the NCPB to court. This is the essence of the matter. So, the matter is between the NCPB and M/s Erad Supplies and General Contracts Limited. How do the trustees come in? The trustees, collectively, asked the NCPB to supply the maize that was required by tendering. All these fellows were my colleagues as I was a Permanent Secretary during that time. In those days, we did not even use the Red Cross Society. The Red Cross Society became an entity, as it is today, because of Eng. Mahamud and others. We made sure that we actually empowered the Red Cross Society to become an agency that is capable of dealing with disasters.

So, let us not mar these things. Hon. Keynan is reading from a Report of the Auditor-General but that Report is not with us here. What we have here is the Report of the PIC. What the amendment is doing is asking us to put the blame where it belongs. The claim is between the management of the NCPB and a company called M/s Erad Supplies and General Contracts Limited. It has nothing to do with anybody else. It squarely puts the blame there because if we diversify and bring other guys in, we lose track. So, let us deal with the problem before us. There was a contract that was not respected, in respect of which somebody went to court. The big problem is that the NCPB is actually being destroyed.

So, with those few remarks, I beg to support the amendment.

**Hon. Speaker:** Hon. Members, you are now aware of the further amendment proposal. Therefore, I will put the Question.

*(Question, that the words to be added  
be added, put and negatived)*

**Hon. Speaker:** Hon. Members, the proposed amendment is defeated. Therefore, we shall go to the Motion as amended, which reads as follows:-

THAT, this House adopts the Special Report of the Public Investments Committee on the Contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited for the supply of white maize, laid on the Table of the House on Tuesday, 22<sup>nd</sup> October, 2013; subject to insertion of the words “in the event that the Court of Appeal rules in favour of the NCPB invalidating the entire transaction, the arbitral award and the resultant court decree” before paragraph 17 of the Conclusions on page 94 and paragraphs 6 and 7 of the Recommendations on page 96 of the Report.

*(Question of the Motion as amended proposed)*

**Hon. Speaker:** Yes, hon. James. Nyikal.

**Hon. (Dr.) Nyikal:** Thank you, hon. Speaker, Sir, for giving me this chance to contribute to this Motion. I want to start by telling you a story. That is for those who watch international news.

This morning, over 100 Africans died in Niger. They were in vehicles and were trying to get to Algeria, Tunisia and then Europe. Two weeks ago, about 300 Africans died near the Island of Lampedusa. They were also moving from North Africa trying to go to Europe. Why are Africans dying on their way to Europe? The answer is that they

cannot live in Africa because the leadership in Africa does not care about the welfare of its people.

You have SGR and you know that there is a tender. The company does not even qualify for the tender; it does not have the capacity; it does not have a bid bond and it delays with the documents that are required to give the LC, but it gets the contract. The company was awarded only 20,000 metric tonnes at the beginning but somebody said: "Give this company 40,000 metric tonnes".

This company does not supply anything---

**Hon. Members:** It supplied air!

**Hon. (Dr.) Nyikal:** Hon. Speaker, Sir, knowing that it did not supply the maize. It said that they wanted a LC because that was a breach of contract. As far as I know, the LC only says that the money is there so that you are assured that if you supply, you will be paid. If you do not supply, why do you get paid? You go for arbitration and yet you did not supply the maize and there are allegations of corruption everywhere during the arbitration.

*(Applause)*

During the arbitration, the company is awarded and quickly, some courts give the order of execution. The National Cereals and Produce Board tries to appeal but the appeal is quickly thrown out on technical grounds. You quickly move in and you get Kshs300 million. In the name of God, what do you get it for?

**Hon. Members:** Shame! Shame!

**Hon. (Dr.) Nyikal:** Hon. Speaker, Sir, we have seen in this country the pictures of Africans dying. Most of those who died are women and children. The people who died in the Island of Lampedusa were mostly women and children. Colleagues, we are the most educated and gifted in all ways in this country.

## ADJOURNMENT

**Hon. Speaker:** Order, hon. Nyikal! We have come to the end of today's proceedings. Hon. Nyikal, you have a balance of six minutes.

Therefore, the House stands adjourned until Tuesday, 5<sup>th</sup> November, 2013, at 2.30 p.m.

The House rose at 6.30 p.m.