

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 5th November, 2013

The House met at 2.30 p.m.

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

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Member: -
Hon. (Dr.) Patrick Mweu Musimba, MP

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Members coming in, I have the following two Communications to make.

MEMBERSHIP OF COMMONWEALTH PARLIAMENTARY ASSOCIATION

The first Communication relates to membership of the Commonwealth Parliamentary Association (CPA). The CPA was founded as the Empire Parliamentary Association in 1911 with its first branches being Australia, Canada, New Zealand, South Africa and the United Kingdom, the latter branch administering the association as a whole. In 1948, the association changed its name to the current Commonwealth Parliamentary Association and allowed all branches part in administration of the organisation. The branches are grouped into nine Commonwealth regions, namely, Africa, Asia, Australia, British Islands and the Mediterranean, Canada, Caribbean, the Americas and the Atlantic, India, Pacific and South-East Asia.

Members, its mission is to promote the advancement of parliamentary democracy by enhancing knowledge and understanding of democratic governance. It seeks to build a parliamentary community able to deepen the commonwealth's democratic commitment and to further co-operation among its parliaments and legislatures. The association meets on an annual basis to deliberate on matters of national interest and good governance. Kenya is an active Member of the association and sends representatives to regional and international meetings.

Registration for membership to the association is open to all Members of Parliament upon payment of requisite registration fees. This is, therefore, to invite interested Members to register with the secretariat in Room No.8 from today, 5th November, 2013, to Friday, 15th November, 2013. A meeting to elect office bearers for the Kenya branch will be convened at a date to be communicated. This Communication

and message are intended for the entire Parliament as understood in terms of Article 93 of the Constitution.

SITTING ARRANGEMENT IN CHAMBER AND USE OF PARKING SPACE

Hon. Members, the second Communication relates to sitting in the Chamber and use of parking space.

I have received a request from all Chairpersons of Committees through the Liaison Committee that we designate specific seats for Chairpersons of Committees in the Chamber. The Liaison Committee also requested that suitable parking space be reserved for the exclusive use of Chairpersons of Committees. The request is informed by the fact that Chairpersons of Committees are required to respond to certain matters in the House. In addition, Chairpersons have other additional responsibilities relating to moving or replying to debates on Bills, Motions, and Reports of Committees in the House. Indeed, it becomes extremely difficult for the Speaker when presiding to locate the sitting position of Chairpersons of Committees whenever the Speaker needs to consult.

In my view, the request by the Committee Chairpersons regarding sitting in the Chamber constitutes a question within the meaning of Standing Order No.259(3). I have since considered the request favourably.

Hon. Members, therefore, pursuant to Standing Order No.259(3) I now direct the Clerk to do the following:

(i) Mark the seats on the front and the second rows on my right for use by Chairpersons of Committees. The Chairpersons of Public Accounts Committee and Public Investments Committee will have their seats reserved on the front row on my left.

(ii) Reserve specific seats on both sides of the House for use by the Majority and Minority Chief Whips.

(iii) Reserve the parking at the front courtyard of Parliament Buildings previously referred to as Minister's parking for the exclusive use by the leadership of the House, including Chairpersons of Committees.

Hon. Members, these directions will take effect tomorrow Wednesday, 6th November, 2013 and are meant to enhance the effectiveness and performance of the National Assembly.

I thank you.

PAPERS LAID

The Environmental Management and Coordination (Electronic Waste Management) Regulations, 2013.

(By hon. (Ms.) Abdalla)

The 2014/2015 Financial Year Budget Review and Outlook Paper.

(By hon. Musyimi)

REQUESTS FOR STATEMENTS

MEASURES TO CURB INSECURITY IN RACHUONYO SOUTH DISTRICT

Hon. Magwanga: Hon. Speaker, I rise to request for a Statement pursuant to Standing Order No.44(2)(c) from the Chairperson of the Departmental Committee on Administration and National Security concerning the recent spate of attacks that occurred in Rachuonyo South District between February, 2013 to date.

Hon. Speaker, over 500 residents have been attacked, women raped, others killed and others maimed. There are so many people who have been hospitalized. I would like to mention a few of them: A Chief Inspector and a prosecutor by the name Samuel Kipyegon and a magistrate were attacked. The prosecutor was killed. The raids have taken place in open places such as hotels and resorts.

In view of this, the Chairperson should urgently inquire into and report on:

(i) the steps security officers have taken to control the rate of insecurity around the country as well as control the armed raids in Rachuonyo South which has two constituencies, that is, Kasipul and Kabondo Kasipul;

(ii) clarify whether the police officers based at Oyugis Police Station edited the Occurrence Book (OB) in relation to insecurity cases reported between February and July, 2013 as a cover up;

(i) the number of persons arrested in relation to the attacks and raids, including, if any, further action taken against such persons.

(ii) the status of investigations being carried out, if any, on the attacks and raids; and

(iii) the measures in place to help curb the recurrence of such attacks and raids.

I thank you, hon. Speaker.

Hon. Abongotum: Hon. Speaker, the issues raised by hon. Magwanga are really grave and require urgent attention by the Government. So, where the police themselves are being killed, a magistrate attacked and 500 people being subjected to death and rape, it is really serious. We need to bring this information in a week's time.

Hon. Magwanga: Hon. Speaker, I am most obliged. I will be happy to have the Statement in a week's time.

Hon. Speaker: The hon. Members whose names appear on the Order Paper as desiring to request Statements, you must put your requests. Hon. Lekuton.

DROUGHT MANAGEMENT IN ARID AND SEMI-ARID LANDS

Hon. Lekuton: Hon. Speaker, pursuant to Standing Order No.44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Co-operatives regarding drought management in the Arid and Semi-Arid Lands (ASALs).

The ASAL areas are drought prone mainly because of their peculiar climatic conditions. However, the Government response seems inadequate every time there is a serious drought. There has been very little rain in the ASAL areas in the last three years as demonstrated by the ongoing severe shortage of water in the region.

The Meteorological Department has already predicted a shortfall in projected short rains and issued a warning that most parts of the country will experience failed harvest and even livestock deaths.

In the Statement, the Chairperson should inquire into and report on: One, Government's preparedness to deal with the impending drought in the ASAL areas and the humanitarian crisis that may follow.

Two, the measures the Government has put in place to prevent livestock deaths due to drought, a crucial source of livelihood for pastoralists and farmers. Finally, what role does the county Government play in drought mitigation measures?

Thank you, Hon. Speaker

Hon. Speaker: The Chairperson, Committee on Agriculture, Livestock and Cooperatives. Is it Hon. Noor? This is why I am saying it is important that Members be assigned sitting spaces. Who is his Vice Chair, if any?

Hon. Kabando Wa Kabando.

Hon. Kabando wa Kabando: Thank you hon. Speaker, as a Member of the Committee, we will liaise with the leadership of my committee and we can come back with a considered answer within two weeks.

Hon. Speaker: within two weeks?

Hon. Kabando wa Kabando: Yes, hon Speaker Sir.

Hon. Lekuton: No objection, hon. Speaker Sir

Hon. Speaker: Very well, the next Member is Hon. Shidiye

MEASURES TO COMBAT DROUGHT IN LAGDERA

Hon. Shidiye: Thank you Hon. Speaker. Pursuant to Standing Order No 44(2) (c), I would like to request for a Statement from the Chairperson of Committee on Agriculture, Livestock and Cooperatives on drought management in northern Kenya. Due to persistent drought in my area, already in my constituency two children have died out of thirst; boreholes have collapsed, pans have dried up and my district headquarters in Modogashe has no water. In the statement, I wish to request the Chairperson to address, among other things short-term and long-term measures on drought management and what the National Drought Management Authority is doing. Up to now, people are depending on water trucking which also might not be available at times. Secondly, the Chairperson should declare it a national disaster because the drought is biting, famine will be the result, and more people are likely to die.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Hon Shidiye, did I hear you ask whether the Chairperson can declare --- I think it is good to look at the constitutive framework, which is the Standing Orders; specifically, Standing Order No. 216. I do not think the Chairperson has the power to declare national disasters. They may recommend to the Executive to do so. So, even as hon. Kabando wa Kabando may be willing to give an undertaking with regard to the latter, it might be, perhaps, more than they could chew.

Hon. Kabando wa Kabando.

Hon. Kabando wa Kabando: Thank you hon. Speaker for your wise guidance. In fact, that was the considered opinion. This matter, since it has budgetary implications, is an issue that requires a lot of consultations. I think we should be given between four and five weeks to sit with organizations concerned because long-term solutions require detailed appraisal.

Hon. Speaker: The only question being that according to the calendar of the National Assembly, the assembly will go on recess on 5th December, which is 30 days from today.

Hon. Kabando wa Kabando: Yes, hon. Speaker. Perhaps, the quick advice that one would give is instead of--- The matter is properly before the House and directed to the relevant committee. Perhaps, we can liaise with the Member; go to the Department Committee on Agriculture and consult the relevant agency on emergency intervention, so that we can have a quick solution, rather than subjecting ourselves to detailed committee meetings that will be very bureaucratic. I volunteer tomorrow, the first thing in the morning to liaise with the committee leadership. Tomorrow morning, we can take the Member to the concerned department and seek quick intervention. This will be tomorrow in the morning by 8.00 a.m. as the offices open.

Hon. Speaker: Hon. Shidiye, will you be available at 8.00 a.m.?

Hon. Shidiye: That is in order. This matter is of grave concern, because someone who is thirsty and has no water cannot wait for long. One month will be too long. If that meeting can take place tomorrow, that will be okay.
Thank you.

Hon. Speaker: Very well, you liaise with the leadership of the committee, so that you see how best to address the matter.

Hon. Gakuya, place your request.

Hon. Gakuya: Hon. Speaker, I rise to inform the House that the same statement was read last week in the House; so, I think it is a repetition.

Hon. Speaker: Very well; Yes hon. Nanok

REPORT ON DISCOVERY OF WATER IN TURKANA

Hon. Nanok: Thank you, Hon. Speaker. I arise to seek a statement, pursuant to Standing Order No 44(2)(c), from the Chairperson of Departmental Committee on Environment and Natural Resources regarding the report of discovery of underground water in Turkana County. The report, already in the public domain, is that the Lotikipi plains, which is situated in Turkana West Constituency, and other areas in Turkana county, is home to huge volumes of underground water. We have been told it can last 70 years.

These reports, if they are true, are going to completely change the way of life of the nomadic pastoralist communities living in that region of the country. It is also possible that it will change the lives of these people positively. On the negative side, it may make them vulnerable to individuals who may exploit them, if the results are not well planned.

In her statement, the Chairperson should inquire into and report on the following: One, the plans the Government has so far put in place to provide water to the residents of this county, considering that at this time there is looming drought which could lead to a lot of conflict due to the movement of these nomadic pastoralists to very insecure areas of the county.

Two, let her mention the measures the Government is taking, or intends to take, to sensitize the community, in particular concerning establishment of a development project

like irrigation and issues to do with land adjudication. The whole of Turkana is considered community land held in trust by the county of Turkana.

The vast region of Turkana, in fact the whole region, is basically a nomadic pastoralist region and when these new projects are introduced, they are likely to affect or impact on the lives of the people.

Thirdly and finally, the Chairperson should report on the measures the Government is taking to ensure that the local community is not exploited by individuals wishing to acquire ownership to the said land considering that the resource again is situated on community land.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you, hon. Speaker. I want to confirm to the Member that the Minister had already confirmed to us that, that aquifer was discovered but I will ask her to give us what plan they have, considering the short time between when she announced the discovery and now. So, I will ask the Cabinet Secretary to provide whatever plans they have and we will be able to give them to you in a week's time.

Hon. Speaker: Very well. Hon. Epuyo.

Hon. Nanok: Hon. Speaker, I agree with that and there is already one borehole that was sunk to the depth of 330 metres by the Japan International Cooperation Agency (JICA). This borehole can actually give the residents water but it has been closed and people are really suffering. So, given an answer in one week would suffice.

Thank you, hon. Speaker.

Hon. Speaker: It looks like you may have more information than the Committee but you can enrich the response, if necessary.

Hon. Nanok: I shall oblige and visit the Committee when they invite me to their meetings. Thank you.

Hon. Speaker: Hon. John Bomet Serut.

UNDERAGE SCHOOLGIRL PREGNANCIES IN
CHEPKURKUR PRIMARY SCHOOL

Hon. Serut: Thank you, hon. Speaker, Sir. I rise to request for a Statement pursuant to Standing Order 44(2)(c) from the Chairperson of the Departmental Committee on Education, Research and Technology regarding pregnancies of primary school girls, specifically 18 in Chepkurkur Primary School in Mount Elgon Constituency as reported in both the electronic and print media in May and June this year, 2013.

Hon. Speaker, Sir, despite the fact that the said schoolgirls got pregnant while they were pupils at the said school, the head teacher and the school management failed to report the incident. Instead it took the media to expose the same. In the Statement, I request that the Committee inquires into the reasons behind the concealing of this particular crime especially by the head teacher and the school management. Two, how many girls were impregnated in the said school during that period; three, who are the suspects behind these pregnancies; four, why the school head teacher including the management have so far not--

(Laughter)

Hon. Speaker: Order, hon. Members. Allow hon. Serut to make his contribution.

Hon. Serut: Hon. Speaker, Sir, protect me from the Members. The question is simple: Who are the suspects behind the pregnancies of these school girls who are all underage? Why has the Ministry not taken any action to date against the suspects together with the school management and the head teacher of the said school? Thank you.

Hon. Speaker: Hon. Sabina Chege.

Hon. (Ms.) S.W. Chege: Thank you, hon. Speaker. Owing to the depth of the matter that the hon. Member has asked, the Committee might decide even to go to the school. So, I would request that he gives us three weeks so that then the Committee can actually interrogate and also get an answer from the Ministry on what measures were taken and then we can do a proper report. This is because if there are people who are mentioned as suspects, then we also need to confirm that.

Thank you very much, hon. Speaker.

Hon. Speaker: Well, you say you want to visit the scene to see what?

(Laughter)

Anyway, hon. Serut, the Committee wants to go to see how the girls were impregnated and it would therefore require three weeks.

Hon. Serut: Hon. Speaker, Sir, I will welcome the Committee to visit Mount Elgon and especially Chepkurkur and even see for themselves the little young girls who were made pregnant by these people and yet the Government has not taken any action to date.

Hon. Speaker: Very well. Hon. Sabina Chege, you are welcomed to visit Mount Elgon and particularly Chepkurkur Primary School and maybe any others where there could be that heinous crime of impregnating underage school girls and report to the House as appropriate.

Hon. Abongotum: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Kamama, what is your point of order?

Hon. Abongotum: Hon. Speaker, my point of order is in relation to the intervention by hon. Serut. Would I be in order to advise hon. Serut to also tell the Committee what they have done to address this issue before the Government comes in because local initiative works better?

Hon. Speaker: Let us not open debate because hon. Serut has sought a Statement. The Committee has offered to travel there. Obviously, the Committee will be seeking among other things efforts made by the local leadership to try and identify the culprits and if the local administration has played any particular role. So, let us not open it up for debate. Hon. Dennitah Ghati, you want to pursue that matter?

Hon. (Ms.) Ghati: It is a point of order. Thank you, hon. Speaker. I think the hon. Member for Mount Elgon wanted to know how or the method used to impregnate these girls and who impregnated them. It does not take three weeks for the Chair of the Departmental Committee on Education, Research and Technology to find out how these girls were impregnated and who did this. That is a very serious issue that requires very urgent intervention.

(Laughter)

Hon. Speaker: Order, hon. Members. Let us not go into the details. Hon. Sabina Chege and your Committee, I think you will deal with all those – the methods and the chemistry behind all those things. Hon. Kaluma, do you still want to prosecute the matter further?

Hon. Kaluma: Thank you, hon. Speaker, Sir. This issue has been approached in a manner that makes us laugh but it is a very serious issue affecting not only the schools mentioned but I believe very many areas of the country. I wanted to request that the Committee reviews and comes up with an overall policy to many places. I will be glad to personally invite them to my constituency because I have many cases where pupils are being infected with HIV/AIDS or being raped and the local administration is doing nothing about this. So, let us take it a bit more seriously. Let this be a policy document in terms of the report that we can work on to avoid this situation going into the future.

(Applause)

Hon. Speaker: Very well. I am sure that the Committee is agreeable to your proposal. Of course, it will not be possible for the Committee to travel to every location in the country because they might be engaged in primary investigations where others are likely to be impregnated and looking for methods and things like those. As proposed by hon. Dennitah, it will be very difficult.

Hon. (Ms.) R.N. Wanyonyi: On a point of order, hon. Speaker, Sir.

Hon. Speaker: You are out of order. Sit down. The Committee should investigate all that and as a policy come up with some suggestions which will address matters in future. It should not only be Mount Elgon but the rest of the country.

The Member pretending to rise on a point of order is hon. (Ms.) Wanyonyi.

Hon. (Ms.) R.N. Wanyonyi: Thank you, hon. Speaker, Sir. I rise in connection to what has been said about Mount Elgon. I want to say that I am the County Woman Representative, Bungoma County (CWR), where Mount Elgon falls under. I want to talk about Chepkurkur Primary School. This issue is not new. It featured in the newspaper sometime back. As the CWR, Bungoma County, I visited that school in June and we had a meeting with the community. The first person who blew the whistle about girls getting pregnant was the headmaster of the primary school. The Chairman of the school together with the community organized a meeting and we looked at the issues affecting this school. What came out is that that region, having been a settlement, has issues pertaining to the community. In most cases we learnt that most of the houses are too small. They are one room houses. So, what happens is that parents take children to the neighbours' houses which are bigger to sleep there. So, boys and girls meet in the neighbourhood and girls are made pregnant.

(Loud consultations)

So, we had a meeting with the community---

Hon. Speaker: Order, hon. Members!

Hon. (Ms.) R.N. Wanyonyi: Hon. Speaker, Sir, we met with the community and established that the only way to secure the girls in Kopsiro Division of Mount Elgon is to set up a rescue centre so that they can have boarding facilities. Arrangements were put in place for that.

I want to inform this House that even---

Hon. Speaker: You rose on a point of order----

Hon. (Ms.) R.N. Wanyonyi: Hon. Speaker, Sir, I rose on a point of order but the community---

Hon. Speaker: Hon. Wanyonyi, I direct that you sit down now.

Hon. (Ms.) R.N. Wanyonyi: Thank you, hon. Speaker, Sir, but that is the situation in Mount Elgon.

Hon. Speaker: Hon. (Ms.) Wanyonyi, since you appear to know how the girls are impregnated, I advise that you avail yourself before the Committee so that among other things you propose those solutions which you appear to have discussed at the local level. If we engage in that, hon. Serut may rise and claim that that is not how--- It will be very difficult for this House. I direct that you appear before the Committee alongside hon. Serut so that you try to suggest those solutions to the problem. However, that is not to say that the point raised by hon. Kaluma on policy should not be addressed by the Committee. This is because according to you, this appears to be a local problem about the methods and things like those. However, avail yourself to the Committee.

Yes, hon. Jamleck Kamau.

STATEMENT

CLARIFICATION ON KENYA INFORMATION AND COMMUNICATIONS (AMENDMENT) BILL

Hon. Kamau: Thank you, hon. Speaker, Sir. I would like to give a Statement on the uproar in the media fraternity over the passage of the Kenya Information and Communications (Amendment) Bill, 2013 by the National Assembly on Thursday, 31st October, 2013.

This is after the Committee met and agreed that it is important for Members of this House to be told what is happening.

The media has complained that the Bill if assented to by His Excellency the President shall be the death knell for the media freedom in Kenya and further that it is unconstitutional. But unfortunately, it is only the media's point of view that is being put to the public thereby leaving the public with the impression that the media is right. This is not the case. I wish to very quickly give and show the position taken by the media *vis-à-vis* the correct position so that Members of this House and Kenyans can exactly know where we are.

Hon. Ng'ongo: On a point of order, hon. Speaker, Sir. I appreciate how emotive this issue of the media Bill is. However, I am just wondering because we have to transact business within our rules. The Bill that the Chair is referring to was actually passed by this House. I do not know whether this Statement intends to re-open the Bill because it has to go to the President who can refuse to assent to it and then it is sent back to us as a House. So, we will deal with the Bill once it is referred to us appropriately rather than

trying to get a Statement explaining this. It could be true that probably there is oversight by this House. However, that can be dealt with properly when the President refers the Bill back to this House.

I urge the hon. Member to petition the President given the fact that he comes from the Jubilee side of the coalition. He can petition the President to refer the Bill back to us and then we deal with it appropriately instead of listening to a Statement and yet we do not know what to do with it.

Hon. Speaker: Hon. John Mbadi, the hon. Member as well as the Committee consulted the Speaker and he allowed him to make the Statement. As you know, the Speaker has wide discretionary powers unknown to you. Look at Standing Order No.1. I am sure that hon. Mbadi knows about this Standing Order.

The hon. Member is making a Statement. The issues about the President assenting to the Bill or not are matters well established. They are not being canvassed and the Bill is not being reopened for debate. However, it is important as a public institution that we also correct wrong impressions being made by others.

(Applause)

Proceed, hon. Kamau.

Hon. Kamau: Thank you, hon. Speaker, Sir. Indeed, that is the exact position. The position is intended to give the correct position as opposed to what has been given out there. I will take a few of the positions that have been taken by the media *vis-à-vis* the actual position as contained in that Bill.

The media claims that members of the Communications and Multimedia Appeals Tribunal shall be appointed and controlled by the Government. That is not the position because this Bill is clear that the members of the tribunal shall be appointed in a competitive process that shall be independent of Government media and commercial interests. That is what is contained in the Bill.

Hon. Speaker, the media also claims that the tribunal shall have powers to detain journalists and raid media houses' bank accounts. Nothing can be further from the truth. It is clear that the tribunal has no such powers. It cannot raid any media house or bank accounts of any journalist. The media further claims that the National Assembly has arrogated itself the power to vet members of the tribunal. Again, this is not correct because the National Assembly shall not be involved in the vetting of nominees to this important tribunal. The National Assembly shall only vet the members of the Communications Authority of Kenya, just like it does for members of other independent authorities.

The media also claims that the tribunal shall have powers to deregister journalists. This is, again, incorrect. The correct position is that the tribunal can recommend to the Media Council – which belongs to journalists – a particular person has offended the provisions of the Act and recommend actions to be taken against such person. The final action would come from the Media Council, and not the tribunal. The media also says that the Bill provides for 60 per cent local content on all radio and television stations. Again, this is not the correct position. The correct position is that the Bill provides for 45 per cent local content. This provision is in line with the international practice, where each

country strives to develop the local film industry and music through television stations in their own countries.

Hon. Speaker, I have looked at some other jurisdictions. If you allow me, I can give the example of United States of America (USA), where there is a presidential system of Government just like in Kenya. In the USA, there is a body called the Federal Communications Commission (FCC), whose functions are in line with the functions of the tribunal proposed in this Bill. In the USA, the FCC has various powers of regulating the activities of the media. As we know, for every freedom, there are limitations. We are saying that the media must enjoy freedoms but in doing so, they must not jeopardise the freedoms of other people.

So, we just wanted to make very clear that, that is the position and appeal to the media that this country belongs to all of us and, therefore, it must be taken care of by all of us. Let us not politicise the issue of the media. Some members of the media fraternity and many Kenyans may not have read this Bill. They are simply taking their positions based on the information that has been provided by the same media, which is totally misinformed. Therefore, I would like to ask members of the media fraternity to read the Bill and understand it, so that they can make informed decisions.

Finally, let the media also publish the views of all Kenyans, irrespective of whether they support or dissent to the Bill, so that there can be proper debate on the matter. The media has said that some provisions in this Bill are unconstitutional. I would like to advise them that if they indeed feel that there is any part of the Bill that is unconstitutional, we are open to discussions. So far, they have not quoted any specific section of the law that is unconstitutional. This House has done its work. The Bill is before the President. He will be guided accordingly to act in whichever way he will act.

With those remarks, I beg to lay the documents on the Table.

(Hon. Kamau laid the document on the Table)

Hon. Speaker: Hon. Members, let us hear a comment or two from hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Speaker, as a Member of the Committee, I thank you for giving me the opportunity to also contribute to this debate.

My view is that even though rights are enjoyed, they are joined hand-in-hand with responsibility. The import of the debate that has been going on is that the Committee and the institution of Parliament are being subjected to unnecessary mob justice. It is important for the media to candidly engage in this debate. Before we came to the amendments that the media is talking about, we had several engagements with the media practitioners, the Editors' Guild, the Media Owners Association and even the Media Council of Kenya itself. I am, in fact, surprised that the media is not telling Kenyans that the name of the tribunal they are complaining about and its structure was actually coined by them.

Hon. Speaker, for a long time, leaders in Kenya have been treated as if they have no rights. I do not subscribe to that view. The freedoms that are espoused in our Constitution must extend to everybody. Everyone must be treated equally, whether one is in the media or in this House. More importantly, everybody must be accountable for their actions. A lot of times, Kenyan leaders have been falsely accused but it is like when they are falsely accused, they have no right to even complain. The unwritten law in our

country seems to be that they have no right to be heard. It is like every time they are accused, they are automatically guilty as charged.

Forty years ago, I had an encounter with my mother, which is probably the reason I am here today. We had an argument and she observed that I was very good looking but she said that I was ugly, and that if I hoped to make it in life and get a good woman to marry, I needed to go to school.

(Laughter)

That encounter has done a lot to me. I believed then, and still believe, that I am not handsome. That means as I go around in life, the only women who can give a second look at me are my wife, my daughters, my elderly sisters and my late brother, may God rest his soul in peace. However, the same cannot be said of my friends, like the Leader of Majority Party or the Committee Chairman or my good friend, Kanini Kega; who, from time to time, get into trouble on account of their good looks.

(Laughter)

Hon. Speaker, what is fundamental, which is the point we have to look at, is that when it happens that way, they deserve a hearing. About three months ago, I read a story of a Member of this House who was claimed to have borne a child out of wedlock. It was a small write up. The story went that the lady in question had claimed that the hon. Member had met her three years before, and that the child was born three years later. The lady said that they only met once. The simple question is: If they met once and it was three years before, how was it possible that a child was born three years later?

Hon. Member :*(off-record)*

Hon. (Eng.) Gumbo: Of course, it applies to others, but not me. I would not get into such kind of problems. So, I want to paraphrase what the Chairman of the Committee has said. What I want to tell the media owners and the editors is that, instead of subjecting Parliament to mob justice--- In a way, I also thank them because on Friday, for merely saying that 45 per cent of the broadcast content of radio and television stations should be local content, they put it on the front page. I rarely get to the front page of newspapers. I was with you, hon. Speaker. I thank the media for that.

My call to the media is that they should come forward, so that we can reason together. This is not a case for mob justice. This law was not made in Heaven. It was made right in this country and in this House. Most importantly, let this debate not be ruled by unnecessary excitement, denationalization and vacuum misrepresentation.

Hon. Speaker, Sir, what I found very sad when I was reading about this issue on Friday, hon. Members of this House and even Senators who were to know better, were talking about the Media Council Bill, which has not gone to Second Reading. Sometimes, it feels nice to look good by siding with the popular opinion, but sometimes the popular opinion is not always the right opinion. I think we have to embrace this.

So, I would urge the media to come and we reason together, do not make it look like somebody has declared war on the media. We need the media similarly, I dare say, the media also needs us because we are major generators of news. So, it is a symbiotic

relationship; we cannot look like we are the bad guys and they are the good ones. Let us work together so that Kenya moves forward.

Thank you, hon. Speaker, Sir.

Hon. A.B. Duale: Hon. Speaker, Sir, I want to join the Chair and my good friend. My looks are not very far from his looks; so, he needs to go to the mirror.

I want to make some very key statements. One, under this system Bills go through a conveyor belt. There is input from the Commission for the Implementation of the Constitution (CIC), Cabinet Secretary and stakeholders. After that the Bill comes to Parliament, it is looked at by our Legal Department. From there, it goes to the Speaker, the Leader of Majority Party and then it is signed. Then the Bill comes to the House and it is laid on the Table.

Hon. Speaker, Sir, under Articles 95 and 96, one of the key functions and mandate of this House is to amend and formulate laws. The President has only one function; to assent. In fact, he cannot usurp the legislative powers of this Parliament. We want to tell our brothers in the media, as I said earlier, investment in the media is very serious and they are serious contributors to the economy, governance and democracy. We want all of us to work together. The accountants in this country, as a profession or institution have laws under which they operate. It is called the Accountants Act. We have great lawyers here, like hon. Kaluma and Maanzo, who at one time stole a certificate.

(Laughter)

Sorry, he disappeared with a certificate. He did not steal. He disappeared with the certificate of a great party called Orange Democratic Movement (ODM) and he left us in limbo in 2007. He is a great man and I respect him. The legal profession operates within the Advocates Act, Section 55. The Engineers have a very noble profession, like the lawyers. They have a body in which there is compliance commission within which they operate. It is called the Engineers Registration Act. For the lawyers, it is the Advocates Act. In those bodies there is the Compliance Act.

Hon. Speaker, Sir, medical practitioners have their own law, it is called the Medical Practitioners and the Dentists Act. We are telling our colleagues – I was shocked by our former Vice-President. In fact, I looked for his number and called him.

Under Article 34(5), the Constitution gives this House the powers. It states: -

“Parliament shall enact legislation that provides for the establishment of a body, which shall –

(a) be independent of control by government, political interests or commercial interests;

(b) reflect the interests of all sections of the society; and

(c) set media standards and regulate and monitor compliance with those standards.”

This is the body that this Bill formed. I saw the former Vice-President and the great Senator saying that we withdraw the Bill. If we withdraw the Bill and a Kenyan goes to court, this House will be dissolved.

I thought the former Vice-President and Leader of Government Business, who played a big role in the making of the Constitution, understood this. There are laws that must be passed within the three years of enactment of the new Constitution.

So, what the Chair of the Committee is saying is that we want to have dialogue as we wait for the President either to assent or to send back the Bill. We want to have dialogue and we want to call all the stakeholders; the legal practitioners, the Editors' Guild, the Media Owners Association and so on. We want to sit with the Committee and go through the Bill clause by clause and see which section is draconian?

Hon. Speaker, Sir, you cannot say, for example, the Finance Bill is draconian. We want to sit down with the media fraternity, they are very important in our country. We want to move without emotions. I want the media to hear me. The Media Owners Association led by one Kiprono Kittony, as the Chair he should not run away from his responsibility. He appeared before the Departmental Committee on Energy, Communication and Information and he gave his share. We have the document; Kiprono Kittony should not continue to chair that association. The Media Owners Association should look for another chair. He cannot come and mislead people here. He went to a television station and said that he never appeared before a Parliamentary Committee. That is being dishonest.

Hon. Speaker, Sir, the minutes are there. Our committees keep minutes, but in a nutshell, we want to sit with the media because we are making laws for posterity. We do not want laws that will injure any sector of our country. We want to make laws for posterity. We want the Committee and the leadership of Parliament to sit and agree so that when the Bill is returned, Kenya gets the best media law. We want to make sure that Kenya gets the best media law that will make sure democracy and good governance is entrenched.

I think Parliament has a role under the Constitution and nobody can deny us our role. The Media Council Bill is coming for the Second Reading this week. It is a totally different Bill. Somebody was saying that there are already amendments on the Media Council Bill. There are no amendments on the Media Council Bill. Hon. Members received a report on the Bill. We are going to debate it during the Second Reading and we will ask even the media and other stakeholders to forward their input.

Let us also prepare our concerns so that as we move to the Third Reading, we make sure that all the concerns of the industry are taken on board.

Thank you, hon. Speaker, Sir.

Hon. Wakhungu: Thank you very much, hon. Speaker, Sir. Indeed, this is very important issue of national interest.

If you look at Article 35 (1) of the Constitution, it states as follows: -

“Every citizen has the right of access to –

- (a) information held by the State; and---”

The citizen can access this information through the media. The National Assembly and the media houses must have a mutual relationship. As earlier presenters have said, we need each other. Indeed, I agree with the people who talked about the symbiotic relationship. If the common *mwananchi* has to access this information, the media has to be there because it plays a very critical role. Indeed, it is the responsibility of this Parliament to set rules and procedures that will enable the media to behave in a better way.

Hon. Speaker, Sir, Article 33(1) states that: -

“Every person has the right to freedom of expression---”

Indeed, the media also has that freedom of expression. This National Assembly is there to play oversight role, legislate and represent. The Leader of Majority Party mentioned Kiprono Kittony who is the Chairman of the Media Owners Association. I am here as his representative; he comes from Trans-Nzoia County. One thing I want to say is that the new Constitution strives for consolidative and participatory approach. Indeed, it came out clearly that the Media Owners Association was not involved in this matter.

I am getting shocked to hear that they were involved. Indeed, it is important, whatever we pass here, for the common *mwananchi* outside there to know that these key stakeholders were indeed, involved. We are having a lot of problems because of misinterpretation or misreporting.

Hon. Speaker, Sir, Article 34(1) talks about the freedom of media. It states the following: -

“Freedom and independence of electronic, print and all other types of media is guaranteed, but does not extend to any expression specified in Article 33(2).”

Article 33 (2) states as follows: -

“The right to freedom of expression does not extend to –

- (a) propaganda of war;
- (b) incitement to violence;
- (c) hate speech; or
- (d) advocacy of hatred that -
 - (i) constitutes ethnic incitement, vilification of others or incitement

to cause harm; or

(ii) is based on any ground of discrimination specified or contemplated in Article 27(4).”

It does not extend to hate speech or advocacy of hatred.

Indeed, the Constitution is very clear. This is the time that we must establish a mutualistic relationship with the media.

The Cabinet Secretary, Mr. Matiang’i, went to the media and said that he was not aware of this. I am left perplexed and do not know whether he was involved, he was not being sincere or he is being a populist. It is high time we stood up to be counted. We are not here for publicist approach, but to speak on this matter, so that we can enact laws that will enable the media to work in a conducive environment and report objectively. In any case, if we have any contentious clauses, they should be brought back. I was among the first people to say that if any issue is contentious, the President should not assent to this law. If we have any contentious issues, let the stakeholders come together, so that we can resolve them and move together as one Kenya.

Hon. Mati: On a point of information, hon. Speaker, Sir. I thought I should inform my party leader, hon. Wakhungu, that the Cabinet Secretary, Mr. Matiang’i has written a very long letter, three pages to be exact, disclaiming anything attributed to him by the media. The Chairman of the Committee is in possession of that letter. He has specifically demanded the *Daily Nation* Newspaper to withdraw the statement attributed to him, that he was not involved in the development of this Bill.

Basically, you can see the malice that is going on. Somebody out somewhere wants to create a conflict between us and the Cabinet Secretary. But since I have this opportunity, I should remind us that the media has come a long way. When we passed the new Constitution, it became like independence, which made a lot of things different to

different people. To the cook of the white man, it meant that he could move from the servant quarter to the main house. To the manual labourer in a farm in Nyeri, it meant that they could move to the master's house and own the farm. The media thinks that because we have a new Constitution, there should be no responsibilities to whatever they want to do.

Many Members of Parliament and I regret this, over the weekend denounced a Parliamentary Committee without being seized of the matter and without even reading the actual Bill. They quoted the Media Council Bill, which is a different Bill from the Kenya Information and Communications (Amendment) Bill that we are discussing. This was a bit irresponsible to some of our brothers and sisters. They made it look like Parliament just basically passes things without consultation.

As a Member of the Committee, I have sat with the Media Council and the media fraternity at the Intercontinental Hotel more than twice. I have also sat with them in Mombasa more than two times. I remember asking their Chairman, hon. Kittony, how we can have a structure that is funded by the taxpayer whereby the President, Parliament and the Judiciary have nothing to do with it. He said that the Law Society of Kenya is such an institution. We said, well, the Law Society is such an institution, but it does not get a cent from the taxpayer. How will we make the media accountable for whatever will be voted for it by Parliament every year? He said they did not want to be controlled. Nobody wants to control the media. That is why we put the appointment of this body to the Judicial Service Commission as opposed to Parliament, the President or the Cabinet Secretary.

I beg us, as Members of Parliament, to read this document before we embarrass ourselves before the media. Read this document so that, at least, we know, first, which document we are talking about and secondly, what is offending in it. There are two documents that are circulating. There is the Kenya Information and Communication Bill and the Media Council Bill. Most of the statements that I saw being attributed to some of my brothers and sisters refer to the Media Council Bill, which has not come before this House or, at least, has not been passed.

With those few remarks, thank you. I wish to ask my Chairman to read the statement by the Cabinet Secretary recanting what is attributed to him by the *Daily Nation*.

Hon. Speaker: Maybe the Chairman can table the letter from the Cabinet Secretary.

Hon. Kamau: Hon. Speaker, Sir, yes, indeed, I want to table this letter from the Cabinet Secretary. It is clear that what was reported today that the Cabinet Secretary was in the dark, is totally and completely misinformation from the media.

If I just quote one, "The article under the banner, '*Matiang'i: I was in the Dark*,' grossly misrepresents the facts of a press conference I addressed at the Nairobi Serena. In particular, the article creates an erroneous impression that I accused Parliament of keeping me in the dark on the Bill. Nothing could be further from the truth". Finally, he says: "I urge the Media Council of Kenya to take up the responsibility of guiding the debate on the Kenya Information and Communications Bill and ensure that the media does not misrepresent facts in an attempt to protect their interests". This is extremely paranoid. He also goes on to say that the Media Council should ensure that the truth in this debate is not sacrificed at the altar of mob lynching on Parliament.

I want to table this report and say clearly that as far as I am concerned as the Chair of that Committee, I am confident that that Bill is clean, clear and constitutional and I will even request the President to sign it to law.

(Hon. Kamau laid the document on the Table)

Hon. Speaker: Hon. Members, that should bring us to the end of that matter. Like I had indicated, it was merely to give that information and clarification. The Bill in question is on its way to the President. It is upon the President to assent to it or if he feels uncomfortable with it, refer it back to this House. I emphasize, “this House”, for avoidance of doubt because we do not want people to get into other things. The President can only refer the Bill back to this House with a memorandum. If that ever happens again, I will guide the House because to override a President’s memorandum, you know the usual threshold of two thirds. Otherwise, if you do not raise the two thirds to override a memorandum from the President, the Bill will be deemed to have been passed with its memorandum. But there is no need for us to anticipate what is going to happen.

Therefore, even Members of this House who were expressing views that they were going to lobby their colleagues, sorry, there is no opportunity. The Bill is in the conveyor belt headed to the President. I know sometimes Members feel excited when they are confronted by the media in the villages and they want to be seen to be in sync with what is popular. When you make those kinds of statements, if you happen to have grown up children, when they later learn from your colleagues here that you were discussing in ignorance, they may start thinking something else. Not what hon. Gumbo said, but they may begin questioning your ability to judge things. So, since we have already passed the Bill and it is headed to the President, let us just wait for the President to do what he must do constitutionally. So, lobbying your colleagues here or there is not necessary. There is no window for that.

Next Order!

MOTIONS

Hon. Keynan: Hon. Speaker, I rise under Standing Order No.40(2) which is about sequence of proceedings and it states thus: “Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the House, direct.”

Hon. Speaker, this Report by the Public Investments Committee (PIC) has been around for the last four weeks. I want to plead with you that this be concluded first because what is left is not a lot and then we can move to other business that is on the Order Paper.

Hon. Speaker: Well, hon. Keynan has raised that issue in terms of Standing Order No.40. Indeed, he approached the Chair and I think, to be fair, for the convenience of the House, the matter shown as Order No.9, as you know, has been with the House for some time. It is only fair that we conclude it before we go to the business on the Order Paper.

I, therefore, direct that business on the Order Paper shown as Order No.9 be debated before we go to business on Order No.8.

I am assuming that the Members who have placed their requests have accordingly reorganized their thought processes so that nobody is caught unawares. Fortunately, hon. Dr. Nyikal was on the Floor. He has a balance of six minutes.

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, subject to insertion of the words “In the event that the Court of Appeal rules in favour of National Cereals and Produce Board invalidating the entire transaction, the arbitral award and the resultant court decree” before paragraph 17 of the conclusions in page 94 and paragraph 6 and 7 of the Recommendations on page 96 of the Report.

(Hon. Keynan on 29.10.2013)

(Resumption of Debate interrupted on 31.10. 2013)

Hon. (Dr.) Nyikal: Hon. Speaker, last week when I rose to contribute on this issue I said that African women and children die across the Sahara Desert, the Mediterranean Ocean when they are leaving Africa in search of a better life because we the leaders of Africa have not been able to or are unwilling to provide an environment in which they can live. I said that this Report before us gives the clearest example---

(Loud consultations)

Hon. Speaker: Order, Members! You will allow hon. Nyikal to make his point. Those consulting, do so in low tones.

Hon. (Dr.) Nyikal: Hon. Speaker, this Motion where a company, perhaps, in collusion with a group of people sought to defraud and, actually in mind, defrauded the Kenya Government of Kshs300 million and also sought to sell and destroy the Strategic Grain Reserve (SGR) of this country--- Hon. Speaker, anybody who seeks to destroy the SGR is a murderer! That person or those people seek to let Kenyan children starve. We have seen on televisions across the world the pictures of Africans starving and begging. Where we have not supplied anything, we seek to be paid millions of shillings. We have not supplied anything and we seek to destroy the SGR. This is equivalent to somebody going to Kitale and Eldoret and burning all the maize before it is harvested. In my mind, those are murderers.

This scheme has what is called in our corrupt system “perfect collusion’ where all those people entrusted with the responsibility of looking after public good collude in total. This Motion also shows another aspect of corruption in this country where civil servants and the private sector collude to defraud an impoverished country and make the people suffer.

(Loud consultations)

Hon. Ichung'wah: Hon. Speaker, I was just seeking your indulgence so that you rule on the Members who are consulting so loudly because we can hardly hear the very important contributions being made by hon. Dr. Nyikal.

Hon. Speaker: Yes, that is correct. Hon. Members, it does not help anything. We cannot hear what the Member contributing is saying. Remember that at the end of it all, you must make some decision. This is a report and it seeks adoption. How is it that you will be able to vote one way or another if you have not heard what is being said?

Hon. (Dr.) Nyikal: Hon. Speaker, I, therefore, say that all the people who were involved in the process as recommended by the report need to be investigated further starting with the technical team, the tender committee, the officials of the NCPB, the arbitrator, the court that threw out the appeal by the board and the court that quickly gave an exclusion order. All these units were colluding to defraud this country and make it starve. The trustees are included here. I remember the Motion said that we exclude the trustees. Some of them are people I worked with, but in this thing of near perfect collusion, I am sure such honourable people as Mr. Kinyua, if investigations are done properly, will be cleared. We cannot use their names to sanitize people who have robbed this country and who intended to murder the children of Kenyans through starvation.

Hon. Speaker, I strongly support this Motion and all the recommendations that have been given including---

Hon. A.B. Duale: On a point of order, hon. Speaker. The recommendations of this report are very clear. Is the hon. Member in order to say that one, Joseph Kinyua is part of the recommendations? Maybe it is the other one, SGR Trustees but not Kinyua.

Hon. (Dr.) Nyikal: Hon. Speaker, in that case, I stand informed but I know there was an amendment that was moved where his name was mentioned. So, I support this Motion and all the persons must be investigated. Those who are innocent will be cleared. We cannot stand here or be in this House and watch a group of people who wanted to destroy the SGR go free. They took Kshs300 million from Kenyans for supplying air. I know when rich people of that nature go around even during elections, they give Kshs500 per person. Do people remember that, that is their money that was stolen that will make them poor and hungry?

Hon. Speaker, with that I support the Motion.

Hon. Speaker: Hon. Johana Ngeno. He made his request and took a walk? You see now, that is why I say that those people should reorganize their thought processes. Hon. Ali Wario.

Hon. Wario: Thank you, hon. Speaker. If I heard the Leader of Majority Party well, he said that the recommendations of this report are very clear and that the name of Joseph Kinyua is not in the report. I will invite you to read page 12, Recommendation "b". Has that been deleted? I beg to be informed, hon. Speaker, Sir. Thank you.

Hon. Speaker: Very well, hon. Ali Wario. You beg to differ. You purported to rise on a point of order. So, you are rising to differ?

Hon. Wario: Hon. Speaker, Sir, is that the name of Joseph Kinyua?

Hon. Speaker: Please, hon. Members. I invite all of you to read the report thoroughly. These unnecessary points of order just to say that this one has made a mistake and so on, is not right. Read it. Finally, you will have to vote in one way or the

other. I intend that you should do it today. So, read. It is not enough for you to tell me that this one is not there or the other one is there. Read yourselves. You are the ones to vote. It is not me. Let Members contribute. Hon. Asman Kamama, do you want to contribute to this?

Hon. Abongotum: Yes, hon. Speaker. I even waited last time for two hours.

Hon. Speaker: Hon. Members, please I want you to understand. Hon. Ngeno, I gave you a chance and you were nowhere. You have just walked in.

Hon. Kipyegon: I am here, hon. Speaker.

Hon. Speaker: No. Hon. Ng'eno, you have become so migratory. You do not know where your card is. So, you have forfeited your chance.

Hon. Abongotum: Hon. Speaker, I rise to fully support this Motion in its totality because as patriotic Kenyans and as people who want to espouse and even support the war against corruption, we must support this and ensure that anybody who is mentioned is actually cleared by the Ethics and Anti-Corruption Authority (EACC). That has to be done. We will start with this report and other reports will follow.

Hon. Speaker, I want to take the House back to the year 1789 during the French Revolution. The French Revolution was caused by scarcity of bread and so there is a lot of correlation between peace, stability, good security and food security. Without food security, do not cheat this country that this country can be stable. It will never be. So, I support it fully. When you are told that there was a company which was paid over Kshs300 million for supplying nothing but air and for not even supplying one single grain of maize, this is a sorry state of affairs and this House must rise to the occasion and deal with this matter expeditiously. We are not against anybody. We are not against any single person. In fact, in this report quite a number of my friends are mentioned but my conscience will lead me to heaven. That conscience will not lead me to hell.

Hon. Speaker, there are a litany of issues that were not done well. One of them is the late performance bid bonds. If I may take you back, Kenya Railways that used to be so prestigious is now a total shell, as we speak and yet it is a company that has operated in this country since the British rule. Somebody called Engineer Princeton commissioned a railway around 1900 or over 100 years ago. So, a company that has assisted Kenyans and that has been there for over 100 years has been reduced to a shell by almost the same cartels. Kenya Oil Refinery is also a shell, as we speak.

So, I want to say with a lot of respect that people who are mentioned and who are my friends need clearance from that respected body called the EACC. So many committees were involved in this. There is the Inter-ministerial Tender Committee; the Technical Evaluation Tender Committee; arbitrators and even the courts were involved. I have a lot of respect for the head of the current Judiciary but despite what we did to actually vet quite a number of our judges we still have some of them who are still living in the past. So, even these rulings that were made must be subjected to some investigation to clear them. This is despite the fact that there are problems in the JSC.

Hon. Speaker, I want to tell the House that let us save the NCPB. Let us not kill it because those of us who are in arid areas actually depend on it. If you kill it then you are killing the entire pastoral people. As you know, we have farmers who grow maize but cannot trade with NCPB. The normal operation usually is that people grow their maize, take it to NCPB and then wait for money. Very many places especially in the Rift Valley are suffering. Farmers in Rift Valley are suffering because some people have actually

decided to kill the NCPB. They cannot even buy a bench. When they decide to buy a bench, these people are there to collect the same bench. I mean, really, we must do something about this.

So, hon. Speaker, with those few remarks, I want us to support and take it the full hog until action is taken against those who want to kill the NCPB in this country.

Hon. Speaker: Hon. Ng'eno, the Member for Emurua Dikirr but now you are advised to remain in one place.

Hon. Kipyegon: Thank you, hon. Speaker, Sir, for giving me this chance to contribute to this Motion. I support this Motion because of what the is to Kenyans.

The NCPB is the lifeline of three-quarters of Kenyans. It is an institution which takes care of our welfare. It is also an institution which I remember when I was a small boy I used to take maize on donkeys to sell for my school fees. It is an institution that has helped very many children from villages to access their education. When I look at the way its assets are being auctioned, I feel that I should stand with those people whose livelihoods depend on the NCPB.

I belong to the Committee which looked into this matter. Sometimes I feel very bad when I hear Members who do not belong to this Committee claim that we did a shoddy job and yet we disagreed on several occasions. It is even disappointing to hear one of the Members who belonged to this Committee and who did not dissent claim that this report is skewed and incorrect. He even calls it very many names.

Hon. Speaker, Sir, I would like to say that we support this report not because of anybody but because of the feeling that we have for the many Kenyans who rely on the NCPB.

We cannot allow the NCPB to die because of the names of certain individuals who are sitting as trustees. I have sat and listened carefully to people claim that we cannot sacrifice certain people's names. We care about millions of Kenyans who rely on the NCPB than one individual whose name some people would like to protect.

In 1932, there was a famine in Ukraine called "Holodomor" which was artificial. There was no scarcity of food but some individuals in the Government kept food in Odessa and left seven million people dead.

If you look at this report, you will find that there was artificial hunger which was created by a few individuals. Sometimes I agree with hon. Wario when he asks who owned the other five companies. We need to look at that deeply. However, we cannot kill this report because of a company, two companies or three companies we associate with some powerful individuals in the Government at that time. I would like, if there will be serious investigations, even these other companies other than Erad to be thoroughly investigated so that the people who own them can be known. You cannot imagine a declaration of hunger at a time when you are only remaining with two months to have a bumper harvest in the North Rift.

I would like to say that there have been very many things when looking at this report. There were many things that were happening in this House when this report was being tabled here. We cannot allow the sideshows to kill the report that we have thoroughly done for the last six months and a report that will help this country recover its maize.

We have had many scandals in this country. We had the Triton oil scandal which has gone without notice. We also had the Goldenberg scandal which has been in and out

of court and many other scandals. Even this one has been in and out of court. When we seized this matter, we knew that it had been dispensed with by the court. However, if you look at the proceedings of the courts or the arbitration, you will see that it was skewed. If you look at the ruling of the court, you will also see that it was skewed. That is why we said that we, as the House, are the only people who can save the NCPB by seizing this matter. We are not saying that we will overrule what the Court of Appeal will rule.

We are doing our work and we want to remind the Government through EACC that this matter should be investigated thoroughly so that we know how these issues came up.

Hon. Speaker, Sir, it is Kenyans who owned Erad. These are people of moral standing and people who know that the NCPB is an investment of poor people in the villages. However, they still want to demand millions of shillings from the NCPB without supplying a single grain of maize. They have gone to an extent of attaching the properties of the board. They even want to close their accounts and put some people behind bars. I do not know the mistakes that were made but I think that the EACC should be seized of this matter and investigate thoroughly all these people who were involved in this matter regardless of the position they hold now. Whether they are in State House, ambassadors or Members of Parliament, they should be ready to face the law.

(Applause)

Hon. Speaker, Sir, I am passionate about this matter because like I told you, I come from an area where we do farming and we know nothing other than farming. That is our livelihood. Every year, we are told that the NCPB is not opening because its properties are attached, it has no money and its accounts are closed. The board does not have money to buy maize from farmers.

I will leave the rest of the investigations to the EACC to establish the real owners of the other companies. We cannot allow maneuvers, threats and some names of some individuals to kill this report. If this report “dies” in this House, and I urge hon. Members of this House not to allow it, it will die with us as the Committee and as Kenyans because we will stand to defend the NCPB. I urge my friends to support this Motion so that we can adopt it and allow the other arms of the Government to look seriously into the failures in this particular issue.

Hon. Speaker, Sir, with those few remarks, I support this Motion.

Hon. Barua: Hon. Speaker, Sir, I rise to support the Motion as amended. I want to state from the outset that I am a Member of the PIC and I am part of the team that came up with this report.

I would like to say that as Parliamentarians we have a duty and responsibility to fight impunity, corruption and tribalism. I want to say that this is the first report that the PIC has tabled for discussion in this House. I can see that there is spirited effort against this report. I want to join my fellow hon. Ng’eno in saying that this report should be supported. It should not be allowed to die because doing so would be an assault on the Committee and, by extension, on Parliament itself. As Kenyans, we are aware that impunity has been in this country for a long time. There have been other mega corruption scandals that were investigated in the past, but nothing has been done. Therefore, this House should rise to the occasion and adopt this report and ensure that the

recommendations therein are implemented. I find it completely unacceptable for some PIC Members to oppose this report even though it is clear, from the record of this House, that those hon. Members did not dissent to the Committee's resolutions. We should fight corruption at all times. We should also fight tribalism. This report should not be viewed as an assault to a particular community. In my view, this was a well organised rip-off of Government funds through collaboration by institutions, including M/s Erad Supplies and General Contracts Limited, banks and the NCPB. It is clear that M/s Erad Supplies and General Contracts Limited did not supply even a single grain of maize. It is also very saddening to note that they are even claiming damages for storage. If they did not have a single grain of maize, what did they have in the stores? Why are they claiming money for storage?

Hon. Speaker, those responsible for the award of this tender awarded it to M/s Erad Supplies and General Contracts Limited, knowing that the company did not have technical or financial capacity to supply the maize as requested. At the time of the award of the tender, M/s Erad Supplies and General Contracts Limited had a net worth of Kshs7 million. It is very surprising that a company which was worth Kshs7 million could be awarded a tender worth close to a billion shillings. To me, this is corruption.

In as far as the signing of the contract is concerned, and issuance of the Letter of Credit, it is coming out clearly that the officials of the NCPB oversaw, and very effectively; the breach of contract. They ensured that the contract was signed during late hours, and that the Letter of Credit was not supplied at the right time. They ensured that the contract was breached. So, they actually facilitated M/s Erad Supplies and General Contracts to have a case against the Government. On the side of the banks, I would recommend stern action against them. For a bank to issue a conditional bid bond, which is not effective in law, it is a crime in itself. This kind of collaboration between suppliers and banks is unacceptable.

Hon. Speaker, a report that was presented by the Auditor-General to a Committee of this House recently shows that over 30 per cent of Government expenditure in the last financial years is unaccounted for. In order for us to stop this from happening and ensure that this achieves Vision 2030 and the Millennium Development Goals (MDGs), we should be able to ensure that such schemes do not see the light of the day. We are aware of the Triton and Goldenberg scams, among others. Since, as Parliament, we are empowered to investigate such developments within our parastatals, we should stand to be counted.

Therefore, we should support this report, as Parliament, because we want to save this country. Let us not oppose this report because we want to protect a few individuals. Let us not support this report because we want to punish anybody but rather on the basis of its contents.

With those few remarks, I beg to support the Motion.

Hon. Speaker: Yes, hon. Abdullswamad.

Hon. Nassir: Thank you very much, hon. Speaker. As a Member of the Committee, which has been able to collectively come up with this very comprehensive report, I wish to re-emphasise what hon. Asman Kamama has just mentioned about the French Revolution. When Marie Antoinette saw that the people were revolting, she asked: "Why are the people revolting?" She was told: "Because there is lack of bread."

Due to disconnect between government and the people, she replied: “In the absence of bread, let them have cake.”

Hon. Speaker, this is exactly what is going to happen if, as a House, we do not fully adopt this report. As a House, we have been through a lot regarding various issues. If there is one particular instance whereby, as a House, we can collectively be deemed to have done justice to this country, is by adopting this report as it is. While out there, I heard one or two of my colleagues express a different view. I seriously urge each and every Member of this House to go through this report. You will see the intrigues of wicked minded Kenyans, who came together with no shame or guilt or remorse whatsoever in ensuring the death of this country.

Therefore, it is my hope that we will put everything else aside and put the interests of this country above us all. I once again urge every Member of this House to read this report and support it fully. It is in the interest of justice and in the interest of ensuring that calamities like the one captured in this report do not happen again. There was fabrication on the need to import maize to the extent that, weeks after the maize had been imported, it was announced that there was going to be a bumper harvest. This is against the background of having been told that there was going to be a famine in the country.

Hon. Speaker, it is, therefore, my hope and the hope of many of my colleagues that this report will be adopted by an overwhelming majority of this House.

Thank you.

Hon. Speaker: Yes, hon. Mary Emaase.

Hon. (Ms.) Otucho: Thank you, hon. Speaker. I rise to support the Motion so that the report can be adopted as it is.

The NCPB is a very important institution because it plays a very critical role in this country. As a crop, maize is a staple food which is consumed not only locally but regionally. In fact, where I come from – Teso South – you cannot serve anything without *ugali* and call it a meal. It will be an incomplete meal. So, just the availability of maize alone signifies food security for this country. Therefore, we cannot watch the NCPB collapse because it is a very important institution for this country.

Hon. Speaker, looking at the report, it is clear that it is riddled with a lot of inconsistencies. Some of the companies that were awarded tenders should not have been awarded the tenders in the first place because they did not qualify.

They failed to meet the technical and financial requirements. I want to say that the recommendations that have been made by this Committee should be allowed to move to the next level for the Ethics and Anti-Corruption Commission to do further investigation.

Hon. Speaker, Sir, in the life of this nation time has come when we have to say no to corruption and unconventional ways of doing things. This nation is lagging behind in development because of some of these cultures that we believe in and we think are normal. The NCPB must survive. There is no way a company can purport to supply air and it is paid millions and the accounts are closed and we still want to say no to this report.

I want to support and commend the Committee for the good work done.

Thank you.

Hon. Shidiye: On a point of order, hon. Speaker, Sir. Hon. Wario asked the Chair to give direction on this matter. This matter is before court, it is *sub judice*. We do not want to have conflict between Parliament and the Judiciary. The chair has not given

communication on this matter. We need your direction because we do not have a constitutional crisis in this country where Parliament is saying one thing and Judiciary is having this matter in court.

Hon. Speaker, Sir, you must give direction on this matter before we continue.

Hon. Speaker: Hon. Shidiye, I think you are flogging a dead horse. There is nothing--

(Applause)

There was an amendment to the Motion. There is nothing that is *sub judice*. In any event, you get as good as you bargain for. Those who want to claim *sub judice* must also appreciate that this House has a constitutional mandate to deliberate on all matters of concern to the people of Kenya. That is provided for in Article 95 (2) which states:-

“The National Assembly deliberates on and resolves issues of concern to the people”

The matter involving the NCPB to the extent that it also touches on the Strategic Grain Reserve (SGR) is obviously a matter of concern to the people of Kenya. So, I have allowed debate. I did that long time ago, unless you were not clear. That is why debate is going on and it will go on.

We must do what we are supposed to do under the Constitution. So, there is nothing *sub judice* about the matter and that is my position. The issues which were primary were adjudicated upon when the matters were before arbitration, which through award, as you have said, the report was confirmed. So, there is nothing active before court that should prevent this House from debating this report. In fact, this House would have to express itself on this report.

Therefore, I see nothing *sub judice*.

Hon. Sakaja: Thank you, hon. Speaker, Sir. I rise on two points of order. You have already ruled on one, that if a Member feels that a matter is *sub judice*, according to Standing Order 89, he needs to show how the discussion of that matter will prejudice its fair determination. I do not think that has been shown.

I also rise on Standing Order 95, that for the past four weeks hon. Members have expressed themselves on this matter and judging the mood in the House, would I be in order if I suggest that the Mover be now called upon to reply so that we can move to other matters on the Order Paper?

Hon. Speaker: Which mood did you see?

(Laughter)

Maybe, we can hear one, two or three more hon. Members.

Those who are retreating are at liberty to retreat. Let us hear from hon. James Opiyo Wandayi.

Hon. Wandayi: I had contributed.

Hon. Speaker: Okay. Let us have hon. Sabina Chege then.

Hon. (Ms.) S.W. Chege: Thank you, hon. Speaker. I stand to fully support this report. As hon. Member and also a mother, I feel very sad when I see every year children

dying in Turkana while few individuals are taking advantage of the taxpayers' money and lining their pockets.

The Committee's report shows clearly that no maize was supplied. It is also clear that the procurement process was fraudulent. It is also clear from the report that, indeed, there was no breach between NCPB and the M/s Erad Supplies and General Contracts Limited. The company that breached the contract between NCPB and itself purported to supply maize which they did not supply.

Hon. Speaker, Sir, it is very sad to see a company causing a loss of Kshs313 million in form of legal fees and a possible loss of Kshs262 million, which is money going to the pockets of few individuals. It is also clear that a Letter of Credit is supposed to be a document of international trade between the supplier and the procurement entity. M/s Erad Supplies and General Contracts Limited was not an international company and, therefore, they should have done their supply. The 40 days within which they were supposed to do their supply lapsed before they did so because they did not have the maize neither did they have a source of maize.

I stand to support this Motion and also say that there is a tendency within the Government to misuse Government money and no steps are taken. I know there is a report from the Auditor-General that also touches on education. A lot of money has been misappropriated and no action has been taken.

Hon. Speaker, Sir, I would recommend that investigation is done and a full report on the individuals who were involved is also brought to this House. Let us know the action that is going to be taken against the culprits.

Thank you.

Hon. Wario: Asante Mhe. Spika. Ninachukuwa fursa hii kukushukuru. Wahenga walisema kwamba, "Mnyonge kupata haki ni mwenye nguvu kupenda," Ninasema hivyo kwa sababu nimesimama katika Bunge hili kuchangia Hoja hii.

Kulingana na kipengele 89(3)(d) cha Kanuni za Bunge, kwa heshima na taadhima kubwa, uliahidi na kusema kwamba:

"Mhe. Wario, nimesikia nitakuja kuamua."

Siku ya kwanza, ya pili, na ya tatu nimekaa kungojea uamuzi kutoka kwa Mhe. Spika. Kwa sikitiko kubwa sikupata uamuzi huo. Leo nimeambiwa kwamba: "Mhe. Ali Wario, huna habari, uamuzi ulishatolewa." Ikiwa hivyo ndivyo ilivyo, nimechukua uamuzi wako na wacha niendelee mbele na msafara.

Mhe. Spika, ninasema kwamba tunaambiwa kwamba Halmashauri ya Nafaka na Mazao itakwenda kuzama. Ni lazima tusimame wima tuokoe Halmashauri hiyo isizame. Swala nyeti ni kwamba, wakati zabuni ya kuleta mahindi ilitolewa, ni nani aliitoa kwa M/s Erad Supplies and General Contracts Limited? Ni Halmashauri ya Nafaka na Mazao ndio ilitoa hiyo zabuni bila kuangalia masharti?

Mhe. Spika, tunaambiwa kwamba Serikali itafute pesa ipeane kwa Halmashauri ya Nafaka na Mazao na bado viongozi wa Halmashauri ya Nafaka na Mazao ni wale wale!

Wakati walipelekwa kortini, wakili yule hakuenda kupinga ile hukumu.

Hon. Speaker: You are on a point of order, hon. Wario.

Hon. Wario: Hapana, Bw. Spika. Nimesimama kuichangia Hoja hii.

Hon. Speaker: You have contributed.

Hon. Wario: Ninasimama kuichangia Hoja hii. Sijaichangia Hoja hii. Nilisimama kwa jambo la nidhamu na nikachangia marekebisho. Ikiwa kusema kwangu kunawadhuru; kama hamfurahii, nataka--- Sikuichangia Hoja hii.

Hon. Speaker: On the list here, you are shown to have actually spoken twice. The first time you rose to raise the issue of *sub judice* and the second time, you were contributing including moving your amendment.

Hon. Wario: Hon. Speaker, Sir, I did not contribute. I only contributed to the amendment. I only moved an amendment and I contributed to that amendment. I did not contribute to the main Motion. I only contributed to the amendment.

Bw. Spika, nilileta hoja ya nidhamu na nikaleta marekebisho. Nilizungumza kuhusu hayo marekebisho lakini si juu ya Hoja hii.

Hon. Member: Uongo!

Hon. Wario: Bw. Spika, hon. Kamau ananitukana. Neno “uongo” siyo lugha ya Bunge.

Hon. Speaker: Hon. Wario, you will get the benefit of the doubt because the staff have not kept very good record. I am very sure that if you were indeed contributing, the time that you are shown to have spoken here, you spoke for only three minutes. I am sure given the passion with which you are contributing, you cannot have intended to only speak for three minutes. You got the benefit of the doubt.

Hon. Wario: Thank you, hon. Speaker, Sir. You have heard hon. Kamau using unparliamentary language on me, telling me that, that is a lie. Could he withdraw and apologise?

Hon. Speaker: Let us allow hon. Wario to make his point, please. But allow others who have points of order to raise them. Hon. Irungu!

Hon. Kang’ata: On a point of order, hon. Speaker, Sir. Is it in order for a Member who is contributing to change his language from English to Kiswahili and from Kiswahili to English? Is it in order under the Standing Orders?

Hon. Speaker: Hon. Wario is now permanently on Kiswahili.

Hon. Wario: Bw. Spika, nilikuwa mbele ya mheshimiwa kuingia katika Bunge hili. Kwa hivyo, si mara yangu ya kwanza na hawezi kunifundisha *Standing Orders*.

Nimesimama kupinga Hoja hii. Sipingi kwa sababu ninaunga mkono ufisadi au ninataka NCPB ikufe. Ninapinga kwa sababu shida ambayo imepatikana imetokana na NCPB ambayo imesimamia zabuni. Wao ndio wametoa kadarasi. Wakati wamezozana na Erad wemeenda kortini, NCPB hawajakata rufani hata mara moja mpaka leo.

Hon. Irea: On a point of order, hon. Speaker, Sir. I had risen earlier on a point of order, but you did not see me and you allowed hon. Wario to speak. I had risen to find out at what stage Parliament can stop proceedings which are going on in another institution, which is the High Court? As I speak, Erad is going on prosecuting and attaching the NCPB properties. Are we not creating a constitutional crisis? There is no order from this House to stop the proceedings at the High Court.

Hon. Speaker: Hon. Mwititi, it is not the intention of this House to stop judicial processes from going on and neither can it be within the power of the Judiciary to stop this House from proceedings with what it must do under the Constitution. Every institution is properly provided for within the Constitution. So, hon. Wario is contributing.

Hon. Wario: Bw. Spika, nilipoleta hoja ya nidhamu, niliitwa majina mengi ikiwemo kusemekana kuwa nimeleta hoja kupinga, moja, kwa sababu ya ufidiaji na pili, kwa sababu ya ukabila. Mimi nimeleleka Mkoa wa Pwani, kisha Pwani barani, si baharini kule. Katika hiyo bara, cheo kubwa kabisa tulichonacho katika Serikali ni DC. Ukabila hautanipeleka mahali. Mimi ni kiongozi na ninatoka Bura ambapo kumetoka makabila 42 ya nchi ya Kenya. Siwezi kuleta hoja kwa ajili ya ukabila.

Pendekezo la 13 katika ripoti iliyo mbele yetu linasema uchunguzi ufanywe kwa sababu ukame ambao umetangazwa haufai kutangazwa saa hii. Wajibu wa kutangaza ukame kama janga la kitaifa ni wa nani? Miaka tisa iliyopita, Bunge lilikuwa wapi? Ule ukame uliotangazwa miaka tisa iliyopita, uchunguzi uanze? Tunatumia cheo na mamlaka vibaya.

Hon. Nassir: Kwa hoja ya nidhamu, Bw. Spika. Ningependa kuzungumza kwa lugha ya taifa ambayo ndugu yangu mhe. Wario ametumia. Katika mjadala wake ambao anaouzungumzia, kwanza ni kuwa lawama haiko kwa Erad lakini kwa NCPB. Ile hisia ambayo anaileta kwa Bunge hili na katika Kenya nzima ni kuwa ripoti hii inaisafisha NCPB, ambayo sio ukweli wa maneno. Katika maneno yake ambayo nimemkatiza sasa hivi---

Hon. Speaker: That is not a point of order. Hon. Wario, proceed. Hon. Members, from time to time now, you will have to expect this to happen: if you do not agree with somebody's point of view, you cannot stand and start arguing merely because you disagree. He has a right to hold whatever views he wishes and also you have your right. Both of you will be protected to express those views. So, let hon. Wario advance his point.

Hon. Wario: Bwana Spika, pendekezo la 13 linasema kwamba uchunguzi ufanywe katika Wizara ya Miradi Spesheli na Wizara ya Kilimo kwa kutangaza ukame. Miaka tisa imepita sasa. Kwa nini ukame ulitangazwa kuwa janga la kitaifa? Wajibu wa kufanya hivyo ni wajibu wa Baraza la Mawaziri na Rais. Kwa nini ripoti haijaleleka hapa? Ripoti hii inatupatia ukweli nusu na uongo nusu. Hatujaambiwa fedha ni za nani. Tumechukua kampuni moja na kujaribu kuihalalisha kwa sababu tunataka kuwaambia Wakenya kwamba hawa ndio wabaya zaidi. Je, wale waliochukuwa zabuni ya kuleta tani zaidi ya 110 wako wapi? Wamefanya nini? Wamelipwa pesa ngapi? Ripoti hii haituelezi hayo.

Kwa sababu kuna Erad, tutaonyeshwa hiyo Erad na ukweli mwingine ufichwe. Tutapitisha hii ripoti kwa ajili ya kufurahisha watu fulani. Tuelezeni Purma ni ya nani? Tueleze Freba ni ya nani? Tueleze Euro Commodities ni ya nani? Wamelipwa hela ngapi? Ukifanya hivyo mimi nitakuamini kisha nikuunge mkono.

Bunge hili linapaswa kutoa ukweli na haki kwa Wakenya wote.

Hon. Speaker: Hon. Lessonet, stop gesticulating. You are in the House. You are not in the---

(Laughter)

Hon. Wario: Iwapo tutapitisha hii Hoja, kuna pendekezo---

Hon. Speaker: There is a point of order by hon. Kamama.

Hon. Abongotum: Hon. Speaker, I have a lot of respect for hon. Wario. I used to be a DO in his place. However, is it in order for hon. Wario to insinuate that those of us

who are supporting want to clear the other companies? We are not clearing any other company. If he feels or has any information that these companies did anything, he can move an amendment so that they are also investigated and we will support that.

Hon. Speaker: Once again, hon. Wario is at liberty to make the point that he is making, including most importantly the fact that hon. Wario in taking issue with Recommendation 13, perhaps, being a matter which appears not to have occurred. There is actually nobody called Kenya Anti-Corruption Commission. So, that is for the Committee to note.

Hon. Wario: Bwana Spika, hii ni nyumba ambayo inaangaliwa na Wakenya wote, wakubwa kwa wadogo na watoto kwa wazee. Tegemeo lao ni sheria tunazotunga hapa. Bila usawa na haki hadhi ya nyumba hii itateremka.

Kuna pendekezo moja kwamba Serikali itoe ruzuku kwa NCPB ili iweze kusimama. Mimi nitaunga hilo mkono ikiwa viongozi wa NCPB watabadilishwa. Baada ya hukumu kutolewa wale waliokuwepo hawakwenda kukata rufaa. Hawakumjulisha Mkuu wa Sheria kwamba kuna tatizo kama hili. Kwa sababu gani? Ni kwa sababu wao pia wana mikono yao ndani ya suala hili.

Ikiwa Erad imepoteza robo ya mali ya umma, NCPB itapoteza theluthi tatu ya mali ya umma. Kwa sababu ya NCPB, ninapinga ripoti iliyomo ndani ya Bunge hili.

Hon. Kaluma: Thank you, hon. Speaker. I rise to propose an amendment to the report. The amendment reads as follows:

THAT, the Motion be amended by deleting paragraphs six and seven on Page 96 and paragraphs 16 and 17 on Page 98 of the recommendations of the report.

Hon. Speaker, paragraphs six and seven were previously amended and what it now states is that the recommendations will be implemented, subject to what is happening at the Court of Appeal. I have done a bit of arbitration and may I confirm to my colleagues that truly, the forum where corruption is being perpetrated in the country is in arbitral processes.

Corruption is not a small thing. As I said last time, we are dealing with a public investment which may affect the country in a very big way. My fear is one: We know the limitations in terms of the powers the courts have in dealing with arbitral awards. May I now inform hon. Members that the court has no power to hear appeals against arbitral awards. Courts do not have power to hear review applications. That is why I am happy with the recommendation that we suggest amendments to the Arbitration Act to give judges more flexibility when we have issues like the ones the Committee confirms to us happens.

The Court of Appeal may uphold the position of the High Court and, therefore, the award is not set aside, or the Court of Appeal may disagree with the High Court and then the award is set aside. In any event, may I confirm to the Members that the Court of Appeal intervenes against awards only on two main grounds – this is under Section 35 down to Section 37 of the Arbitration Act – where it is proved that the arbitral proceedings were an illegality. On the face of it, you may not prove that. Again, where the arbitral award is contrary to public policy like immorality or corruption of which you have evidence. But you may have difficulties, of course, proving that.

Hon. Speaker, my fear is this: We make very good recommendations that the EACC should investigate this matter and take appropriate action. May I confirm that we

should not limit that latitude by subjecting whatever happens in terms of recoveries of the monies that we are talking about, to whatever the courts decide. If we left it at the EACC, hon. Members, the EACC can investigate and initiate criminal action.

Secondly, whatever the court says, it is upon the investigation that if the EACC confirms that there was corruption in this matter it can institute action for recovery of the monies. We are safer leaving it at the EACC to investigate and institute action than subjecting the process to the Court of Appeal which may uphold the award and then you lose the money. The EACC, however, can recover the money whatever the---

So, I would urge that we agree in principle that we delete paragraphs six and seven of the recommendations at Page 96. In any event by having it in the manner it is, we are confirming that the matter is in Court of Appeal which is what hon. Wario and others are talking about.

At Page 98, I am proposing deletions to paragraphs 16 and 17. For Paragraph 16, I am making a proposal for deletion based on the provisions of Article 160(5) of the Constitution. Of course, all the lawyers in the House and all Members of Parliament know what that provision says. A member of the Judiciary is no longer liable in action or a suit for anything done by them in the discharge of their judicial functions.

So, unless we have clear evidence that the monies which were received actually rigged a judge to rule, I am requesting that we be alive to the fact of the difficulties, even the judges dealing with this award, based on the limitations of the law of the Arbitration Act we are dealing with. Let us not have a situation where judges are erroneously provoked. In fact, in the long run it may undermine what the EACC may achieve for us. They may arrest people and when they go to court and you have already said that judges be investigated, those people will be released. I request that we do not make such recommendations unless we have tangible evidence. This investigation relates to rulings. The limitations with arbitral process are such that a judge has very limited discretion. That is why, personally I would want to be party to any process that enables us to give judges power to look deep into the merits of the award – which jurisdiction they currently have. So, we will throw in these recommendations and then we are hit back and we fail the nation in saving this national investment for no reason.

Under paragraph 17, lawyers who are representing parties be it in the arbitral processes, be it in the court processes have to be subjected to disciplinary processes. I mean our system of justice is adversarial. As a lawyer, I act on instructions of a client and this is what these lawyers were doing. You cannot take it from them to act and they act on instructions. By the way, we do not have to recommend that as a House. We should not make such recommendations. We can go to the disciplinary committee. We can go to the complaints commission. If, indeed, there is something tangible beyond the mere fact that a lawyer represented a party in a deal that we will later confirm as a House has a problem, we should not make such recommendations. I beg that we agree to this amendment so that we can deal with this matter and end the corruption within arbitral processes. To me, this report is very good so that we may not have situations and recommendations which make us fail to have the effect we are seeking.

Hon. Speaker, with those few remarks, I ask hon. Wanyonyi if it is to be supported, to second the Motion for amendment.

Hon. Speaker: Hon. Wanyonyi Kevin.

Hon. F.K. Wanyonyi: Hon. Speaker, I just want to second the amendment. I think the learned friend, hon. Kaluma, has made it very technical. I think you got it but my addition is that because the case is before the court, it is better for us to leave it at that so that we do not get ourselves involved in issues that we will not be able to explain. So, I think the recommendation is that let the court deal with the matter and then we deal with it. This is because at the end of the day, I think the report itself is very detailed and I quite agree we have a problem with the NCPB, particularly where I come from. In fact, over the weekend we had the Minister for Agriculture in Trans Nzoia opening Kitale Agricultural Show and the farmers were asking when the NCPB will buy their maize and assist them. I quite agree. I am not disputing the report. I think the report is good as it is but that bit of technicality is where we are saying: Why do we not leave this to the court?

I second the amendment. Thank you.

Hon. Speaker: Hon. Keynan, I must propose the amendment.

*(Question, that the words to be left
out be left out, proposed)*

Yes, hon. Keynan.

Hon. Keynan: Hon. Speaker, thank you so much. I have just consulted and I hope hon. Kaluma will accept. On the face of it, it is good to be honest about some of these recommendations. Let me explain the background of Recommendations 16 and 17. These are recommendations to the Judicial Service Commission (JSC). Recommendation 16 says:

“The Judicial Service Commission (JSC) investigates its former and present members and staff who were involved in the handling of the NCPB matter for allegations of corruption, bench fixing, (or influencing the bench), corruption, bias and abuse of office with respect to rulings ...”

Hon. Speaker, what I am informed is that there are a number of witnesses who appeared before the Committee including lawyers. One time the file was missing for almost six months. They had to reconstruct a new file. Who stole that file? Was it not being kept by the Judiciary? One time this case was heard by over eight judges at different times. We had seven lawyers. The first lawyer, for the record was Nancy Barasa. Later on she ended up being the Deputy Chief Justice and that was the period when this thing was alive at the Judiciary. What we said is consistent with the procedures and our Constitution. We are not saying another entity should investigate. We are saying the JSC which has an oversight role on all judicial officers should investigate colleagues. Is there anything wrong with that particular recommendation?

Hon. Members: No.

Hon. Keynan: I say no. I see no harm in that particular recommendation because if there were allegations--- In fact, one witness appeared before the Committee and said this particular lawyer is the one who bribed judge so-and-so. This particular lawyer got this. In fact, that particular witness went ahead and gave us evidence of how much that particular lawyer was given and because we did not have the institutional mechanisms to deal with it, we said let this be investigated by the JSC and also by the Ethics and Anti-Corruption Commission. Therefore, I see no harm in that particular recommendation.

Hon. Speaker, secondly, there is the issue of this other Recommendation 17 which says:

“The Law Society of Kenya (LSK) and its complaints and disciplinary mechanisms should investigate the alleged misconduct of Ms. Nancy Barasa for the claimant (M/s Erad Supplies and General Contracts Limited) and Mr. Joshua Nyawara (for NCPB respondent) during the arbitration process”

Here again, evidence was presented and in fact, even before the Director of Criminal Investigation Department (CID). This issue reached the Office of the Director of Criminal Investigations who appeared before the Committee as a witness. In fact, at one time there was a brawl between Nancy Barasa and another lawyer. These two lawyers encroached in this case and that is the time Nancy was still the Deputy Chief Justice. Who else other than the LSK has the competence to investigate its own members? What is wrong with that particular recommendation? Both lawyers are active members of the LSK. Therefore, I see no harm again in that particular recommendation.

Hon. Speaker, I agree and know you are a seasoned lawyer. There are as many opinions as there are lawyers. That amendment that we passed last week was informed by the consultation we had with you. Today we have another lawyer who brings a different version. I want to plead with hon. Kaluma who is a good friend of mine to withdraw that amendment but if he cannot withdraw, even the amendment he is suggesting will have no effect.

So, hon. Speaker, I want to suggest that it will be very difficult to have a report that is tailor-made to serve particular interests. There are over 26 individuals mentioned. One of them is my relative; another is a relative and friend of Kaluma; another is a relative of Wario; another is a relative of Duale and another is a relative of Cheptumo. Then what will be our role if I decide to remove my relative? Who does not have a relative? Everybody here comes from a community. I really want to plead that let us divorce personal, communal and other interests from this report and deal with this issue of NCPB as a national crisis.

(Applause)

Hon. Speaker, I, therefore, stand to oppose that amendment because the earlier amendment that was passed and this amendment being suggested by hon. Kaluma basically serve the same interest. I want to plead with my brother here to allow us to execute this so that this report is passed and other entities can implement the recommendation.

Hon. Speaker: I am sure the House has been addressed sufficiently both by hon. Kaluma and hon. Keynan. So, I will put the Question.

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

The amendment is defeated. Hon. Irungu Kang'ata.

Hon. Kang'ata: Thank you, hon. Speaker, Sir. From the outset, I would like to declare that I am a member of the Public Investments Committee (PIC) and also that I participated in all proceedings related to this matter. I also confirm that no one gave a

divergent opinion relating to this report. We held so many meetings. We invited so many witnesses. We went to Mombasa to do this report and no member of the Committee gave a divergent opinion relating to this matter.

Hon. Speaker, Sir, I would like also to comment on the nature of this scandal. This country has been bedeviled by many corruption scandals. We had Goldenberg and Anglo Leasing scandals and it is only the institution of Parliament that has been able to save Kenyans against corruption by the Executive. You remember that Goldenberg was a matter that was raised in this House and Anglo Leasing was also a matter that was raised in this House. We now have an opportunity, as the 11th Parliament, to take action against those people who want to close down the NCPB.

Hon. Speaker, Sir, if you look at this company called Erad, you will find that when it was tendering in 2004, or thereabout, it did not have the capacity to do the work that it was seeking the tender for. I draw the attention of the Members of this House to page 83 of this report. It is very clear on that page that the company, as at the time it was tendering, was bankrupt because it did not have enough resources. The balance sheet was not in favour of that company being able to deliver on this tender.

I also want to draw the attention of the Members to the point that initially the tender committee had given an award of 20,000 metric tonnes. How that was inflated again to 40,000 metric tonnes is something that we have never understood.

On the argument relating to people who have been involved in this matter, several recommendations have been made relating to judicial members. It is high time Members of Parliament started questioning how the judicial members have been handling some key matters, particularly this issue.

I draw the attention of the Members to the arbitral award. If you look at the claim that was filed by Erad before the arbitrator, you will find that there are some prayers which were granted by the arbitrator and those prayers are not in the claim by Erad. My question is: How can an arbitrator give an award that is not prayed for? That is an issue that can form a good ground for investigation against the lawyer who did that.

Another issue relates to the files missing at the courts' registry. For those of us who have been practising in courts, we know how corruption happens in the court registry. You will file an application under a certificate of urgency and when you appear before a judge, you are supposed to be heard *ex parte*, that is the other party is not supposed to come and hear your application in the first instance. But suddenly, you see the lawyer representing your adversary appearing before the court. The question you ask yourself is, how did my colleague know that I had an *ex parte* application? It is simple. The other party must have been notified by a court clerk. That is what has been happening in respect to this matter of Erad.

Hon. Speaker, Sir, you will find the lawyer for the NCPB making an application before the court, for instance for the stay of an execution, so as to set aside the arbitral award and raise an issue at the interlocutory stage. However, when you appear for the *ex parte* application, you find the lawyer for the other party coming with a file and saying: "No. Notwithstanding that this matter is at the *ex parte* stage, I demand an audience." When he does that, the NCPB is unable to advance an argument for an *ex parte* order. As a result, the court tended to give orders which were adverse to the NCPB.

It is on that account that we thought that we may not have the institutional competence to really investigate to the bottom line of this matter. We, therefore,

recommended that this matter be handled by the LSK and the Judicial Service Commission, so that we can know where corruption came from.

The other issue also relates to the people who applied for the original tender. We have one, Mr. Ahmednassir. Evidence was tendered that he made an application and bought the original tender documents. He was among the 86 firms that applied for the forms. One witness said that the person who was said to have bought the tender documents, when the matter became contentious later on, he appeared as an advocate for Erad. So, we wonder what the connection between the two was. We thought that it was wise for us to come up with a recommendation to investigate that person and his influence in relationship to the NCPB.

Hon. Speaker, Sir, another issue I would like to draw Members' attention to relates to the other five companies. A Member of this House has said that we have not investigated those other companies. The reason why the issue of Erad is quite different from the other companies is because Erad did not supply a single grain, yet it was paid money.

There is evidence that the rest of the companies may have supplied maize, although others sued the NCPB but lost. It is only Erad which appears to have gone to court, obtained a judgment and was paid in excess of Kshs300 million, yet it did not supply a single grain.

Be that as it may, anyone who has any evidence against the other companies is at liberty to appear before our Committee and, as the PIC, we shall take action, investigate and ensure that if those companies were paid irregularly, the money is recovered. However, as of today, we are following up the evidence we have and it only relates to Erad. Once we get that evidence, we shall proceed and prosecute the other companies.

Therefore, I call upon Members to support this report, so that for the first time in this Parliament we say no to corruption. I foresee a situation where, God willing, we will be able to recover tax money that has been lost.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Recommendation No.13 on page 98 still needs to be addressed. This is where you are calling on the Kenya Anti-Corruption Commission (KACC) to investigate circumstances leading to the declaration of drought as a national disaster. I tried to raise that point with you because you know there is no such body. So, your recommendation should not be in vain. Who will take up that particular recommendation? I draw the attention of Members of that Committee to that matter. I thought you ought to have reacted.

Yes, hon. Keynan.

Hon. Keynan: Thank you, hon. Speaker, Sir. I do reckon that there is a typo error here. Instead of the Ethics and Anti-Corruption Commission we had the Kenya Anti-Corruption and Economic Crimes Commission. This is the commission that preceded the current Commission. I think anybody reading this report will appreciate that.

Hon. Speaker, Sir, with your indulgence, I beg to move an amendment just to correct that. Instead of the KACC, we have the Ethics and Anti-Corruption Commission (EACC). I can do that in a second, so that it is consistent with the current Commission.

I appreciate the presence of our able clerk, Mr. Emejen. I hope that that amendment will be ready in a second.

Hon. Speaker: Very well. Do it quickly.

Yes, hon. Wanga.

Hon. (Ms.) Nyasuna: Thank you, hon. Speaker, Sir. I rise to support this report and thank this Committee. The 11th Parliament in this dispensation has shown that its committees are working.

Recently, we adopted a report in this House by the Departmental Committee on Education, Research and Technology that showed that the Committees of this House have teeth and are biting.

Hon. Speaker, this is the maiden report of the PIC. The Committee has worked hard. They held 32 meetings and compiled a good report, which they have brought to this House. The response by hon. Members shows that we take our committees very seriously. Therefore, we will give them support. The message should be loud and clear to everybody out there: As you amass wealth by looting public resources, you do so alone. The wealth will help you, your girlfriends, your concubines and whoever else is close to you. When you eventually get in trouble, do not come running and saying that you are from this or that community. It does not count because your communities do not benefit from the wealth that you acquire corruptly.

This report has recommended investigations of Mr. Ahmednassir, M/s Barasa and Mr. Karanja. Therefore, the Committee should not be unfairly accused of having tribal leanings. We are dealing with a very important matter. Maize is a staple food for this country. I always put *ugali* on my table, which is made of maize flour. So, maize is that important to us. For somebody to demand payment, first of all, was there really a famine? Somebody must tell us. Whether that happened 10 or 20 or 50 years ago, this is the Parliament that will ask that very important question: Was there a famine or was the story just created, as the Committee has ably established, for some people to line their pockets?

Hon. Speaker, for 50 years, we have been trying to fight hunger, disease and ignorance. These are the kinds of scandals that have come between us and an effective fight against hunger, disease and ignorance. That is why 50 years after Independence, we are still hungry, ignorant and sick, as a country. We must, therefore, send a very strong message to anybody planning to plunder public resources.

Finally, on the Judiciary and the recommendations made by the Committee for the Judicial Service Commission to investigate some of its members who are involved in this case, this matter must be investigated and concluded because we want to have a Judiciary we have confidence in. This is what has so far saved this country, and which will continue to save this country. We must have a Judiciary in which we have confidence that it will dispense justice without fear or favour, just as this House is considering this matter without fear or favour.

With those remarks, I beg to support.

Hon. Speaker: Yes, hon. Murugi Mathenge.

Hon. (Ms.) Mathenge: Thank you, hon. Speaker. I rise to support this report in its totality.

One of the reasons as to why I do so is that when the issue of Erad came to light, I was the Minister of State for Special Programmes. I want to tell this House without fear – or maybe with a little fear – that if there is somebody who is corrupt it is Erad. One morning, he walked into my office. I had never seen him before. He said to me: “I have been sent from the very high offices. You have to sign a letter authorising NCPB to pay

this money.” I asked him: “For what?”, and he explained. I declined to sign the letter and said to him: “Whoever has sent you can as well sign the letter.”

Hon. Opiyo: On a point of order, hon. Speaker.

Hon. Speaker: Hon. Murugi, there is a point of order from hon. Opiyo.

Hon. Opiyo: Thank you very much, hon. Speaker. Through your indulgence, I would like to know who Erad is because, from the report, we captured that Erad is the company. If hon. Mathenge knows who Erad is, by name, could she say so since Erad was able to visit her in the office and intimidate her? This House is more than excited to know who this Erad is because he is the real mongrel that is disturbing this country.

Hon. (Ms.) Mathenge: Hon. Speaker, the gentleman who walked into my office was a director of M/s Erad Supplies and General Contracts Limited. His name was Juma, if that is what you want to know.

Hon. Speaker, I want to assure this House that we not only want to investigate the matter but we also want to prosecute people. This is because even when the matter was taken to court, most of the times, the lawyers who were supposed to go and defend the NCPB made themselves very scarce. They did not appear for the cases.

(Several hon. Members stood up in their places)

Hon. (Ms.) Mathenge: Hon. Speaker, I wish you could give me time to speak. They have all had their time to speak.

Hon. Speaker: Yes, hon. Simba Arati!

Hon. Simba: Thank you, hon. Speaker. I have stood because when hon. Mathenge came in, and subsequently hon. Wanga came in, I had placed my request. Surprisingly, the two hon. Members have spoken as the light on my request gadget keeps on blinking. Is it that I am not supposed to speak in this House?

(Loud consultations)

Hon. Speaker: Hon. Simba Arati, you have gotten the answer from hon. Members.

Hon. (Ms.) Mathenge: Hon. Speaker that was not a point of order.

I remember that M/s Erad Supplies and General Contracts Limited was given a court order to go and have all the NCPB warehouses auctioned. What I would want the investigation to do is to establish the identity of the police officers who escorted the auctioneers who demolished properties that belonged to the NCPB, at the detriment of this country. It took us a lot of effort to actually save the relief food commodities that were stored in the NCPB silos.

So, M/s Erad Supplies and General Contracts Limited does not have the interests of this country at heart. The company should not be given any Government business in this country. It is a company which should be thoroughly investigated. It is a corrupt company. There is a whole line up of people they have corrupted, right from the Judiciary to the police. They have even corrupted people in some very high offices.

Hon. Speaker, everybody has been talking about maize but one thing that hon. Members do not know is that at the beginning of the year, we had an issue as to where we would store the fertilizers once they get to the country. It dawned on us that M/s Erad

Supplies and General Contracts Limited would auction the fertilizers. So, should there be any famine in this country this year, M/s Erad Supplies and General Contracts Limited should be prosecuted for the death of anybody going to die of hunger.

With those remarks, I beg to support the Motion.

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

Hon. Waiganjo: On a point of order, hon. Speaker, Sir. I rise under Standing Order 95(1). We have been ventilating on this matter for close to three hours now. Would I be in order to move that the Mover be now called upon to reply?

Hon. Speaker: Hon. Members, this matter has been raised too many times. Therefore, it is now up to you to decide.

(Question, that the Mover be now called upon to reply, put and agreed to)

Hon. Keynan: Hon. Speaker, before I reply, with your indulgence, I would like the following corrigenda added to the Report:-

THAT, the words “Kenya Anti-Corruption Commission” be deleted wherever they appear in the report and be replaced with the words “Ethics and Anti-Corruption Commission”

Hon. Speaker: Permission granted.

Hon. Keynan: Thank you, hon. Speaker.

Secondly, before I respond, I would like to donate a minute each to hon. (Eng.) J.K. Chege hon. Beatrice, and hon. Arati, so that he stops accusing the Speaker of denying him a chance to speak.

Hon. J.K. Chege: Thank you hon. Speaker, Sir, for giving me the opportunity to contribute and support this Motion. I am a Member of this Committee, and without wasting any time and repeating what other hon. Members have said, I would like to refer to annex 18. You will find that a document was given to enable the NCPB to issue a Letter of Credit. You will find that this is a proforma invoice dated 26th August, 2004; it is Invoice No.00005 and indicates that the supplier of maize was Ethiopian Grain Trade Enterprise. On the next page is the same document and the same number but the supplier is M/s Ropack International.

Hon. Speaker, there was also another company of Texas. From the outset this document indicates that it was not clear even to the NCPB as to who was to supply the maize. If they were to open a Letter of Credit, the two documents are in conflict as to who were the suppliers. In my view, this contract was fraudulent and the intention was to defraud the Kenyan public,

Hon. (Ms.) Nyaga: Thank you hon. Speaker, Sir. I stand to support the Motion on this report. I know my colleagues have talked a lot about it, but I would like to say one thing; the tender was only awarded to the wrong people without the capacity to supply and using fake documents. These are the people who did not have Kenyans at heart.

Hon. Speaker, Sir, I would like to quote the Bible. The Bible says if you do not work you should not eat. Therefore, M/s Erad Supplies and General Contracts Limited wanted to eat from where they did not work. We should not allow the NCPB to die a natural death, because of a few individuals who wanted to reap from where they did not sow

I support the Motion on this report and I want to congratulate the Chair of the Public Investments Committee for bringing it to the House.

Hon. Simba: Thank you, hon. Speaker. I take this opportunity to thank the Chairperson of Public Investments Committee.

I had an observation on Freba Investments, which is one of the companies. Her Excellency the Second First Lady--- I am told that it was a well calculated move even by the then sitting President, through his own family, to support. Indeed, that is why he went ahead to declare famine a national disaster.

I want to stand in this House and ---

Hon. Speaker: What are you saying? Are you reading the same report that other hon. Members are reading?

Hon. Simba: Her Excellency the Second First Lady of the First Family indeed, supplied---

Hon. Speaker: Proceed, hon. Keynan.

(Loud consultations)

Order! Order, hon. Members!

Hon. Keynan: Thank you hon. Speaker, Sir. May I take this opportunity to, first of all put the deliberations on record as I do not want what hon. Simba--- I just donated a minute of my time to him because he has been accusing the Chair of not having seen his request. I think the outrageous allegation that he has just made has nothing to do with this Committee. This Committee was guided by facts and evidence adduced before it. That is what informed the recommendations.

There are all observations, conclusions, recommendations and suggestions for the way forward.

If somebody has any issue with other titles, please let him do it outside the Public Investments Committee. This is because that did not come before the Committee.

Secondly, I want to take this opportunity to thank hon. Members. This country has been destroyed by corruption. Countries like China have developed simply because they deal with corruption decisively and mercilessly.

Hon. Speaker, Sir, over the last three weeks I have been subjected to a lot of consultations. I have been asked: How can you recommend adversely against a brother from northern Kenya, Rift Valley, western Kenya or a colleague who is sitting in Parliament? My answer has been one, the law must apply to every Kenyan in equal measure.

This is why as an institution, pursuant to Article 1 of the Constitution, Kenyans have entrusted us with the leadership of this country. That is why sovereignty is equated to representation. Therefore, as we discharge our functions, we must operate above petty, regional, clan and party interests and work for what will assist the Republic of Kenya.

Hon. Speaker, Sir, corruption, impunity, economic crimes, fraudulent practices, and even to some extent, supplying hot air are things that have grounded the activities of one of the most vibrant institutions in the Republic of Kenya, as far as food security is concerned.

I want to share this with the hon. House. When we visited the headquarters of NCPB and their depot, hon. Members who were there, almost shed tears. Why? First of

all, the staff initially--- Everything had been attached; the bank accounts and all their properties had been attached. Therefore, there was nothing left even for the management.

They asked us the first question: “You as our elected representatives are you here to play political games or you are going to save NCPB and ensure that we are not retrenched?”

We had a *baraza* with them and all the hon. Members spoke; we said, and this is what I want to repeat: We will do everything possible to safeguard, first all, their interests, their employment and secondly the national interest by ensuring that those who had brought NCPB down, would not go scot-free.

In our wisdom, this report is not the only report on this. I want to confirm to hon. Members that the Auditor-General has done a report to the Ethics and Anti-Corruption Commission that was also copied to the Committee. The Office of the Inspector of State Corporations has also done a report; the Office of Internal Audit in the National Treasury has also done a report. Interestingly, the recommendations are all the same, that indeed, there is somebody who connived with other individuals and, through fraudulent means, wanted to defraud NCPB.

That is what happened. I can tell the House how this order was issued in one of the evenings. It was on a Friday, at around 3.00 p.m. when somebody appeared before a judge and got an order. The Registrar was on standby, and the order was prepared. It was served on the Kenya Commercial Bank by 5.00 p.m. The following morning on Saturday at around 11.00 a.m. the whole account of NCPB, of over Kshs297 million was garnisheered. Was that not a well-coordinated fraudulent scheme?

Hon. Members: Yes.

Hon. Keynan: That is exactly what happened. Those are the individuals we are saying should be investigated.

Hon. Speaker, Sir, I want to thank hon. Members because this House must protect the interests of ordinary Kenyans at all times. Where I come from, I represent one of the most remote constituencies; over 87 per cent of the population relies on relief food that is stored by the NCPB and the same applies to many other areas. This is what we are saying; we must restore hope among our population in our constituencies. We should also deal decisively with the corrupt and those who are out to loot our national economy.

With these remarks, I beg to move and plead with my colleagues to adopt the report.

Thank you.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

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, subject to insertion of the words: “In the event that the Court of Appeal rules in favour of National Cereals and Produce Board invalidating the entire transaction, the arbitral award and the resultant

court decree” before paragraph 17 of the conclusion in page 94 and paragraph 6 and 7 of the Recommendations on page 96 of the Report.

REPORT ON IRREGULAR APPOINTMENTS IN LANDS MINISTRY

Hon. Speaker: I am informed that hon. Cheptumo, the co-chair is the one moving this Motion.

Hon. Cheptumo: Hon. Speaker, Sir, I beg to move the following Motion:-
THAT, this House adopts the Joint Report of the Departmental Committee on Lands and the Select Committee on Delegated Legislation on the recent irregular appointments in the Ministry of Lands, Housing and Urban Development, laid on the Table of the House on Thursday, 31st October 2013.

My co-chair, hon. Mwiru was supposed to move this Motion, unfortunately, last evening he was involved in an accident. So, I wish to proceed.

The Motion before the House---

Hon. Kisoi: On a point of order, hon. Speaker, Sir. The report that is being awaited from the Chair of the Select Committee on Delegated Legislation is a matter of serious national concern. I need your direction and guidance on this matter, since pertinent issues that are being raised in this House must be raised in good faith. It is alleged that one of the petitioners in the report that is being tabled before this House for debate, which is of very serious nature, had specific interest.

I want to seek your guidance as to whether it is in order for a Member who has certain interest in a matter not to declare his interest beforehand, so that this House can move ahead with full knowledge of that interest. Standing Order No.90(1), on the declaration of interest, reads:-

“90. (1) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest”.

One of the petitioners in this matter is the Vice-Chair of the Select Committee on Delegated Legislation. It is alleged that he has personal interest in this matter, yet in front of this House, he never declared his interest. When we sat in the Committee, he still did not disclose his interest in this matter. Therefore, it seems that whatever we are trying to undertake cannot be transacted in a free, fair and transparent environment. This is an issue which touches on elements of corruption, and you know that corruption fights back heavily. I wish you could kindly give guidance on that matter. I request whether the Vice-Chair of the Select Committee on Delegated Legislation can first declare his interest in this matter before we allow the report to be tabled in this House for debate.

Hon. Speaker: Hon. Kisoi, hon. Cheptumo is the Chairperson of the Select Committee on Delegated Legislation. He is not the Vice-Chairperson. It is important that if you have such allegations, when that person stands to speak, then you raise the issue. But as of now, we must allow hon. Cheptumo to move the Motion.

Hon. Ng’ongo: Hon. Speaker, Sir, it is quite interesting and unfortunate that this matter is coming at this point. Much as I agree with your ruling, the issue that hon. Kisoi has raised needs substantiation. The reason why I feel that this matter should be sorted out at this point is because the Member he has mentioned together with me are the two Members who raised this issue. If one of us has an interest, then it complicates the matter.

Before he mentioned hon. Gitari, I was really jittery. I was wondering how he could make such a serious allegation about me. I know myself and I know that I do not have any pecuniary interest; I do not have any personal relationship and any business relationship.

Since this issue came as a result of a Statement from hon. Mbadi and hon. Gitari, it appears to me that hon. Gitari is being adversely mentioned. It would be proper to ask hon. Kisozi to substantiate. Otherwise, we should not allow the Floor of this House to be used to scandalize other Members. If it turns out that hon. Gitari took advantage of my Statement to further his own personal interest, then either of them should be named; the Member we will determine as being mischievous needs to be named.

Hon. Speaker: Hon. Kisozi, there is nothing out of order. Now that you have mentioned hon. Gitari and I can see that he is already agitated---

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

Hon. Speaker: Hon. Kisozi, just relax. Breathe in and out properly. Hon. Gitari, you have been mentioned by hon. Kisozi.

Hon. Gitari: Hon. Speaker, Sir, the matter the Member has mentioned--- I will give him a chance to substantiate. I also want to bring to your attention the fact that he sits in the Committee on Delegated Legislation and when we were sitting, at no time did he register dissent. The matter that he wants to raise, that I have special interest, I do not know about it. My Statement was on illegal appointment of a Director-General. He wants me to start fighting with my brother, hon. Mbadi, and that is misleading the House. He should come out clearly. It is also important for him to declare his interest; at one point, he was practically chased away from the Committee by the Chairman for being a nuisance.

Hon. Speaker: Hon. Members, let us not do it that way. Let us allow hon. Kisozi to substantiate.

Hon. Kisozi: Hon. Speaker, Sir, maybe that was one of the reasons why I was chased away.

Hon. Speaker: Go ahead and substantiate that hon. Gitari has personal interest.

Hon. Kisozi: Hon. Speaker, on 6th February, 2013 there was a letter that was forwarded by the PS, Ms. Angote. It was forwarding an AIE for financing of LAPSSET Project component in the Ministry of Lands. Here, Kshs225 million was being given for surveying of the following areas: Lamu Corridor, Kshs185 million; physical planning, Kshs20 million; land administration for settlement and planning, Kshs20 million.

Hon. Speaker, I have a copy of the authority to incur expenditure and a copy of the letter from the PS that was forwarding the same AIE. Documents available show that a company known as First Link Supplies Limited received a huge sum of money, to the tune of Kshs31 million. Other companies are Kintona Merchants and Compu-net Digital Systems. It is alleged in the documents that I am holding here that the money which was meant for LAPSSET Projects was diverted to Laikipia, Nyeri, and Nyandarua and never even reached its destination. We are talking of Kshs225 million here.

Hon. Speaker, as I speak here now---

Hon. Speaker: Hon. Muniyao, the documents you refer to must be authentic and you must hand them over.

Hon. Kisozi: Hon. Speaker, I am ready to table them immediately I finish this.

Hon. Speaker: After you do that, bring it to the information of the Member.

Commented [AN1]:

Hon. Kisoi: Hon. Speaker, those documents that I am holding, it is on record that those companies, hon. Gitari has special interest as one of the directors.

(Loud consultations)

When this matter came before the Committee---

Hon. Speaker: Also lay the evidence about his directorship in the companies, please.

(Loud consultations)

Hon. Okoth, it is not your business. It is my business! So, hon. Munyao, the documents that you are holding, bring them here and not to any Member; not to the Leader of Majority Party. Bring them to me. It is me to make a decision. Bring them here. Bring all of them.

(Hon. Kisoi gave the documents to the Speaker)

Order, hon. Members! It is true that these are photocopies of documents none of which is certified. The documents talk about financing of LAPSSSET. There is the authority to incur expenditure which also is not certified. There is a further set of photocopies of documents none of which is certified. I have here a Local Purchase Order. There is another document with some blue markings about companies indicated as First Link Supplies Limited, Kintona Merchants, Compu-net Digital Systems, Ramadhan Geosystems, Julius K. Rotich, Jamleck M. Ndavi, Alex Nthiga, Nancy Ogalo, Bernard Munyao, Benjamin Nandwa, Charity Ayabei, and so on.

This document purports to show figures that could be interpreted to mean money.

(Laughter)

I am saying so because these are just figures. One may assume that the figures shown here are monies. We need to know who the directors of these companies are because the other persons whose names appear are indicated.

Hon. Munyao Kisoi, you need to indicate to the House which of these companies belong to hon. Gitari. If you are not able to do so now, because your allegation is fairly serious, you will be required--- Indeed, I will require you to withdraw your allegation and apologize to the House and to the hon. Member. Are you able to substantiate? It is upon you, according to the same Standing Order you quoted, to be accurate when it comes to the statements that you utter before the House.

Hon. Kisoi: Hon. Speaker, the documents I was tabling touch on a very serious issue. That is why I started by saying that corruption fights back and it fights back heavily.

Hon. Speaker: Hon. Kisoi Munyao, address me on the issue that I have raised with you.

Hon. Kisoi: Hon. Speaker, that is just a tip of the iceberg.

Hon. Speaker: Hon. Kisoi, I am not interested in tips of icebergs or tips of anything else. Address the issue. Whose companies are these? Are you able to substantiate?

Hon. Kisoi: Hon. Kisoi, I tabled these documents because they touch on a very serious issue.

Hon. Speaker: Hon. Munyao, it is not in vain that I made observations that these documents are uncertified. So, they are not even capable of---

Hon. Kisoi: Hon. Speaker, can I request that I be given time so that I can have the documents certified?

Hon. Speaker: Hon. Kisoi Munyao, that is a serious allegation. If you are not able to substantiate now you withdraw your allegation and apologize to the House and to the Member.

Hon. Kisoi: Hon. Speaker, I withdraw, but I will be ready to table the certified copies of these documents in due course.

Hon. Speaker: You must withdraw and apologize to the House and to the Member.

Hon. Kisoi: Hon. Speaker, I apologize for not tabling certified documents, but I will endeavor to certify them.

Hon. Speaker: You must apologize to the Member.

Hon. Kisoi: Hon. Speaker, you are not giving me time to finish. I apologize to hon. Gitari and I hope once the documents are tabled the truth about what I am talking will come out. Kenyans must know the truth about this.

Hon. Speaker: Hon. Munyao there are no conditional apologies. You withdraw and apologize. These documents are incapable of being tabled before this House. You can now keep your documents because they are uncertified. They have no probative value.

(Laughter)

Hon. Cheptumo!

Hon. Cheptumo: Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, allow hon. Cheptumo to move. Those are the rules of the House. They are in your own Standing Orders.

(Loud consultations)

Hon. Cheptumo: Hon. Speaker, the consultations are too loud.

Hon. Speaker: You may have to raise your voice.

Hon. Cheptumo: Thank you, hon. Speaker. The Motion before the House is relating to the Statement sought by two Members of this House – hon. Gitari and hon. Mbadi. Hon. John Mbadi sought to know the following: The qualifications of the two officials who had been appointed – these are the Director and Deputy Director of Survey in the Ministry of Lands, Housing and Urban Development. Two, the legal basis for the appointment and number three, the reasons why the Public Service Commission(PSC) was not involved in the appointments. Number four, whether the appointments were done

in line with the Government policy of reducing the wage bill and finally, whether the appointments were conducted in a fair, open and competitive manner and based on merit.

Hon. Speaker, I wish to inform the House that you ordered that two committees sit to address these issues – the Committee on Delegated Legislation which I chair and the Departmental Committee on Lands chaired by my co-chair, hon. Mwiru. We sat as a joint committee and ultimately we invited the Cabinet Secretary in charge of Lands. It was the position that she was to address the various issues raised by hon. Mbadi and I wish in a summary, because the report is quite long, to specify the following regarding the issues raised by hon. Mbadi:

The Cabinet Secretary informed the Committee that for efficient and effective service delivery and after consultation, the Directorate of the Public Service Management vide letter MDP/DPMSM.1/3/LA XLIV(80) dated 10th September, 2013 transferred the Director of Surveys and Deputy Director out of the Ministry of Lands. It should be noted here that according to the Cabinet Secretary the transfers were actually effected by the Department of Public Service Management under the Ministry of Devolution and Planning. In place of those two, Director and Deputy Director, one Mr. Cesare Mbaria and Julius Kiplagat Rotich replaced the Director and Deputy Director respectively on an acting capacity. The Cabinet Secretary further informed the Committee about the qualifications of the two members that were appointed. This is as per request number two of hon. Mbadi's question.

Hon. Speaker, the acting Director of Survey, Cesare Mbaria had the following qualifications: He held a Master of Science Degree in Computer Based Information Systems with a bias on GIS based Land Information Management Systems and a Bachelor of Science Degree in Surveying. He also held a Postgraduate Diploma in Photography and Integrated Map and Geo-information Production. These are the qualifications of the Deputy Director. She went ahead to also specify the qualifications of Julius Kiplagat Rotich and because Members have this report I wish not to really go through the details that she specified as the qualifications of Mr. Rotich.

So, hon. Speaker, the next question by hon. Mbadi is the legal basis for the appointment of the Director and the Deputy Director and the justification given by the Minister is that the appointments were not substantive and were in an acting capacity to ensure normal operations within the department were not disrupted. Substantive appointments thereafter will actually be done by the PSC. That was the position given by the Cabinet Secretary on the question of the legal basis of the appointments.

Hon. Speaker, on the reasons why the PSC was not involved, the Cabinet Secretary said that the substantive appointments again had not been done and will be done by the PSC. The other two questions on whether the appointments were done in line with the Government policy of reducing the wage bill and whether the appointments were conducted in a fair, open and competitive manner, the Cabinet Secretary again said that all that will be done once the PSC does substantive appointments to those positions.

Hon. Speaker, hon. Gitari on the other hand had also five questions: One, why the Cabinet Secretary revoked the appointment of Mabea from signing titles; two, why the Cabinet Secretary appointed Peter Kahuho as the acting Director-General despite the National Land Commission faulting the move; three, why the Government seal was removed from Ardhi House and taken to Ruaraka survey office and the procedure of

appointment of such public officers. Finally, why 1,700 leases prepared prior to the appointment of the new Director have not been signed yet.

Hon. Speaker, again by way of summary because I do not intend to really go through the entire report, the Cabinet Secretary informed the Committee that the Commissioner of Lands was appointed under the Registration of Titles Act which was then repealed when we passed the Lands Act 2012 and the new Act does not provide for the Office of Commissioner of Lands. That is the reason given by the Cabinet Secretary.

On why the Cabinet Secretary appointed Mr. Peter Kahuho as the acting Director-General despite the National Land Commission faulting the move, according to the Cabinet Secretary she actually confirmed to the Committee that she consulted the National Land Commission and there was no disagreement on the appointment of Peter Kahuho as the person to sign titles.

Hon. Speaker, number three on why the Government seal was removed from Ardhi House and taken to Ruaraka, according to the Cabinet Secretary she found no problem with that because this is a function of the Ministry and it can be taken to any office depending on the need that is required.

Hon. Speaker, on the procedure of appointment of such public officers, I wish in a summary again to confirm that the Cabinet Secretary was able to tell the Committee that she appointed those officers in an acting capacity; that the PSC thereafter shall then be able to fill those positions in a substantive position.

Hon. Speaker, as to why we have 1,700 leases unsigned, the Cabinet Secretary informed the Committee that many grants and leases had been prepared and forwarded to the Commissioner of Lands for execution under transition provisions, who was unable to sign them on health grounds. The issue of signing grants and leases was under discussion between her office, the National Land Commission and the Attorney-General.

Hon. Speaker, having been able to outline to the House the answers given by the Cabinet Secretary to the questions raised by Members, we had to invite also the Chairman of the National Land Commission to clarify the issue whether there was consensus between him and the Cabinet Secretary in the appointment of Mr. Kahuho as the person now to sign titles.

Hon. Speaker, Sir, I would like to confirm to the House that upon the Chairman appearing before the Committee, he was able to confirm to the Committee that there was no consensus. He said that they consulted but they did not reach a consensus as to whether the Cabinet Secretary should proceed and appoint Mr. Kahuho as the Director-General of Lands who will then be able to sign the title documents. Despite his reservations to the Cabinet Secretary, she went ahead to appoint Mr. Kahuho as the Director-General of Lands and mandated him to sign the titles.

That is very important information for this House. Before this House, the question that arises is whether the appointment of Mr. Kahuho was done procedurally and under the provisions of the law.

Finally, the Commission confirmed to the Committee that they were now finalizing the regulations on the Land Act with a view to having the stakeholders retreat and the same to be brought to the House. Because this is an issue touching on the employment of public officers, we also invited the Public Service Commission Chair who appeared before the Committee to confirm whether the appointments were also done as per the law.

The Chair of the PSC appeared before us and was able to clarify the following: Indeed, there was communication from the PSC to the Ministry of Lands, Housing and Urban Development informing them to restructure the office, create various directorates and this was done. She also confirmed to us that the various directorates created in the Ministry of Lands, Housing and Urban Development had not been approved by the PSC. Therefore, those appointments which were done by the Cabinet Secretary based on the draft structure were illegal and were in direct contravention of Article 234(2) of the Constitution.

It is important for us, as a House, to appreciate the provisions of Article 234. I would like to read it out very fast so that we understand what the Committee is saying. Article 234 says:-

“(1) The functions and powers of the Commission are as set out in this Article.

(2) The Commission shall-

(a) subject to this Constitution and legislation-

(i) establish and abolish offices in the public service.”

Hon. Speaker, the business and work of establishing and abolishing public offices is the function of the PSC.

Article 234(2)(a)(ii) says:-

“appoint persons to hold or act in those offices, and to confirm appointments.”

Secondly, it is also the function of the PSC to appoint any person(s) to hold offices which are created by the PSC.

So, the finding of the Committee is that the appointment of Mr. Kahuhu as the Director-General of Lands, based on a draft structure of the Ministry of Lands, Housing and Urban Development and the gazette of that person to sign titles was done outside and in clear breach of the express provisions of Article 234(2) of the Constitution.

It is important for us to take note of Article 10 of the Constitution. I would like to refer to it because it is very important. It says:-

“(1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons wherever any of them-

(a) applies or interprets this Constitution;

(b) enacts, applies or interprets any law; or

(c) makes or implements public policy decisions.

(Loud consultations)

Therefore, the position that the Committee took is that the Cabinet Secretary ought to have been guided by the provisions of Article 10 of the Constitution so that any appointment or creation---

Hon. A.B. Duale: On a point of order, hon. Speaker, Sir. Is it in order for---

Hon. Speaker: This is not Kibera. You should not shout across the House!

Hon. A.B. Duale: Absolutely. This is not Kibera and we are not selling fish.

There is serious consultation going on at the back after we received an amendment from hon. Wandayi. Could the Chair direct that if hon. Members want to discuss, they can use the facilities behind so that we can listen to the debate?

Hon. Speaker: That is not for you, hon. Okoth. Those consulting, please do that in low tones.

Hon. Cheptumo: Thank you, hon. Speaker, Sir. I would like to proceed moving the Motion.

We are saying, as a Committee, that Gazette Notice No.13766 which was published by the Cabinet Secretary was illegal and unconstitutional. When the Cabinet Secretary realized about the illegality of this Gazette Notice, she went ahead and revoked it vide *Kenya Gazette* Notice No.14102. She revoked the previous Gazette Notice that appointed the Director-General of Lands which was done illegally.

Members of this House have definitely gone through this report because you ordered on Thursday that it be circulated. I really do not want to take too long.

Finally, let me go to the recommendations of the Committee. In the absence of constitutional, legal, administrative and procedural backing for the transfers, promotions, appointments, establishment of offices and gazettement of posts in the Ministry, the Committee recommends as follows:-

(i) The officers who had been irregularly transferred or un-procedurally removed from office be reinstated and the purported transfers be revoked with immediate effect;

(ii) 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 in the Ministry;

(iii) The Cabinet Secretary should, as a matter of urgency, submit the regulations to the Lands Act to this House for consideration and approval as required.

Hon. Speaker, my appeal to this House is that we adopt these recommendations. I appeal to this House because where any appointment is made and where public office is created without following the due process of the law, such appointments are not constitutional and, therefore, are null and void. Those are the recommendations that I wanted to make, on behalf of the Committee.

Therefore, I beg to move and request hon. Members to approve the recommendations. I want to request hon. ole Sakuda to second the Motion.

Hon. ole Sakuda: Thank you very much, hon. Speaker. In seconding this Motion, I will be very brief because the Co-Chairperson of the Joint Committee has taken quite some time to share with this House the processes that the two Committees undertook to respond to the Statement by hon. Gitari and hon. Mbadi. Out of the processes, one should be able to tell that there was a breach of the Constitution, through Article 234. It is grave violation of the supreme law that somebody can sit down somewhere and make appointments without following the laid down procedure.

Secondly, there was an intention by the Cabinet Secretary to have a legal notice drafted and published, thereby ignoring the legal office that has been put in place by the Constitution under the Office of the Attorney-General. So, the observation of the Committee was that the Cabinet Secretary ignored part of the advice that was given by the Attorney-General and went ahead to not only draft a legal notice but also forwarded it to the Government Printer for it to be published and complete the appointment of Mr. Kahuhu.

The PSC has rightfully concluded that it is its supreme duty to undertake any transfers and appointments, in consultation with the respective Ministries.

Hon. Speaker, Sir, we want to ask this House to adopt our report. By adopting this report, this House will send a very clear signal, not only to the Cabinet Secretary, but also to other Cabinet Secretaries that this House will not allow any Cabinet Secretary to do things the way they think they should do but to follow the laid down procedures; to follow the supreme law of the land which is the Constitution.

Hon. Speaker, in the PIC report that has just been deliberated we have all been told that it is good for us as a House to support the Committee. We should not be seen to protect an individual or any other community in the name of justice. That is why we are asking this House to adopt this report so that as a House of order, we can put things in order.

With those few remarks, I second the Motion.

Thank you.

(Question proposed)

Hon. Ng'ongo: Thank you hon. Speaker, Sir. I did not request.

Hon. Speaker: You requested because you are the hon. Members who requested.

Hon. Ng'ongo: I want to contribute. I think I have one minute to contribute, the rest I will finish tomorrow.

Thank hon. Speaker, Sir, for giving me this chance to support the Motion as it is.

My main reason for seeking the statement was not for witch-hunt nor was it to have any person removed from office, but rather to have things done properly as per the law. Having two senior officers at the level of Job "T" and "R" being transferred without any reason and without following due process of the law was not right.

(Hon. Member crossed the Floor without bowing)

Hon. Speaker: The hon. Member crossing the Floor, just go back. How many induction workshops shall we hold?

Hon. Ng'ongo: Thank you hon. Speaker, Sir. I was saying that, having two senior officers at the level of Director of Survey and his Deputy being transferred and without following the due process of the law, was in my view, not right and that is why I felt that these Kenyans need to be protected and saved. That is why I raised this statement.

I want to thank the Committee for doing a commendable job of looking at the legality of the transfers and the legality of creation of the position which hon. Gitari talked about.

The Constitution is very clear. It gives the power even to---

ADJOURNMENT

Hon. Speaker: Order! Order, hon. Members! Hon. Ng'ongo, you have a balance of eight minutes. You will continue tomorrow.

Hon. Members, it is now time to adjourn the business of the House. Therefore, this House stands adjourned until tomorrow, Wednesday 6th November, 2013, at 9.00 a.m.

House rose at 6.30 p.m.