

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 14th November, 2013

The House met at 2.30 p.m.

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

PRAYERS

PETITION

AMENDMENT OF VALUE ADDED TAX ACT

Hon. Speaker: Hon. Members, those who are walking, please take your seats. Hon. Members, this is conveying a petition regarding the Value Added Tax Act.

Standing Order No.225 (2) requires that the Speaker presents to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my office has received a petition regarding the Value Added Tax Act, 2013. The petition was submitted by the Kenya Union of Domestic, Hotels, Educational Institutions and Hospitals Allied Workers (KUDHEIHA) regarding Value Added Tax (VAT) levied on service charge on tips and gratuity in hotels and restaurants. The petition dated 11th November, 2013, is signed by 149 citizens praying that Parliament amends Section 13(7) of the Value Added Tax Act, 2013.

Hon. Members, this petition, therefore, shall stand committed to the Departmental Committee on Finance, Planning and Trade for consideration. The Committee is requested to consider the petition and report its findings in accordance with Standing Order No.227(2). I am also aware that there is a Bill awaiting publication which also proposes to amend the Value Added Tax Act, 2013.

The Committee is at liberty to consider this petition alongside the Bill when it is finally referred to them.

Thank you.

PAPERS LAID

The following Papers were laid on the Table:-

The Transition Authority Annual Report for the period July, 2012 to June, 2013.

The Transition Authority Phase I Annual Progress Report for the period March, 2013 to July, 2013.

The Transition Authority Quarterly Report for the period January, 2013 to March, 2013.

The Ethics and Anti-Corruption Commission Third Quarterly Report for the year 2013 covering the period 1st July, 2013 to 30th September, 2013.

The Financial Statement for the year ended 30th June, 2012 for the Medical Practitioners and Dentists Board.

The Financial Statement for the year ended 30th June, 2012 for the Communications Commission of Kenya.

The Insurance Industry Annual Report, 2012 from the Insurance Regulatory Authority.

The Annual Report and Financial Statement for the year ended 30th June, 2012 for the National Biosafety Authority.

(By hon. A.B. Duale)

The Reports of the Departmental Committee on Transport, Public Works and Housing on:-

1. The Petition by residents of Westlands Constituency to the Government on the construction of a pedestrian foot bridge at Githogoro Shopping Centre along the Northern Bypass, Nairobi County requested by hon. Timothy Wanyonyi Wetangula, M.P.

2. The Petition by residents of Malindi Constituency to the Government on the tarmacking of the Malindi-Lango Baya-Chakama-Sala Gate Road in Malindi, Kilifi County requested by hon. Dan Kazungu Muzee, M.P.

3. The Petition by residents of Ugunja Constituency to the Government on the construction of rumble strips and street bumps at Madeya/Rangala Shopping Centre in Siaya County requested by hon. Opiyo Wandayi, M.P.

(By hon. (Eng.) Mahamud)

Hon. Speaker: Yes hon. Wetangula.

Hon. Wetangula: Thank you hon. Speaker Sir. I think this Statement has taken sometime, but I wish to thank the Chairman for the effort. I just wanted to know when this programme is likely to take place, because he has not indicated the time.

Hon. Speaker: Have you seen the Report?

Hon. Wetangula: No, hon. Speaker Sir.

Hon. Speaker: Then hon. (Eng) Mahamud could respond to that particular aspect.

Hon. (Eng) Mahamud: Hon. Speaker Sir, we have a report which we tabled, and in the Report, we asked the Ministry of Transport and Infrastructure to budget for the foot bridge in the ongoing budget preparation.

Hon. Speaker: That is okay. Hon. Wetangula, are you satisfied?

Hon. Wetangula: I am satisfied, hon. Speaker Sir

Hon. Speaker: Very well; can we get the Member for Malindi? The other report was with regard to the petition by residents of Malindi Constituency on the tarmacking of Malindi-Lango Baya, Chakama, Sala Gate Road. Member for Malindi? Absent and not desiring to be present? His right is therefore lost.

Hon. Member for Ugunja, the indomitable hon. Wandayi, have you seen the Report which has been raised? You do not appear to be willing to use your --- Now you can be heard; the rest of the time you were speaking to yourself.

Hon. Wandayi: Thank you hon. Speaker Sir, I am very grateful that the Report has finally come to the House. Unfortunately I have not had time to look at it. Is it possible that the Vice-Chair of the Committee takes us through the Report, so that we can respond appropriately?

Hon. Speaker: In terms of your own Standing Orders, he is not supposed to take anybody through. This is why sometimes people do not understand what happens in Parliament. These rules were adopted in January by the last Parliament. And they said you are supposed to come and lay the Report on the Table. We are seeing now that the consumers in the 11th Parliament can now see the inadequacies in the procedure adopted. In fairness, you ought to have had a copy of that Report, so that, at least, you are able to seek clarifications. The rules require that we allow you some 20 minutes or so. How can you ask a question on a Report you have not seen unless you raise a general question like the one raised by hon. Wanyonyi?

Hon. Wandayi: Is it possible that I take time to look at it, then allow me on Tuesday to raise any issues if at all---

Hon. Speaker: You see, now I will be bending the rules.

Hon. Wandayi: Hon. Speaker Sir, you can use Standing Order No 1 to allow me do that.

(Laughter)

Hon. Speaker: I do not want to use my discretion so frequently and more so upon requests. I think hon. (Eng.) Mahamud could say something.

Hon. (Eng.) Mahamud: Hon. Speaker Sir, an hon. Member asked for rumble strips to be constructed on Kisumu-Busia Road. The Ministry is looking at where they are going to do them. So work is going to be undertaken.

Thank you.

Hon. Speaker: Hon. Wandayi.

Hon. Wandayi: I have heard what he has said; he is giving a commitment on behalf of the Ministry that they will look at the section and, perhaps, consider putting up the speed bumps and the rumble strips. My only request would be that he follows through, and ensures he comes back and gives me a firm indication as to when exactly this thing is going to happen, so that I can communicate to my people effectively.

Hon. Speaker: This is what your Standing Order says; that whenever a petition is committed to a Departmental Committee, the Committee shall act in not more than 60 calendar days from the time of reading of the prayer, respond to the petitioner by way of a report addressed to the petitioner, or petitioners and laid on the Table of the House, and no debate on or in relation to the report shall be allowed, but the speaker may, in exceptional circumstances allow comments or observations in relation to the petition for not more than 20 minutes. That is why I thought it exceptional, in that you have not seen the Report tabled. What follows in sub-section (3), is extremely important moving forward. It says that the Clerk shall, within 15 days of the decision of the House, in writing notify the petitioner of the decision of the House on the petition.

The House cannot make a decision on a matter that it has not been seized of, by laying on the Table a report which is not debated, and only allowing comments in exceptional circumstances. I am addressing this to the entire House, so that you can

begin thinking about more progressive ways of dealing with reports of this nature. I think this is even a better way of going about Statements in general terms. We think of how best to deal with the matter, how the House resolves or defines a Report of this nature. Hon. Wandayi you have a right to get a copy of that report, so that even as you go to the village, you can wave it to your constituents to see that you did something here. At least when you are pursuing the matter of when action is going to be taken, they can also see you are not acting in vain. Yes, I think it is only fair. The rest of the House will, obviously, lend you some support in making representations.

Next Order!

Hon. Speaker: Any Member desiring to give Notice of Motion?

Next Order,

STATEMENTS

Hon. Speaker: Hon. Members, I wish to refer you to my ruling on this matter. We shall transact this business for a period of not more than one hour. There are five Statements; the first one is by the Chairperson, Departmental Committee on Energy, Communication and Information, on telecommunications service coverage in Galole, and it was requested by hon. Dukicha. Hon. (Eng) Rege, you are the one making the response?

Hon. (Eng) Rege: Yes, hon. Speaker Sir.

Hon. Speaker: Proceed.

Hon. (Eng.) Rege: Hon. Speaker, is it in order for me to respond even though the Questioner is not within?

Hon. Speaker: Hon. Dukicha, Member for Galole.

Hon. Member: He is on parliamentary business.

Hon. Speaker: I do not recall ever having given him permission to travel out of the country. You see, I make sure that I see those who travel. So, do not just rise there and imagine that you will tell about a Member who has travelled on business other than parliamentary business.

(Laughter)

Hon. Rege, is the Member on official duty? Hon. Amina Abdalla, do you want to confirm that?

Hon. (Ms.) Abdalla: Yes, hon. Speaker, Sir. I wish to confirm that hon. Dukicha is attending the conference of parties on the Kyoto Protocol in Poland. He will not be here until 22nd November, 2013.

Hon. Speaker: Very well, he is lucky. So, that is deferred until such time as the Member will be back in the House, at least, after 22nd November, 2013.

The next one is the Statement by the Chairperson of the Departmental Committee on Energy, Communication and Information on Universal Service Fund requested by hon. Abdullahi Diriye. Is hon. Diriye in the House? Is he the one standing there?

(Laughter)

Certainly you look different today but, at least, looking at your face now I can confirm that you are the one. Normally when he puts on a suit he looks slightly lankier than now.
Proceed, hon. Rege.

OPERATIONALIZATION OF THE UNIVERSAL SERVICE FUND

Hon. (Eng.) Rege: Hon. Speaker, the Statement was requested by hon. Abdullahi Diriye, Member of Parliament for Wajir South. The response is as follows:

(i) The reason why the Universal Service Fund (USF) had not benefitted the intended beneficiaries yet the Act was enacted in 2008 and subsequent regulation put in place in 2010 is that the USF is yet to be fully operationalized. The Council was gazetted in the official *Kenya Gazette* in February, 2013. The Government is in the process of operationalizing the Fund. The Committee also noted that the directors have just been appointed and are still undergoing orientation.

(ii). With regard to the criteria to be used to determine which locations should benefit from the Fund, the Committee established that this is contained in the study on ICT Access Gaps in Kenya that was undertaken jointly by the Communications Commission of Kenya (CCK) and the National Bureau of Statistics (NBS) in 2011. The Report found ICT gaps as areas in Kenya where there is no access to ICT. These are areas that have poor roads or no electricity or low demand. The areas that were identified to have high ICT access gaps and which are supposed to benefit from the USF are largely in the counties of Turkana, Marsabit, Wajir, Mandera, Garissa, Isiolo, Tana River, and Samburu.

The Committee, therefore, resolved that the response was satisfying. I would, therefore, like to lay the Paper on the Table.

Hon. Speaker: Has hon. Diriye had occasion to look at it? For this particular Statement, he is supposed to know something so that he can seek clarification on it.

Hon. Mohamed Diriye: Hon. Speaker, I am not absolutely convinced with the response given because it is superficial. My first question was about why people have not benefited. The reason given that the Council has just been formed is not enough. This is because the USF was put in place as per the Kenya Information and Communications Act in 2010. From then on up to now, 2013 we are waiting for the operationalization of this fund.

It is true that I found out that the Council was established in March. However, between March, 2013 and now, November, 2013 it is a long time and people are suffering. The Ministry and service providers are wrangling and so this Fund is not likely to benefit the intended beneficiaries. Hon. Speaker, therefore, that Statement is not convincing and it does not touch on the real facts.

On the second answer where it is determined, I am also aware that some of the big providers like Safaricom, Zain, the Ministry and the CCK are wrangling. When two bulls fight, it is the grass which suffers; the people are suffering. I would like the Chairman of the Committee to clearly identify the problem and give us the way forward.

Hon. Speaker: Hon. Rege, are you in a position to comment on what the Member has just said?

Hon. (Eng.) Rege: Hon. Speaker, what I know is that at the moment the Committee is in a retreat to find out how they can start operationalizing the USF. Very soon they will be back and they will start operationalizing the USF. Even as we speak right now, the USF is a contribution of all the network operators in Kenya. As we speak now, none of those network operators has been asked to start putting in money. However, the CCK has put in place some Kshs1 billion to start operationalizing the Fund.

Hon. Mohamed Diriye: Hon. Speaker, could the Member tell us what the problem is? What is hampering this operationalization? The Fund was established in 2010. The service providers were supposed to pay a certain percentage of their profit in order to cater for the marginalized areas. What is the real problem? He has said that the Committee is now on a retreat to work on the modalities. Could we, please, have timelines within which this Fund will be operationalized?

Hon. (Eng.) Rege: Hon. Speaker, it is hard to find out what reasons were there in operationalizing the Committee. However, from Parliament's point of view--- I was a Member of this Committee in the Tenth Parliament. I know that many things were not operationalized because--- There were so many facts affecting the operationalization of anything in those departments.

Also we have to know that procurement issues or problems hampered operationalizing anything in the Ministries.

Hon. Speaker: Hon. Members, I really appreciate that hon. Nicholas Gumbo could supplement because I know that he has expertise and knowledge in that area. I would also like to encourage that where there are issues of non implementation, the Committee be seized of the matter, so that they can actually give direction.

Hon. (Eng.) Gumbo: Thank you, hon. Speaker. I just want hon. Diriye to know that when the Fund was set up, the initial proposal was that all the service providers contribute one per cent of their gross earnings per year but the service providers were up in arms. So, the initial regulation that came up had to be amended. There was push and pull, which delayed it. Until 2010, no much movement had happened. As hon. (Eng.) Rege has just said, the Committee that is going to implement the Fund was only gazetted early this year. So, it was really negotiations that have made it to take this long.

Hon. Speaker: Hon. Members, this is not debate time. There is only one hour for this exhibition. So, you have exhibited sufficiently. Let others also have a chance. Committee on Energy, Information and Communications, again, there is the matter of retrenched staff of Telkom Kenya Limited requested by hon. Janet Nangabo. Who is giving the Statement? Is it Eng. Rege again or hon. Odera?

PAYMENT OF DUES TO RETRENCHED STAFF OF TELKOM KENYA LIMITED

Hon. Odera: Thank you, hon. Speaker. The Statement was requested by hon. Janet Nangabo. The Committee has since received a response from the Ministry, which I will read out.

In the 2007, a total of 6,607 employees were retrenched and a total of Kshs5,732,507,652.89 paid to them. In 2008, a total of Kshs3,083 employees were retrenched and a total of Kshs3,130,778,267 paid to them. All the employees were paid their final dues in full. Telkom Kenya Limited paid up a cumulative sum of Kshs8,863,286,919.89 to all the retrenched employees. However, the Committee, having

met the Cabinet Secretary and the Principal Secretary on the matter, agreed that if the hon. Member or any other Member has any specific cases of former employees of Telkom Kenya who have not been paid their dues, the Ministry would be willing to take up the matter, and the Committee will be glad to follow up.

Hon. Speaker, the Committee resolved that the response was satisfactory as the Member requested. I hereby table the Report.

(Hon. Odera laid the document on the Table)

Hon. Speaker: Yes, hon. Nangabo.

Hon. (Ms.) Wanyama: Thank you, hon. Speaker. I just want to thank the Committee for the Report they have brought to the House. However, I had indicated to them that I have certain cases in respect of which I needed to give them information. Some of the affected staff members were retrenched because of sickness. Some of them were old people; they were approaching the age of 50 years. So, I will give them more information.

Hon. Speaker: Of course even as hon. Odera was concluding I thought that it would have been much more useful if you had been called to the meeting because you would have given the additional information to the Ministry and the Committee, so that the matter could be pursued. However, as he has said, you are at liberty to present the information to them. They will pursue the matter on your behalf and give you some response. Is that what I heard you say, hon. Arthur?

Hon. Odera: Yes although, of course, we have to appreciate the distinction between retrenchment and retirement on medical grounds. The two are different. So, if there are more former employees who were retrenched but who have not been paid, we will certainly follow up the matter.

Hon. Speaker: Hon. Nangabo, I hope you have gotten the difference.

Hon. (Ms.) Wanyama: Hon. Speaker, I have the documents with me. I will bring them.

Hon. Speaker: The cases must relate to retrenchment and not to retirement on medical grounds.

Hon. (Ms.) Wanyama: Hon. Speaker, they were retrenchment because of sickness. There are several types of retirement.

Hon. Speaker: You will present the information to the Committee and have the matters sorted out there.

Hon. (Ms.) Wanyama: Thank you, hon. Speaker.

Hon. Speaker: The next Statement is by the Chairperson of the Committee on Agriculture, Livestock and Cooperatives on non payment of salaries to employees of several Agricultural Development Corporation farms requested by hon. (Dr.) Robert Pukose.

NON-PAYMENT OF SALARIES TO ADC EMPLOYEES

Hon. Angatia: Hon. Speaker, on Thursday, 10th October, 2013, the Member for Endebbes, hon. (Dr.) Robert Pukose, asked for a Statement from the Committee on Agriculture, Livestock and Cooperatives. On Tuesday, 22nd October, 2013, we called the

Principal Secretary of the Ministry of Agriculture, Livestock and Fisheries and the hon. Member who had requested for the Statement. We interrogated the Minister and, therefore, I would like to give a response.

The Ministry confirmed that the ADC owes workers wages amounting to Kshs107,537,486 as at 30th September, 2013 and that there were no unpaid wages relating to the Corporation other than the ADC, Kitale region. The payments were delayed due to the following factors:

The ADC, Kitale region, produces maize seed, which is sold to the Kenya Seed Company. However, the cost of production has increased whereas the sale price has remained stagnant.

(Loud consultations)

Hon. Speaker: Order! Order, hon. Members! Please, consult in low tones.

Hon. Angatia: Hon. Speaker, that is one of the factors that have reduced the cash flow of the Corporation to an extent of not being able to meet its financial obligations.

Secondly, over several years, farms have been taken away, including Chepchoina, Nzoia, Ndia, Ngata, Molo, Ng'oka and Sirikwa units but the staff members were deployed in the remaining units. Some of the farms were allocated to individuals by former regimes but the workers' names have remained in the books. They have not been paid due to financial constraints.

Thirdly, the 2007/2008 post-election violence also had some effect on ADC farms in the region of Kitale because the Corporation's assets were looted. Livestock and farm produce valued at Kshs61 million were looted during the violence.

Hon. Speaker, the request also seeks to know when the workers would be paid. Efforts are being made to pay up the salary arrears as follows: The Corporation has ventured into activities such as eco-tourism, which will increase their cash flow to enable them to compensate for losses incurred, so that they can pay workers on time. Additionally, the Corporation has made monthly allocation of Kshs2 million for payment of workers' pending wages. The Corporation has also undertaken an excise to reduce the current work force in relation to its operations and embrace modern farming methods to reduce operating costs. The Corporation does not and has never paid its employees' wages using milk as indicated by the hon. Member.

Finally, the Government should repossess all the ADC farms and put them under irrigation to ensure food security and pay workers. The Government should also increase the wages for workers in the farms.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. Pukose.

Hon. (Dr.) Pukose: Hon. Speaker, I would like to thank the Chairman of the Committee and his team for the effort they have made to make sure that the team from the Ministry of Agriculture, Livestock and Fisheries appeared before this Committee on these pertinent issues, which affect my constituents. As much as the Chairman has tried to deny what I heard, which is captured in the HANSARD, it was an admission by the Director of ADC at that time. He said that they were giving farmers milk and meat from time to time. The interpretation on the ground is that, that amounted to payment.

It will be good if the Committee can follow it up so that, that kind of an issue is sorted out. My worry is that when I raised these issues the workers of the ADC, Sabwani, Katuke, Nai, Japata and Swam were expecting that the Committee would visit the ground to get the first hand information for itself. They only heard from one side and as usual, the employer will always try to raise issues that protect him. On the ground, we know that the workers of the ADC in the areas which I have mentioned, who are my constituents in Endebbes, are working under pathetic conditions. The first time they started receiving salaries was last month, but these are arrears which go into several months. We are talking of people staying without salaries for the last one-and-a-half years. When somebody stays for one-and-a-half years without a salary, yet he has dependants like school going children, medical expenses and other dependants that our society gives and you can also be responsible for your extended families, it is very inhuman. The Committee should visit the area and get first hand information.

So, could the Chair of this Committee tell me when the Committee is visiting the area, so that they can get firsthand information?

Hon. Nooru: Hon. Speaker, Sir, I literally almost heard nothing from the Member because there is too much noise in the House. However, the Ministry has not denied anything. They have accepted that these staff members have not been paid. They have given reasons why they could not be paid. They stated that the Corporation had a financial problem because of the factors that I have mentioned. They have already started paying as has been appreciated by the Member. However, we intend to visit the area, but financial constraints make it difficult for the Committee to do that.

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

Hon. Speaker: There is nothing out of order. Do not tell me that somebody wants to claim a point of order. Is it further clarification?

Hon. Gichigi: Hon. Speaker, Sir, I wish to seek further clarification from the Committee. If I heard the report well, there was indication that a substantial part of the Corporation's land has been taken away by individuals. Is it by way of encroachment, namely, trespass by, for example, squatters or has the land been grabbed through the grabbing mania of titles being issued in respect of the land? Among the steps that are being taken by the Corporation, I have not heard about anything to do with the repossession of that land. They have not said what they are doing to make sure that, that land that has been taken away by individuals is taken back through the legal laid down mechanisms.

Hon. Speaker: Hon. Nooru, can you take another one so that you can respond to two?

Hon. Mwiru: Hon. Speaker, Sir, I have heard from the Chair of the Committee that some of these pieces of land belonging to the ADC have been taken away. I have also had some interaction with some of the employees during my work and some of them could be my friends. I wanted to get some clarification from the Chair whether these arrears that the employees are claiming could have been compensated by way of giving out these pieces of land. Quite a number of the ADC employees have been given land in these ADC farms. I would like to know whether it could have been part of the compensation in terms of the arrears that they have incurred. They have land in those ADC farms.

Hon. Nooru: Hon. Speaker, Sir, on the issue of land grabbing, yes, there are a few areas where, maybe, individuals have encroached and are squatters on those pieces of land. However, it is common knowledge that most of these pieces of land were allocated by previous regimes to individuals. We have also recommended that the Ministry should follow up and see whether it is possible to repossess the land. The issue of giving the workers land, is one of the issues that we dealt with and recommended that we would rather dispose of the livestock in those farms or even part of those farms and pay those workers rather than giving them, as mentioned, some maize which they are said to have been given subsidized price. We asked: Why do you give people meat rather than selling a cow and then giving them the money? We have recommended that to the Ministry and they are taking some action.

Hon. Speaker: The Chairman, Committee on Agriculture, Livestock and Cooperatives on tea bonuses paid to farmers, requested by hon. Ronald Kiprotich Tonui. Is hon. Ronald Kiprotich Tonui in the Chamber? Hon. Nooru, your response.

TEA BONUSES PAID TO FARMERS

Hon. Nooru: Hon. Speaker, Sir, on Thursday, 26th September, 2013, hon. Ronald Tonui, Member for Bomet Central sought a Statement from my Committee. I summoned the Cabinet Secretary for Agriculture and Livestock on Tuesday, 22nd October. I also invited the Member who sought the Statement. I wish to give the following response:

Kenya is the largest exporter of tea in the world accounting to 22 per cent of the total world export. Secondly, Kenya is the third largest producer in the world accounting to 10 per cent of the world production. Tea is the largest single foreign earner in this country. In 2012, we earned Kshs130.2 billion on tea. About 10 per cent of Kenya's population depends on tea and contributes about 4 per cent of the GDP and 26 per cent in this country's export earnings. On the question raised on the bonus, there are two major factors which have brought about the fluctuations of foreign currency between 2012 and 2013 whereby the dollar has fallen from Kshs89 per US\$1 to Kshs85 per US\$1. This is one factor which has reduced the bonus. The global tea price has reduced from US\$3.19 within the same period.

Secondly, the Member wanted ways of stabilizing the future prices to shield farmers from these losses. The following measures have been put in place: Diversification of production of different kinds of tea rather than the normal tea, that is; Orthodox tea, Apple tea and Green tea which is going to diversify the tea market. The new market has to be created because culturally we have only five markets outside the country where we export tea that is Pakistan, Egypt, Afghanistan, United Kingdom and Sudan.

More investment is required in energy to reduce the cost of tea production. There is need for adoption of technology to add value chain and to enhance value addition. These are the issues that we would factor into increase the price of tea in future.

In conclusion, the Committee's observations are as follows:-
The Government should guard tea farmers and all other farmers against any exploitation by the middle men and cartels. There is also need for improvement of value addition to our product to maximize the income.

Thank you.

Hon. Speaker: Hon. Tonui, take the Floor.

Hon. Tonui: Thank you, hon. Speaker, Sir. I want to thank the Committee on Agriculture, Livestock and Cooperatives and the Chair for involving me in tackling this request for Statement. However, I must raise some few issues. One, I expected the Ministry of Agriculture, Livestock and Fisheries to audit the functions of Kenya Tea Development Authority (KTDA). Unfortunately, when I appeared in that Committee, what the Ministry brought were simply photocopies of responses by KTDA. I thought it was a very bogus way of answering that request and in fact I doubted the competence of the people who were there. They are unable to monitor KTDA and that came out clearly.

If you were to go through this very long Statement, which the Chair only picked on certain areas, you see among the factors which occasion the drop in the earning and bonuses is a drop of the Kenyan global tea prices from US\$3.19 to \$3.18. But there was information which was provided by KTDA which is attached here, a table which you can allow me to simply read, because it was total misinformation by KTDA. It was not even interrogated by the Ministry of Agriculture, Livestock and Fisheries. For example, in this table which is attached here the Colombo tea auction---

Hon. Speaker: Hon. Members, there must be order! There will be order in the House! Hon. Tonui needs to be heard.

Hon. Tonui: In Colombo tea auction, the price of tea in the Financial Year 2011/2012 was US\$ 3.08 and in 2012/2013 it was US\$ 3.18. But the actual one where our tea passes through, Mombasa tea auction, in that period it was US\$ 2.74 and US\$ 2.80 respectively. But here in this Statement they are quoting the Colombo tea auction. You can see this is a totally irrelevant answer given what I raised.

The issue of the brokers was not even tackled, because they are the ones who determine whether to pay this tea bonus or not. I wondered why there was no proper answer by the Ministry of Agriculture, Livestock and Fisheries. I would wish that this request could be interrogated further. I hope I will come up with another request later on, which I would wish details to be interrogated and then a proper answer be provided.

The issues of mismanagement by KTDA were not tackled in any way. I expected issues like procurement to be investigated and answers provided if they are being done correctly. I expected issues like regional structure of KTDA to be tackled. It has several levels which are very costly to the farmer, if they could be considered to be scrapped because this structure is not in the best interest of the farmers.

There is the issue of research tax which is there in this sector---

Hon. Speaker: May I propose this hon. Tonui, you are raising very serious issues and I have a feeling that some of them may be addressed in the regulatory framework that governs the operations of KTDA. If there are institutional weaknesses which could be addressed by either you proposing amendments to the existing KTDA law and the regulations made thereunder, which govern those operations, it would be better if perhaps you came up with some legislative proposals which would address those issues.

I quite agree that you are raising very pertinent issues, particularly concerning the farmers, but I think they would be best addressed not by seeking a Statement from the Committee. If you went and researched on the ailing areas, you appear to be knowledgeable of what is happening there, you could actually propose to the House to come and express itself by way of either a resolution or amendments to the various regulatory provisions which impact on the issues you have raised, particularly with

regard to what finally goes to the farmer. I do not think that hon. Nooru's Committee is likely to tackle that, unless you propose to them.

You should take those proposals to the Committee and discuss with them so that they can look at the KTDA Act and any other regulations that are made under that Act, which in your view and perhaps with the interaction of your colleagues in the Committee, you could actually propose them for adoption by the House. Even if you seek further clarifications, the Committee is unlikely to help in the areas that I can see you are seeking for some direction. You want farmers to benefit and the numbers of middle men and women reduced. I do not know whether there are middle women, who affect what finally goes to the farmer. I do not know whether my suggestions are making sense.

Hon. Tonui: It does and in fact I accept, I think it is the right direction to take, to come up with laws so that we take care of these farmers. When I look at the fellows who are running the Ministry of Agriculture, Livestock and Fisheries, from the Principal Secretary who was present on that day, I did not think he was able to handle this. He only swallowed wholesale what KTDA was saying, which was not very good. The various laws governing KTDA require amendments. So I accept your suggestion and I will bring it in due course.

Hon. Speaker: Very well, and also consider any regulations which may have been made under the Act. The Act may have provided that KTDA could make regulations to govern their operations. If there are regulations which may have been made on the authority of the parent Act, then you can also look at them, present them before the Committee on Delegated Legislation, which might also be a quicker avenue of reducing some of the red tape that may be there.

Hon. Tonui: I am duly guided. Thank you.

Hon. Speaker: Hon. Mohamed Nooru, take the Floor.

Hon. Nooru: Thank you, hon. Speaker, Sir. There is a very wrong notion that was created by the Member, that the Ministry presented what KTDA gave. We gave the Member an opportunity to appear and interrogate the Cabinet Secretary, the Principal Secretary, including other officers. This is the response from the Ministry despite that it may be giving some wrong facts. It is almost a 30 page reply and I am going to table it. It is so detailed. Rather than saying everything presented was from KTDA, he had an opportunity to interrogate the Cabinet Secretary in person. I just wanted to correct that for the purpose of the record, but as for the rest I abide by the suggestions of your ruling.

Thank you.

Hon. Speaker: As a Committee, indeed, it is within your mandate to make any recommendations that would help advance the course of the farmers, as hon. Tonui is pressing.

Hon. Nooru: There is a Bill which will be coming on the regulations of KTDA and many others such as Coffee Board, Sugar Board and so on, so that we can make proper regulations.

Hon. Speaker: Hon. John Munuve, take the Floor.

Hon. Mati: Thank you, hon. Speaker, Sir.

PERSONAL STATEMENT

INSECURITY AFFECTING MEMBERS OF PARLIAMENT

Hon. Mati: Hon. Speaker, Sir, this is pursuant to Standing Order No. 84. I wish to make a Statement regarding the insecurity facing hon. Members and myself in particular. There has been a rise in cases of insecurity, especially in various constituencies.

Hon. Speaker, Sir, in my constituency, armed gangsters dressed in jungle uniform invaded the area residents in Nyanyaa Village, Kasiluni Location, Ngomeni Ward, Kyuso District, where I was to visit in the course of yesterday, Wednesday 13th November, 2013, according to the programme I had drawn and circulated beforehand. The attacks appear to be targeting me for unknown reasons. The residents have now fled the area due to fears of their own security, leaving their homes and farms unattended during this planting season.

Hon. Speaker, Sir, I wish to appeal to the Government to immediately make the necessary intervention in this matter so as to reestablish peace in the area and enable my constituents and myself to live in a safe and secure environment. I seek your indulgence to explain this, if you allow me.

For the last one week, I have gone to my constituency and circulated, through the Provincial Administration as well as vernacular radios that I will be in specific places. However, I actually changed my schedule three days ago and decided to come back to Nairobi so that I could participate in another regional matter yesterday. At the time that I was to appear at Kasiluni Location, at 2.00 p.m., people dressed in jungle uniforms arrived at that area, shot people at their farms and disappeared. They could have been very easily mistaken for security officers because when I go to those specific areas, I have to go with Administration Police officers.

Hon. Speaker, Sir, at the beginning of this Parliament, I personally wrote to your good office, expressing fears of my own security, both in the constituency and in Nairobi. I just thought that I should make this Statement loud and clear that my life is in danger. It is not only in the constituency, but also elsewhere because of the stance I have taken in relation to the security of my people, their wealth, mainly cattle and land, which is on the verge of being invaded by people with superior weaponry.

Hon. Speaker, Sir, I thought I should make this statement as a starting point because I wish to pursue this matter as far as it is humanly possible to safeguard the security of the people of Mwingi North.

Thank you.

Hon. Speaker: Hon. Members that was a Personal Statement pursuant to Standing Order 84. There is no debate.

Hon. Wekesa: Hon. Speaker, Sir, if you can allow me, I just want to draw the attention of the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives to the Statement of hon. Pukose. It is unfortunate that he is not aware that ADC workers are forced to take maize flour, milk and meat as part of payment in order to survive due to delays of their salary payment.

Hon. Speaker, Sir, even during barter trade, it was a willing seller-willing buyer situation. What measure is the Chairperson of the Committee going to take to ensure that, that does not happen?

Hon. Speaker: Hon. Nooru, I am sure, maybe, you are able to deal with the issue of milk, meat and flour. Hon. Nooru, I will give you a chance to say a word or two.

Hon. Nooru: Hon. Speaker, I would like to say that there is nobody who has forced anybody and there is nobody who can force any other person. Even chicken cannot be forced to drink water. Forget about forcing people to eat maize flour which they do not want to eat. I have just said that they have never given maize to people as payments. If at all there is anything, they buy at subsidized prices because those products come from their own farms where they work. Those are workers and so, if the farm produce is there and the rest are sold, then they can take some at subsidized prices. In fact, they are given at lesser prices than any other farmers.

Hon. Speaker: Hon, Nooru, you may not have given, you said: "We have never." Remember this is ADC and you are a Member of Parliament. I think the safer route is three of your Members--- Please, Chairs of Committees, I have advised this long enough. Please, Chairs of Committees, I want to commend the Departmental Committee on Energy, Information and Communication. You can see responses are coming from, not just the Chair or the Vice-Chair, responses can be given by any Member. Please, you can form a sub-committee of three or four Members of your Committee to visit those areas so that you can get firsthand information.

We will not be able, as Parliament, to sponsor 29 of you to go to that area. But if you came up with a proposal that three, four or five of your Members can travel there, they will give you a report as a sub-committee of the Committee, which then you can bring to the plenary as a report of the Committee. I want to encourage you to feel free to entrust your colleagues with providing some leadership in these areas.

Hon. Nooru, please approach the Chair. We will facilitate your Committee because this matter is serious. We will facilitate your Committee to the affected area so they can do some fact-finding and report to your main Committee.

Hon. Nooru: Hon. Speaker, Sir, even today, we had suggested the same thing; that we are going to split into two groups. But the problem is the staff; the clerks. That hitch could not allow us to split into different groups.

Hon. Speaker: Priority is guaranteed by me, none other. We will ensure that your Committee goes to find out what is happening on the ground.

Hon. K.F. Wanyonyi: On appoint of clarification, hon. Speaker, Sir.

Hon. Speaker: Hon. K.F. Wanyonyi, there is nothing to clarify now. Learn the rules of the House. Let the Committee go to the ground. Next time you open your mouth like that, you will be seeing the door!

The House is not similar to some other places out there. The hon. Nooru, you can approach. He is instructed accordingly to facilitate your sub-committee to go to the area.

POINT OF ORDER

LEADERSHIP STUDY TOUR

Hon. Katoo: Hon. Speaker, Sir, I had sought the indulgence of the Chair to allow me to make a very brief Statement and I would like to say that a section of the House leadership undertook a two weeks leadership study tour in the State of Massachusetts and Florida, in the United State of America (USA), funded by the Parliamentary Service Commission (PSC) and the State University of New York (SUNY) in conjunction with the Centre for International Development (CID).

Hon. Speaker, Sir, on behalf of the delegation, which included the Chairperson of the Committee, hon. T.J. Kajwang', the Deputy Leader of the Majority Party, hon. Naomi Shaban, the Chief Whips of the Majority and Minority; that is hon. Gideon Mung'aro and a Member of the House Business Committee hon. Mithika Linturi, we really wish to thank the PSC, SUNY and CID for sponsoring the trip.

Hon. Speaker, I would like to say that, on behalf of the delegation, we really appreciate the warm hospitality of the people of the USA, especially the States of Florida and Massachusetts and, more so, the legislatures of the two mentioned states. This is noted by the serious commitment extended by the House leaders in those two states. They deviated from their busy schedule including their recess period, to be with the delegation during the entire period.

Hon. Speaker, Sir, the delegation learnt a number of things which included, one, the role of committees in processing of legislation, especially Bills; two, the relationship between the Majority and the Minority in both Houses; three, the support of party caucuses by the legislature; four, public hearing or public participation in committees; five, the harmonious working relationship among the house leadership and six, the relationship between the Senate and the House of Representatives.

Finally, we wish to more sincerely appreciate the great honour extended to the delegation by the State of Massachusetts and its leadership that is Governor Deval Patrick, who issued a proclamation on the delegation visit. The Speaker of the House of Representatives and the President of the Senate, who also passed a resolution on the visit; that the delegation visit be part of the House resolutions. Further in Florida, although the House was in recess, the House leadership found time to be in the state capital to meet the delegation in the entire period.

Hon. Speaker, a detailed report accompanied by the instruments of the delegation will be submitted to the House in due course. That is because we went on behalf of this House and we would like those records and instruments of honour to be part of this House's records.

Thank you, hon. Speaker.

(Applause)

Hon. Speaker: Very well. That is most welcome. Hon. Kajwang'.

Hon. Kajwang': Thank you, hon. Speaker, Sir. Allow me to also make comments and observations to support my brother, Katoole Metito, who was the leader of our delegation. He has been a fabulous leader of the delegation and he has shown truly that he has what it takes to be a chief whip. Accept salutation from the Speakers of the House of Representatives in Massachusetts and Florida states. We are informed right now that these proceedings are being streamed live in the Houses, both in the Senate and in the House of Representatives, so that they are able to see how their partners in Africa are doing with the presidential system.

Hon. Speaker, Sir, it pleases to visit a country with a similar jurisdiction and to learn and observe that what they do there is not very different from what we do here. Even though they have had a presidential legislative system for over 300 years, we have a nascent one for only two years after the promulgation of the new Constitution. But what

we have put in place is seriously similar to what others have done for the last 300 years. It is very pleasing to note that we are not really off the mark.

Hon. Speaker, Sir, however, there are a few things that we learnt that if our Legislature could also emulate, then we will perfect the presidential system. Where is the relationship between the Leader of Majority Party and the Leader of the Minority Party? In Massachusetts, for example, the Democrats are the majority and the Republicans are the minority. But in Florida, the Republicans are the majority while the Democrats are the minority. But in those two states, nobody applies the tyranny of numbers. There are serious and structured consultations between the Leader of the Majority Party and the Leader of the Minority Party. They often meet. The whips call themselves in caucuses and by the time they are before the Speaker, almost everything which needed to have been done has been hammered. In that case, they give legislators a very easy time to be able to debate issues out of their own conscience and without necessarily following the party whims.

The second thing which was very important was the party caucuses. There is physical space given to Members of the Majority and Minority to meet every so frequently and caucus on matters which are before the House so that, by the time a matter is before the House, every Member knows what is coming before the House. So, they do not have to look for leaders outside Parliament to come, lead and tell them what to do because they have caucused and they have minutes of how they are going to approach a particular issue. Committee hearings have been properly structured. There is physical space for committees with chairmen. There is enough comfortable space that Members are able to go into the committees and members of the public come to give testimony and by the time a Bill is before the House, everybody has known how the vote is going to be. These are some of the things that I think, although we are on the right track, we could do much better.

To wind up, hon. Speaker, Sir, committee proceedings are meant to make sure that by the time a Bill is before the House, every Member has seen that Bill, commented on it and taken a position on it. So, by the time we come to vote, we do not even need to go to Division because we have already decided how to vote on a particular matter.

Thank you, hon. Speaker, Sir, for giving me the opportunity to be part of this delegation and I think that we will bring this new or further knowledge to assist and complement the proceedings before the House. Thank you very much.

Hon. Speaker: Well, I think once the report is ready and is tabled, an appropriate decision will be taken as to whether those that were lucky to be in the delegation and those others who have been in other delegations, and I can only remember, at least, in the current Parliament hon. Midiwo Washington--- He has been to a number of those jurisdictions that have these processes. I think we should have some workshop so that we all discuss and agree. We want to do it for the betterment of our country. So, hon. Metito and hon. Kajwang', we want to get that report quickly so that we can look at it and make a decision as to when it is that we can have a workshop to discuss on the best way forward as we try to implement this new governance system. Hon. Leader of the Majority Party, proceed.

Hon. A.B. Duale: Hon. Speaker, I have two small Statements. One is for hon. Nicholas Gumbo and the other one for hon. Dido. I do not know whether time will allow us to proceed.

Hon. Speaker: Yes. Proceed.

STATEMENTS

POLITICALLY INSTIGATED DISCRIMINATION AND CONFLICTS IN MARSABIT COUNTY

Hon. A.B. Duale: Let me start with the one for hon. Dido, the Member of Parliament for Saku who requested for a Statement regarding the politically instigated discrimination and conflicts in Marsabit County. The answer is this: One, the Government is not aware of the existence of an association by the name REGABU and hence it is not aware of the alleged influence of such an organisation in the employment and resource sharing in Marsabit County. Nevertheless, the issue of employment and resource sharing can be better dealt with by the Marsabit County Government.

Two, the Government is further not aware of the influence of the alleged organisation in the conflict in Marsabit County. However, the relationship between the Borana community on one hand and the Burji and the Gabra communities on the other is characterised by mistrust and suspicion. The main cause of all the reported conflicts in Marsabit County is attributed to competition for resources as the case may be in most of the pastoralist counties.

During the recent incident in Moyale Central, a District Officer's office, Sesse Academy Primary School and a number of homes were burnt down besides the looting of two lorries. I want to confirm that 23 suspects were arrested and charged and the case is pending before the Moyale Law Court.

In addition, the Government, through the Ministry of Devolution and Planning, has provided humanitarian assistance to the people affected by the conflict. I will table the Ministry of Devolution and Planning, Kenya Red Cross and the World Food Programme (WFP) reports.

Further, the Government has taken the following measures to address the conflict and insecurity in Marsabit County:-

- (i) enhancing both foot and mobile patrols;
- (ii) deployment of more police officers in Marsabit County;
- (iii) during the recent meeting of the Kenya and Ethiopia Joint Border Commission held between 2nd and 4th September, 2013 in Adama Ethiopia, the Government of Kenya requested the Ethiopian Government to ensure that people from the Ethiopian side do not participate in the conflict;
- (iv) frequent peace meetings have been held in the area. I want to report that in the last two months the county has been very peaceful;
- (v) the Kenya Defence Forces (KDF) are patrolling the Kenya/Ethiopia border to prevent foreign militia from crossing the border using the Moyale KDF Camp; and,
- (vi) intelligence information gathering and sharing among the security agencies within the country and outside the neighbouring countries has been up-scaled.

Hon. Dido: Thank you very much, hon. Speaker, Sir. Let me, from the outset thank the Leader of Majority Party for giving that response. I would like to say that the fact that we have devolved does not isolate any part of Kenya and does not put any individual above the law. All leaders at every level must act within the law.

What is in this response are individuals or departments that are sleeping on the job. These are the Transition Authority, the Public Procurement Oversight Authority (PPOA), the National Intelligence Service (NIS) and the Ministry of Devolution and Planning. Had they acted on the complaints raised from the beginning, we would not have requested this Statement on the Floor of this House.

One of the things we raised in the Statement request is fundamental articles of the Constitution being violated by the County Government of Marsabit. This is Article 20 on the Bill of Rights and Article 27 on equality and freedom from discrimination. The national Government must take the necessary measures if any part of our society feels discriminated against. To say that the Government is not aware that there is a group called “REGABU”--- I am happy to hear what came from the Leader of Majority Party. That is an outlawed organization. I look forward to what the national Government will do about such an outfit.

To say that the county has been peaceful over the last two months is far from the truth. This is because there has been fighting in Moyale Town in the last three days. Yesterday night, a settlement which is just three kilometres from the military camp in a place called Gimbe was attacked by the militia. I do not understand what the term “peace” means with my background in the military for many years when the Leader of Majority says that the county is peaceful. I served in many places in this country, including in Somalia.

Thank you, hon. Speaker, Sir.

Hon. Speaker: I think peace appears to be relative. That could be the reason. There has been a request by hon. Francis Chachu Ganya, who is also from Marsabit County.

Hon. Ganya: Thank you, hon. Speaker, Sir. I want to thank the Majority Leader for giving a very responsible Statement. This is a very sensitive issue and as a responsible Government, he has given a very good response. The so called REGABU are the Redille, Gabra and Borana. These are communities we proudly and ably represent in this august House.

These communities, in exercising their constitutional right under Article 36 of the Constitution on the right of association, formed an alliance through which they formed the County Government of Marsabit. We have no apologies to make whatsoever for exercising our constitutional right given by our Constitution. We ask our Government to be extremely vigilant and ensure that peace prevails in our county. Right now, there is looming conflict in one corner of our county, Moyale Constituency in particular. We are told that people in both communities are arming themselves. We request our Government to be firm and ensure that peace prevails in that county. As responsible leaders, we will do whatever it takes to work with the Government to bring peace to our county.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Yes, that you should. Yes, hon. A.B. Duale.

Hon. A.B. Duale: Hon. Speaker, Sir, the Government is alive to the incident that happened this week. I think this is not only for the Marsabit County Government, but is for all county governments in our country. The principles and objects of a devolved government are about giving powers of self governance to the people. It is also about recognizing the rights of communities to manage their own affairs. It is about protecting and promoting the interest and rights of the minorities and marginalized groups.

I am sure that our governors and county assembly leadership will protect that. I urge the leadership of Marsabit County both in this House and outside this House that it is only in peace that we can achieve economic growth that our people are yearning for. This will enable our children to go to school.

I would like to tell my colleagues, especially those from the pastoral communities, that Kenya is at 50 and we cannot keep on fighting. We do not want the next 50 years to be for fighting among the pastoral communities in Garissa, Mandera, Wajir, Marsabit, Turkana, Samburu and Pokot; the next 50 years should be for prosperity and economic development. We, the leadership should be at the forefront of making sure that we become the champions of peace.

As hon. Chachu has said, the Government will play its role to make sure that Kenyans across the country live in peace, because it is the constitutional mandate of the Government to protect its citizens, their wealth and property.

Thank you.

Hon. Speaker: I want to add that discrimination is forbidden in the Constitution. Should anybody be desirous of enforcing that, they are at liberty to institute public interest litigation for enforcement of the provisions of the Constitution that prohibit discrimination, especially within the context of the Bill of Rights.

The Leader of Majority Party, you still have another Statement to make.

STATE OF ROAD NETWORK AND POWER SUPPLY

Hon. A.B. Duale: Hon. Speaker, Sir, the next Statement was sought by the Member for Rarieda, hon. (Eng.) Nicholas Gumbo on two separate matters. One was on the total length of power transmission and distribution lines in the country. The other one was on the total length of tarmac roads service per constituency broken down into classes "A", "B", "C", "D" and "E".

I will start with the one on power distribution. Due to interconnectivity nature of the transmission and distribution lines which traverse the counties without necessarily serving the same counties, we have not had a system of apportioning these lines to constituencies.

However, we are in the process of establishing the number of transformers per county and constituency which would have been more relevant, bearing in mind the determination of the level of electricity per county. In the meantime, we have indicated the total length of power transmission/distribution lines in the country. For the voltage level of 400KV, we do not have anything. We have no length. For 220KV, we have 1,331 kilometres; for 132KV, we have 2,436 kilometres; for 66KV we have 1,097 kilometres; for 33KV, we have 1,632 kilometres; and for 11KV, we have 28,881 kilometres. The total domestic and industrial electricity connections per county in the country is given below, starting with Mombasa County which has 157,182; Nairobi County has 762,978, but the total is 2,499,115.

The measures the Government is taking to bring equity to all parts of the country with regard to electricity connections are as follows:-

(i) The Rural Electrification Project is intended to focus on the rural areas which have less coverage of infrastructure than the urban and peri-urban areas. A lot of work has taken place under this programme since 2004. However, in a new constitutional

dispensation, sustainability of these gains has been reversed because funds have been channelled to the county governments. The central Government is, therefore, not able to continue with the programme of establishing equity which could even result in the uneven distribution of funds and failure to realise establishment of equity across the country. An equalisation fund may need to be used by the central Government.

(ii) Maximization of connectivity through the enhanced utilization of the existing transformers with Government subsidy: The Government support on electricity connection subsidy to Kenya Power is aimed at maximising the number of customers who are served by the existing transformers within the payment of standard fees, notwithstanding the length of the infrastructure to supply to each consumer or customer. This has created demand as more prospective customers are able to afford the minimal set fee.

(iii) Group schemes: These schemes are modelled to standardize fees paid by each customer benefitting from the electrification; this again enhances affordability. The KPLC will invest in supplying the pioneer customers and recover the cost in latter customers as they pay for connections.

(iv) Partnership with the donor community and the use of revolving funds: The Kenya Power and donor community have initiated a Stima Loan Scheme which facilitates access to credit by the customers who are unable to raise the standard connection fees, thus creating more demand and extended infrastructure across the country.

The Statement on the roads is also short. The Member wanted to find out the total length of tarmac roads. There are 160,886 kilometres of public roads in the country, of which 13,003.8, equivalent of 8.1 per cent are paved or tarmacked. About 147,882.2 kilometres are unpaved. The summary of the Kenya road network distribution by road classes is as follows:-

Classes "A", "B" and "C"; paved is 7,161.7 and unpaved is 6,909.3. For Classes "D", "E" and others, the paved distance is 3,504.5 and unpaved is 130,761.5. Total is 134,266. Urban roads in cities and municipalities, the total paved distance is 2,337 and unpaved is 10,214. Then the detail of the total length of paved roads serviced per constituency broken down into "A", "B", "C" and "E" is attached. The documents are here for the record, and for the House and the Member to see.

Hon. (Eng.) Gumbo: Hon. Speaker, Sir, allow me to start by thanking my friend, the Leader of Majority Party for this answer. Sometime in 1994, as a young engineer, I went to northern Kenya, Merti Town in Isiolo, and when we were being introduced, a young Programme Engineer by the name Boru, kept asking us how Kenya was. That question sounded very strange to me, but when I laid my hands on the highly acclaimed Sessional Paper No.5 of 1965, I understood where Boru was coming from. In truth, that Sessional Paper was for partitioning of Kenya into two classes, namely the neglected part and the part that the Government cared about.

There are parts of this country which have suffered massive degradation and these parts are to be found in the northern part of Kenya, which was initially called the Northern Frontier District. While I thank the Leader of Majority Party, I realise that the interventions that are needed may not easily come. This level of degradation builds tensions in the country, whether we like it or not. There are some of us in this country who do not feel as if they belong to this country. I urge the Leader of Majority Party, by way of a comment that as we go forward---

(Hon. Kang'ata laughed)

Hon. Speaker: The Member for Kiharu, you are laughing as if you are in a market place. Surely, it is not possible that you burst out laughing in the manner that you have just done. There is very serious business being transacted. What hon. Gumbo is saying is very important but you are interrupting.

Hon. (Eng.) Gumbo: Hon. Speaker, Sir, I thank you for that.

The level of degradation that we see in some parts of the country breeds tension. Maybe it is not in the docket of the Leader of Majority Party but we, as the leaders of this country, will probably have to think of a marshal plan that can bring equity to all parts of Kenya because, ultimately, we all stand to gain.

Hon. A.B. Duale: Hon. Speaker, Sir, I want to thank hon. Gumbo because the information he sought is so crucial even for the House. The total length of power distribution lines in the country is information that each Member and the Committee on Energy, Communication and Information will need. Then the one on the length of the tarmac road is information that the Government has given. I also want to agree with him that 50 years that Kenya has been independent, which we are going to celebrate, in terms of road infrastructure, I am sure many will not celebrate. It is upon this House, because this House has the power to make the Budget, to make sure that in the budget-making process, equity in terms of distribution of the national resources is observed. This Parliament has to play the oversight role. In northern Kenya where I come from, for the 50 years of independence, the only tarmac road that has been done is 20 kilometres and it ends in my constituency. I am sure there are so many other people who have not seen the black tar in their counties. There are, however, areas which have produced President, Prime Ministers and Vice-Presidents that have roads. We now have an opportunity as Parliament to make sure that during the budget-making process, Parliament asserts its powers and ensures that the national cake is distributed according to the provisions of the Constitution.

Hon. Speaker, I beg to table this document.

Hon. Speaker, I have the final Statement to make on behalf of the House Business Committee (HBC). It is a very important Statement today in terms of the content.

BUSINESS FOR THE WEEK COMMENCING 19TH TO 21ST NOVEMBER, 2013

Pursuant to Standing Order No.44(1) (2), on behalf of the HBC I would like to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 19th November, 2013:

The HBC met on Tuesday this week at the rise of the House and gave priority to the business of the House for the part of the week that remains and next week. In this regard, next week on Tuesday the House is expected to consider the Second Reading of the following Bills: The Media Council Bill, 2013 – if not concluded today because there is a constitutional deadline on that Bill; the Insurance (Motor Vehicle Third Party Risks (Amendment) Bill; the Wildlife Conservation and Management Bill; the National Social Security Bill, 2013 and the National Police Service (Amendment) Bill.

Hon. Speaker, following the guidance of the Speaker yesterday, the House will have a one hour general debate on the *Uwezo* Fund Regulations on Tuesday. Thereafter, the House will convert into a Committee of the whole House to consider the regulations, including any amendment. I wish to reiterate your request, hon. Speaker, that any Member with amendments should present them to the Clerk before the end of the day today. This is because the Order Paper for Tuesday next week will be prepared and published today on our website.

Hon. Speaker, next week the House will consider the Report of the Departmental Committee on Administration and National Security on the Vetting of the Chairperson of the Board of NACADA. Through you, hon. Speaker, may I urge the Committee to expedite the tabling of the Report in the House to enable Members to acquaint themselves with the contents of the Report and the recommendations of the Committee. I also wish to notify the House that the two Statute Law (Miscellaneous Amendments) Bills have since been read the First Time. The larger Bill contains matters not concerning county governments. The second one touches on matters affecting the county governments. The period for consideration of the larger Bill by the Departmental Committees was reduced from 20 days to 14 days by a resolution of the House yesterday.

This Bill carries proposed amendments to a number of laws part of which should be passed before the end of the session together with other eight Bills. In view of the fact that the House has about 13 sitting days before the December recess, it is the intention of the HBC to seek leave to allow the House to have sittings on Thursday mornings commencing next week. Also we will be asking the House to have Second Reading of Bills prioritized for Wednesdays morning as we did yesterday. May I kindly ask Members to support this new development, so that by the end of the Session, we will have passed the remaining nine Bills.

Hon. Speaker, as we move towards December, I wish to urge Departmental Committees to adjust their programmes to be able to deal with the Bills adequately and table Reports in the House pursuant to Standing Order No. 127(4) and (5). It is our view, as the HBC, that upon conclusion of debate on these Bills, the Committee of the whole House may take place in the last week of this session.

I wish to inform Members that I have since received an indication that the following two joint committees are ready to hold elections for the chairpersons: The Joint Committee on National Cohesion and Equal Opportunity will hold its election next week on Thursday at 9.00 a.m. The Joint Committee on Parliamentary Broadcasting and Library will hold its election on the same day at 11.30 a.m. Members of the two joint committees are urged to avail themselves in good time. I hope our colleagues in the Senate will have time from their busy schedule in the counties.

Finally, the HBC will meet on Tuesday, 19th November, 2013 at the rise of the House to consider business for the rest of the week. I now wish to lay this Statement on the Table. I can see hon. Jakoyo laughing because the Senate had no sessions in the last two days. They were busy in the counties. I hope next week they will be in the city and help our colleagues from the National Assembly to conduct the elections in the two joint committees.

Hon. Speaker, in future, we might be forced to amend the Standing Orders so that we have an Equal Opportunity Committee of the National Assembly and one for broadcasting. Eight months down the line the Members of the National Assembly could

not elect their leadership because the Senate Members were not available. I am sure they were busy doing national duty at the county level.

(Laughter)

Hon. Speaker: Of course, people must perform their roles as provided for in the Constitution, including visiting the villages and--- We need quality pre-primary schools and when as a country we come to debate at the national level, the debate must be informed. So, I think it is a worthwhile venture that they are involved in.

REQUEST FOR STATEMENT

AWARD OF RAILWAY TENDER TO CHINA ROAD COMPANY

Hon. Bollo: Thank you for giving me this chance, hon. Speaker. I would like to request, under Standing Order No. 44(2)(c), a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the tender process of the Mombasa-Malaba Standard Gauge Railway.

I would like to know why the Government single sourced and awarded the tender to China Road and Bridge Construction Company. The Statement should indicate whether China Road and Bridge Construction Company has the capacity to build the Railway. If they have the capacity then we should have the evidence that they have been in construction of railways, at least, for the last 10 years and also the cost.

The Statement should also indicate whether China Road and Bridge Construction Company has the capacity to provide the rolling stock, and if so provide evidence or facts about the same. I would also like to know whether there was due diligence by the Government of Kenya done on the Company to build the railway.

I would like this Statement to be tabled through the Leader of Majority Party.

Hon. Speaker: You must be clear in your mind. You started off by directing your request to the Chairperson of the Committee responsible for transport but you changed your mind midstream and suggested that you want the Statement issued through the Leader of Majority Party.

Hon. Bollo: Hon. Speaker, I mentioned clearly the Chairman of the Departmental Committee.

Hon. Speaker: But as you were concluding, you said that you wanted the Statement issued through the Leader of Majority Party.

Hon. Bollo: Hon. Speaker, that was a slip of the tongue. You know, we are new. We are still learning. When you were new, you also encountered similar challenges.

Hon. Speaker: Fortunately, I was in a different governance structure.

Yes, hon. Maina Kamanda.

Hon. Kamanda: Hon. Speaker, we will be able to give the Statement in two weeks' time before we break for the Christmas holidays.

Hon. Speaker: Is that okay, hon. Awiti?

Hon. Bollo: Yes, hon. Speaker.

Hon. Speaker: Hon. Members, we are past the time for Statements.

Yes, hon. Mbadi.

Hon. Ng'ongo: Hon. Speaker, the issue that I wanted to raise was with regard to the Statement that hon. Duale has just read out concerning the order of business next week. I want to particularly request you to intervene in this matter. Our staff establishment in the Legal Department is wanting. A legal team of only three people cannot serve this House properly. Remember that in the 10th Parliament we were just 222, and we had close to 10 legal officers who were serving Parliament. Right now, the National Assembly, with 349 Members, has only three legal officers. It is just unworkable. Many of us feel frustrated because our Bills cannot be processed as fast as we would like.

I am aware that there were some interviews that were conducted by the Parliamentary Service Commission. I am now addressing you as the Chairman of the Commission. If employment of officers in the various positions cannot be done fast, priority should be given to the Legal Department, so that we can have a minimum of eight legal officers to serve us. I have two Bills which have been pending from May, 2013. I hear that they are now at the Government Printer but that is not good enough. For instance, one of them is on Value Added Tax. Kenyans have suffered so much. If business of the Bill could have been transacted early enough, it would have helped to reduce the cost of living in this country. Therefore, I am requesting you, as the Chairman of the Commission, to intervene, so that we can have more personnel in the legal team.

Hon. Speaker: The matter is under active consideration. We are at the tail end of that exercise. I want Committees far more resourced than is currently the situation. I can see fellow Commissioners nodding their heads in approval because they are aware of the development. It is going to receive very urgent consideration.

Yes, hon. Midiwo.

Hon. Midiwo: Thank you, hon. Speaker. I just wanted to add my voice to the presentation by the Leader of Majority Party. I needed to point out that I realise we have a heavy schedule and plead with hon. Members to work with us. However, arising from what has been raised by hon. Mbadi, in the past, the Statute Law (Miscellaneous Amendments) Bills have always contained mischievous amendments to our laws. We have always ended up making bad laws that were sent here by technocrats without consulting Parliament. I thought that, under the new dispensation, with 350 Members, the Statute Law (Miscellaneous Amendments) Bills will not belong here. We have enough manpower. Why would one want to amend laws through a miscellaneous amendments Bill? Nothing is coming to an end. Neither the term of Parliament nor that of the President is coming to an end. What is it that we need to amend?

Probably, the amendments that would be very important are those to do with the counties. I have said here before that this House has a duty to carry out. I want to plead with you, as our leader. As we campaigned for the new Constitution, we were told that 80 per cent of it was good and 20 per cent was bad. This country cannot afford what we are faced with – the 47 counties in terms of the wage bill. We need to start these discussions as we talk about tarmac roads. Where will this country get money to tarmac roads if all our money, as a people, are going to salaries?

There is more demand for salaries. I said it here last year, and I am saying it again. If this country cannot afford the over 500 Members of Parliament – that is the membership of the Senate and the National Assembly combined – what is it that can be done? That question ought to be asked and answered in this National Assembly. India,

with 1.3 billion people, has a total parliamentary membership of 565. The United States of America (USA), with 340 million people, has 520 Members of Parliament or thereabout. What is it that we can do in our case? This House will be doing a much more relevant thing. We know that there are issues. The Government of the day has challenges, and we ought to help it find solutions. We have a duty. We do not have more time to lose.

We need to deal with the 20 per cent part of the Constitution that is bad. We were told by former President Kibaki and former Prime Minister Raila that they would reignite this debate. This House must reignite this debate, so that as we talk about roads, the sources of funding become clear. This House's Committee on Health has already raised a red flag. The health sector is going to collapse by the end of the year. What are we doing about it, as a House? I want to plead with you, hon. Speaker – and you will be remembered if you do it – that you reignited a bipartisan debate to deal with the challenges facing this country. I do not think that one year down the line, we will afford our survival as a nation.

Thank you, hon. Speaker.

Hon. Speaker: I believe that is raising matters of concern to the people. Hon. Amina Abdala, you have indicated an intervention.

Hon. (Ms.) Abdalla: Hon. Speaker, I indicated an intervention when hon. Mbadi was speaking regarding the poor status of the Legal Department. I was concerned that he had used the wrong word by saying that the Legal Department was wanting. I wanted him to use the word “inadequate” instead because using the word “wanting” is claiming that the officers are not competent. I am conversant with the fact that they are very competent. What we are lacking are the numbers. The numbers are really important because the quality of some of the Bills we are being given is wanting. They have so many grammatical and typographical errors that if we do not have a legal counsel sitting in the Committee as we review Bills, we will not be able to do justice to the Bills and bring out quality Acts of Parliament. Therefore, I agree with hon. Mbadi that we really need to do something very fast, so that we can be serviced by persons from the Legal Department.

Hon. Speaker, now that I am on the Floor, I can contribute on the matter raised by hon. Jakoyo Midiwo.

Hon. Speaker: You do not have all the time.

Hon. (Ms.) Abdalla: Hon. Speaker, I can contribute because it has been the tradition in this House and in the past Houses that every time hon. Jakoyo Midiwo spoke, I must say something.

(Laughter)

Hon. Speaker, following on that tradition, I really want to welcome what hon. Jakoyo Midiwo talked about regarding reigniting what we need to amend in the Constitution, that we had said was 20 per cent wanting. The debate should also include the fact that we did not do a proper review of our budgeting process because of the timing of the elections of this year.

We need to begin that debate about whether we should retain the election date in the Constitution, and how we are going to address the fact that unless we do it in December, we will still have the problem of how the House engages with the budgeting process as required by the Fiscal Act.

The debate on the number of Members of Parliament is really one that I would urge you to call a *Kamukunji* for us to have a pre-publication scrutiny on the Bill that is being proposed by hon. Aghostinho Neto, which is a very progressive way of addressing the problems in the current Constitution.

Finally, the problem of the wage bill is not only an issue of ghost workers, it is that every day when you look at the papers, some counties have 40 positions which they are advertising. My question is, these positions, can the people currently holding them work until we are able to raise enough wealth or money to be able to sustain the wage bill? The debate on the wage bill and the problems in the Constitution need to be dealt with.

From my observation yesterday, on the debate on the National Police Service Commission (Amendment) Bill, I really believe that there are some concerns which would be best handled if the Committee Chair on Administration and National Security and yourself held a *Kamukunji*, so that we address the fears that we are having on the content of the Bill in a more bipartisan manner. What we are hearing, and for those of us who interact with low cadre police officers, it means there is something not right and we will not be able to capture that in this confrontational approach that we adopt when we are debating. Let us get into a sitting that can help us engage more productively and in a less adversarial manner.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Hon. Members, you know there is no Motion. I can see almost everybody, including the Chair of the Committee on Finance, Planning and Trade, are on their feet. I am sure it is because the Budget process was mentioned. Hon. Langat, I will give you a chance.

Let us also be clear that even in our new governance structure Members, you did not do away with the omnibus process of making laws and amending others. Therefore, the root of the Statute Law (Miscellaneous Amendments) Bill has not been done away with. It is only that, as a House or a Legislature, really, we need to begin questioning our place given the new architecture of Government.

Hon. Langat, take the Floor.

Hon. Langat: Thank you, hon. Speaker, Sir. I walked in when my good friend, hon. Jakoyo, was commenting on something which has also been disturbing me for quite a long time. About this new Constitution; guide us first because there are very serious challenges which actually we need to begin addressing. I was just going through the last Budget and I realized one thing; that the amount of money we can collect from our only sources in this country is around Kshs.800 billion. When you work out simple mathematics, for example, you remove Kshs.200 billion and take to the counties, Kshs.300 billion for the payment of public debt and another Kshs.300 billion for salaries, it is very clear that for any serious development in this country, some borrowing must be done. We need to rise and look at what we need to do with the structure that we have created.

Hon. Speaker: Hon. Langat, you know there is no Motion discussing that on the Floor.

Hon. Langat: I thought we were just expressing ourselves, so that we start a debate.

Hon. Speaker: Why do we need to express ourselves when we have business on the Order Paper? What we are doing is at the expense of the business on the Order Paper, yet the Leader of Majority Party has told you the amount of work you have to do.

Hon. Langat: We will raise it at the right time, so that we can begin looking seriously at this Constitution in terms of the costs that are supposed to be incurred to really manage the system that we have created. Maybe my good friend--- I will bring a Motion on this, so that we can see what to do.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Members, now we must go into business. Hon. James Rege, take the Floor.

BILL

Second Reading

THE MEDIA COUNCIL BILL

(Hon. A.B. Duale on 13.11.2013)

(Resumption of Debate interrupted on 13.11.2013- Morning Sitting)

Hon. (Eng.) Rege: Thank you, hon. Speaker, Sir. I believe this is a continuation of the previous day's debate. I have pressed my button to interrupt because I wanted to seek your guidance with regard to the recent instruction which you gave our Committee. While acting as the Chair today, I wanted to ask you what we need to do next with regard to the investigations into the San Marco satellite rocket launching pad in Malindi, because the relevant Committee is not available to meet us. I know that very soon you will be asking for a report. I seek your guidance in this regard because we have tried to meet with them several times but to no avail.

Thank you, hon. Speaker, Sir.

Hon. Speaker: I would imagine that the Committee you are talking about is the one on Defence and Foreign Relations; is it this one or the one on Administration and National Security?

Hon. (Eng.) Rege: The Committee on Energy, Communication and Information and the Committee on Education, Research and Technology. We were supposed to have a joint meeting to investigate the Italian satellite rocket launching pad in Malindi.

Hon. Speaker: I can see the Chair of the Committee on Education, Research and Technology is here. She may be running away from where we directed Chairs to be sitting, but I can still see her in the House.

Hon. (Eng.) Rege: Perhaps, she can answer the question because we agreed that we set up---

Hon. Speaker: There is nothing to answer; the two of you need to meet. Really, if this exhibition must come to an end; she does not need to answer here. The two of you need to meet as a Committee and agree on when you want to hold your joint sittings. Please, hon. Sabina Chege and hon. (Eng.) James Rege there is nothing to respond to; we are dealing with the Media Council Bill, the rest is just courtesy of the Chair.

Hon. (Eng.) Rege, the information I have is that you had a balance of five minutes on this Media Council Bill.

Hon. (Eng.) Rege: Hon. Speaker, if I am given even 10 minutes I could continue but I believe there are others who would like to contribute to the debate, because I had already finished my contribution.

Hon. Speaker: All right, the first on the line is hon. John Muriithi Waiganjo.

[Hon. Speaker left the Chair]

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

Hon. Waiganjo: Thank you, hon. Temporary Deputy Speaker, Sir, for giving me an opportunity to debate the all important Media Council Bill. The need to pass the media legislation arises from a command of the Constitution under Article 34. The constitutional freedom of the media of a right to information was not enshrined in the old Constitution, thereby explaining, perhaps, why the former regimes were running amok, wrecking media establishments and generally jailing journalists on trumped up charges of sedition. Now, we have a clear provision in the Constitution guaranteeing media freedom, and under Article 34 it is clear in the Bill on non-State interference with the media establishments. Article 34 states that any regulatory body with authority over broadcasting and electronic media must be independent of control by State, political or commercial interests. It is clear that any media legislation then must satisfy two standards.

In my view, one of the standards that the legislation of media must satisfy is to cushion the media against State control. Perhaps, the other test is to make sure that any regulatory body is independent. Anybody who regulates the media must be independent. When I say "independent", it is freedom from oversight or supervision by any State organ, including the Cabinet Secretary. Unfortunately, the Bill as drafted appears not to pass the test set by Article 34 of the Constitution. I think we are giving a lot of leeway to the Cabinet Secretary, not only in this Bill but also other Bills that have found their way into this House. We are indulging the State a lot through the Cabinet Secretary, playing a major role in our law, particularly those laws that regulate commissions; we are making ourselves subject to State control.

Hon. Speaker, Sir, I say that this Bill seems to allow the State to interfere with the media industry. One of the things is that, instead of the Bill giving self-regulating mechanism to media establishments and journalists, it appears to reverse this balance of power. The effect of the reverse is the control of media in favour of the State through the Cabinet Secretary. This is because the Bill gives the Cabinet Secretary power to dissolve the current Media Council, the way it is formulated now. It is empowering him to declare vacancies in the Council and convene an all-important select panel to choose candidates for appointment in the successor Media Council.

Hon. Speaker, Sir, of course, there is a council in place and the membership of that council is not going to leave it at once. So, it does not make much sense to say that the Cabinet Secretary should declare that there are any vacancies. More so, the Cabinet Secretary is also empowered, unfortunately, to facilitate that panel. In our parlance or

our language in this country, facilitation can mean anything. In fact, the Bill does not even say what kind of facilitation it is talking about. Is it monetary facilitation, coercion, corruption or what? By any means, it does not say what kind of facilitation. Of course, when the Cabinet Secretary is said to facilitate a panel that is supposed to select candidates and send the names to the Cabinet Secretary then, of course, we are removing the independence of that panel before it is even formed. So, this is clearly something that the Committee must think about and must amend.

The panel will submit 12 names to the Cabinet Secretary after interviews and then the Cabinet Secretary is empowered now to select six out of the 12 for appointment. Then the panel selects three to give to the Cabinet Secretary, who then also forwards them to the President to appoint their chairman or chairperson.

Hon. Speaker, Sir, the Cabinet Secretary is not obligated to take even the six names that will be given to him or her by the panel that he will facilitate. That means then that the panel may conduct interviews, choose candidates and forward the 12 names to the Cabinet Secretary, but the Cabinet Secretary may take or reject them. He is not under any obligation to even give reasons for rejecting them. So, does that not mean that the membership of the council is subordinate to the Cabinet Secretary? It is subservient to the wishes of the Cabinet Secretary. I think it is important to look critically at the formation of that panel because it will ultimately give us the Media Council.

Hon. Speaker, Sir, the other issue I have with this Bill is that the Cabinet Secretary is also mandated or given a leeway to amend the code of conduct for the practice of journalism without public participation. How do we do that? Clearly, we cannot expect--- This power to make rules or ethics for media practitioners is effectively the power to regulate or to control the media, which is clearly contrary to the media which is clearly intended by the provisions of Article 34 of the Constitution.

Hon. Speaker, Sir, the code of conduct or ethics of journalism ought not to have any Executive imprint at all in the way that the media should be lead. Therefore, it is my considered view that if this Bill is passed in the form in which it is published, it will have a negative impact on the media landscape for journalists and the country. Of course, we must take cognizance of the fact that Article 34 of the Constitution does not give a blank cheque to the media because Article 33 also gives the media the responsibility that they must have in doing their work.

I want to urge this House and the Committee that is responsible to look at this Bill again to try and bring amendments, so that when we pass it, we shall be passing a piece of legislation that is acceptable. We do not want to hear hue and cry from the media that we are trying to stifle them. This is because freedom to the media is freedom to the people. We are the representatives of the people; so, if we make any law that appears to stifle the media, or that appears to be oppressive to the media then what we are effectively doing is that we are also stifling ourselves.

Hon. Speaker, Sir, if we make the media subject to control by the State, then what we are saying is that we are making this Parliament and ourselves subject to the State in the manner in which we do our things. So, I support this Bill, because it is required by the Constitution and it is meant to do well and to give more freedom to the media. I support it subject to clear and unequivocal amendments to clauses that appear to give the State, particularly the Cabinet Secretary, a lot of leeway to meddle in the Media Council. The Media Council should be constituted and the media industry and journalists must be

satisfied that the law is for their independence and the independence of this country and not in any way oppressive.

Thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you so much. Well said, but I think the best way you will help us is by proposing amendments. The Committee has already proposed or will be proposing amendments. You will help the Committee if you could also propose those amendments and see if they will help us in streamlining some of those sections that you think are inconsistent with the Constitution.

Thank you.

Hon. (Eng.) Gumbo: Thank you hon. Temporary Deputy Speaker, Sir. May I start by assuring the hon. Member who has just spoken before me that I sit in the Committee and that we arrived at some of the issues that he has spoken to; we welcome him to come, so that he can enrich some amendments that we are proposing to bring before the House.

Hon. Temporary Deputy Speaker, this Bill seeks to entrench self-regulation in the media. As the Chair realizes that is an ideal way of doing things; self-regulation works. The Chair is a lawyer and knows that lawyers self-regulate very well. I am an engineer and I know engineers self-regulate very well. But what we have seen in the media is the tendency that is adapted – I am not afraid to say– by our doctors where every time one of their own is accused, the natural reaction is to protect them instead of looking at the merits of the accusation. That has been the problem. The media can build or it can destroy, and we have seen them doing that many times in Kenya.

Hon. Temporary Deputy Speaker, Sir, we have to speak about this forthrightly. The media in Kenya has destroyed reputations, families, careers and businesses that have taken years to build. We are not condemning them, but these have to be pointed out. These are things that even as we engage with the media--- My Committee has been engaging with the media; these are things that we have pointed out to them. Yes, the ideal is self-regulation; but as you self-regulate, please remember, freedom must also take into account freedoms of the other people.

Hon. Temporary Deputy Speaker, Sir, Kenyans still remember very vividly the negative role the media, particularly, the vernacular radio stations played in fueling the tribal clashes of 2007. This is not gainsaying. In fact, it got to such a point that some communities labeled others using idioms, names that were only known to them, but names that were meant to incite communities against each other. I am a firm believer in the unity of this country. I am a firm believer in the oneness of Kenya. I am a firm believer in the equality of all Kenyans and this is something that we have to avoid.

Hon. Temporary Deputy Speaker, I have gone through the Bill as proposed and if you look at for example Clause 3, it talks of the right to freedom of expression but even as it talks about the right to freedom of expression, under Part “F” it says that that right has to be guided by the national values and principles of governance as enshrined in our Constitution.

Hon. Temporary Deputy Speaker, what are some of these key principles? Some of these key principles are patriotism, national unity, human dignity and non-discrimination. On 21st September, we got an attack at Westgate and that is when I realised how unpatriotic the Kenyan media can be. There were two gentlemen in a radio station who were discussing a football match happening somewhere in the United Kingdom (UK). It

shocked me that despite us being faced with such a national tragedy, these two fellows could actually make a mockery of the state of our unpreparedness and concentrate more time on the football match that was happening in another country. That for me is not how to be patriotic.

Hon. Temporary Deputy Speaker, look at the aspect of national unity – the very elusive concept that Kenya has been pursuing. I have said it in this House before that if this country chose the path of pursuing national unity, today the strides we would have made as a nation would be far much more than where we are. Look at the principles of human dignity. Look at what we saw in a leading newspaper the day after Westgate incident, splashed on both the front and back pages – a sorry picture of somebody who had suffered calamities in Westgate Mall. Even though an apology was issued, surely where was commonsense even before we came to this? Where was human dignity in this?

Hon. Temporary Deputy Speaker, on non-discrimination, I have just spoken about how we stereotype one another. Almost every community and especially we the larger communities are guilty as charged. We have stereotyped other communities. We call them names. We have derogatory terms that we use to refer to other communities. I note that under Clause 6 among the functions of the proposed Media Council under Annex 6(b) is to prescribe standards for journalists.

Hon. Temporary Deputy Speaker, we live in a country today where there are FM stations. Last week I had a chance to engage some media practitioners in a morning television show and one thing that came out very clearly is that there are no standards for journalists. Almost anybody can go to FM station and call themselves journalists. As we look at self-regulation, let us also prescribe standards that will ensure that self-regulation becomes a reality.

Hon. Temporary Deputy Speaker, under Clause 6(d), we are talking of promotion and enhancement of ethical professional standards among journalists and media enterprises. Ethics and standards are still missing and if we are to self-regulate meaningfully, then I think this is something that we have to look at.

Hon. Temporary Deputy Speaker, we are also talking about compilation and maintenance of a register of accredited journalists, foreign journalists, media enterprises and such other related registers as maybe considered necessary. We have had some so called media practitioners in this country where literally--- I am talking of the gutter press. These people provide information whether wrong, inaccurate or whatever you call it but it is information. It is time that a way is found that we are able to rein in on them because they offend people all the time. The gutter press offends people all the time. Almost all of us in this House every week especially when you hold a high position in society, at one point or the other have been offended by the gutter press. So, I think it is important that we are able to locate these people. One of the Members who was contributing yesterday said that when you try to take action against them, they keep on changing. They are in a constant process of metamorphosis and changing their character and form and this is something that has to be reined in if we are to go far in this idea of independence of the media.

Hon. Temporary Deputy Speaker, I am glad that Clause 6(2) talks clearly that in exercise of its powers and discharge of its functions under this Act, the Council and every person to whom this Act applies shall ensure that the freedom and independence of the media is exercised in such a way that respects the rights and reputations of others.

Hon. Temporary Deputy Speaker, this has been wanting in this country. I do not know if I have spoken for 10 minutes. It is exactly five minutes.

The Temporary Deputy Speaker (Hon. Kajwang’): You have two minutes. The hour glass is coming down.

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Speaker. As I rush to conclude, I think it is important also that as we debate this Bill because one of the problems that we have had--- I sit in this Committee and stakeholders were saying they were not involved but there is a call to stakeholders to take part so that every Kenyan can participate in bringing their input.

Hon. Temporary Deputy Speaker, I have spoken about controlling the gutter press but finally I think it is important that we find in this Bill a way to rein in rogue activities in the blogosphere. They are killing each other. Even media practitioners have been victims of rogue activities in the blogosphere and I think this is the framework for us now to rein in so that the fact that you have your freedoms and you are free to exercise them does not mean that you are free also to hurt and injure reputations at will.

Hon. Temporary Deputy Speaker, I thank you.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you very much. Member for Homa Bay.

Hon. (Ms.) Nyasuna: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill. I understand that this Bill is constitutionally required and, therefore, needs to be done either way but in its current state, I find a lot of difficulties supporting it. I will therefore be contributing in opposing it.

Hon. Temporary Deputy Speaker, the media or the Fourth Estate as we know it is really a key player in any democracy. Protecting freedom of the media, freedom of the press, freedom of speech and ideas is a pertinent role of this House. The media is a social actor. The media allows citizens to communicate with each other. It allows us as leaders to communicate with those we lead. The media can also be a very effective watchdog for any Government.

Hon. Temporary Deputy Speaker, the media including the Kenyan media has this choice to make, whether they want to be the watchdog or whether they want to be in bed with the Government and advance partisan interests. In some contexts we have seen the media actually advancing very partisan political vested interests and enhancing social inequities by excluding minorities. This is not the media we want to see.

Hon. Temporary Deputy Speaker, as an Opposition politician, the media that is not in bed with the Government is my greatest ally and, therefore, I must support the freedom of the media at all costs and in the context of this Bill, I am of the view that self regulation is the key. When you look at the objects of this Bill, you see that the principal object of this Bill is to provide part of the framework for the realisation of the right of the freedom of the media as provided for under Article 34 of the Constitution. The Bill seeks to provide a body that is free of control by Government. This is what we are seeing in the objects of the Bill but when you say that this body is free of control by Government and yet the Council as currently constituted is actually appointed by the Cabinet Secretary, then what are we saying? Are these memorandum and objects and reasons of this Bill actually correct? Is it what we are seeing in the Bill? This is because from my reading of it, it is not. This is because Article 34 is very clear but when you say that the Cabinet Secretary will be given names to appoint people to the Media Council, if somebody is

your appointing authority, how do you have audacity to go against that very person that is the one appointing you?

Hon. Temporary Deputy Speaker, Sir, Article 34 says that the State shall not exercise any control or interfere with any person engaged in broadcasting and it shall not penalize any person for their opinion. Even the State-owned media is free to determine the content that they carry. The media must be allowed to regulate itself. I will give five reasons why this should be the case.

First, self-regulation preserves the independence of the media. You cannot say that you have independent media when the regulating authority is actually a State organ appointed by the Cabinet Secretary and whose salaries are determined by the Salaries and Remuneration Commission (SRC). How do we achieve this independence? Self-regulation preserves the independence of the media and protects it from partisan Government interest.

Secondly, self-regulation is likely to be more efficient as the media understand their own environment more than the Government would. On some of the issues referred to by hon. (Eng.) Gumbo earlier on about the blogosphere, internet and this digital age, as the media becomes more globalized it becomes more difficult or the issues become more complex. These are issues of jurisdiction and what exactly goes where because we are now in a global village. Self-regulation is likely to fill this gap because the Government will not be in the business of understanding the international context of the media. The media can do that.

It is less costly to self-regulate because the media have to pay themselves. We were talking earlier on about a rising wage bill and the Government needing more resources saved. It is cost-effective for the media to self-regulate.

Hon. Temporary Deputy speaker, Sir, self-regulation is also likely to drive up the professionalism within the media because peer pressure will come into play and individual organizations must think about what they air and how they develop their own standards around their journalists.

If we pass this Bill as it is we will bring the media under heavy Government regulation, in my view. If that is the case, we might as well change the Memorandum of Objects and Reasons of this Bill and say that this Bill is intended to get the Government control the media or have a strong hand in the media.

Section 9 says clearly that after carrying out interviews, the selection panel shall select three persons qualified to be appointed as chairperson and 12 persons qualified to be members of the Council and forward the names to the Cabinet Secretary. After seven days of receipt of the names, the Cabinet Secretary shall appoint the chairperson and six members of the Council. We have seen people who were not even on the list or who were not even successful seeking appointment on the Floor of this House. How do we know that the Cabinet Secretary will appoint the people who were proposed, who were number one and who merit that job? We cannot bring the media under Government control and yet we are saying that we want a free and democratic society. We cannot reverse the gains that this country has had over the years. I can see we want to do this with the Statute Law (Miscellaneous Amendments) Bill.

We must stop this. I oppose this Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you very much. Appointment is a serious issue in the Constitution and our duty as the National Assembly

is to protect the Constitution. This is under Article 95(4). The Member for Homa Bay County has argued well but she probably should send us amendments and argue very well on those issues that she has so that we are able to play our role; so that these issues do not just fly around the way they seem to be going.

Yes, hon. Ochieng.

Hon. Ochieng: Thank you very much, hon. Temporary Deputy Speaker. I also wish to add my voice to the debate that is going on, on the Media Council Bill. I agree with hon. Members who have said that we must guard the freedom of the press or the media jealously. We must also ensure that in so doing responsibilities, duties and rights are apportioned as the law may require. When I was watching news yesterday night – I do not intend to quote – I heard someone say that the Media Council Bill is draconian, and that this Assembly is just about a draconian Media Council Bill.

Hon. Temporary Deputy Speaker, Sir, as much as I love the press and as much as I want them to be free, I think they should also not seek to gag this House in what it does. The fact that you say something that does not support this Bill when you are debating does not mean that you do not like the press. It is very disheartening. We want to do the right thing. If the media thinks that anything that this House does is draconian, then let them bring us the Bill they want us to pass and we will pass it for them. It is that bad. It is good that the media also gives us a chance to debate laws that relate to them. We want to do the best and we want the right thing for this country. That is why I will propose a number of amendments to make this Bill what I think will help this country achieve a free, independent and self-regulating media.

I am happy that the Chair is a lawyer and my colleague who is seated next to me is a surveyor and there are qualifications that pertain to that. If you look at Clause 2 of this Bill, you will find that a “journalist” means any person who engages in the practice of journalism. Where did they go to school? Who accords them that right to practise journalism? So, we need to get that definition right. Let us know who a journalist is so that not everybody wakes up and says that he is a journalist and he is so described.

Let them bring to us the right definition. Let them tell us who approves them to be journalists. We must know that the practising journalists in this country have gone through the required training and therefore, they understand their code of conduct, the laws that go with that profession and the responsibility of being a journalist so that we have the right people practising journalism in this country. That is why I will be proposing amendments so that we have the right definition of what a journalist is in this country.

Hon. Temporary Deputy Speaker, Sir, the Media Council being proposed is not a dispute settlement mechanism. The roles there are very clear as indicated in Clause 6. That is why saying that the Media Council will be a body that will facilitate resolution of disputes between the Government and the media and between the public and the media and intermediary whereas in the same Bill, we are proposing to have a complaints commission is illogical. If we are proposing that there will be dispute mechanism in the Bill, then let all the disputes be settled within that framework and not take the disputes again to the Media Council.

If you look at Clause 6, you will see that it has very many other roles. I do not think that the roles as proposed are congruent with the role of the Media Council again in settling disputes. Again, I will be bringing amendments to that effect to ensure that the

body established within this Bill that is supposed to settle disputes does so without interference from the Media Council.

I think we also need to define what “media” is because we do not have that in this Bill. Let us be told what media is. Clause 2 says that “media” means the production of electronic and print media for circulation to the public but does not include book publishing. But we have broadcast media and social media, and I am happy my colleague, hon. (Eng.) Gumbo talked about it – the blogosphere. Who will regulate them if we leave them outside the definition of “media”? Will we have another body that will look at the broadcast media?

On the sharing of function, assuming that the CCK has the capacity to regulate media, we must show here clearly that there is this kind of media and we think its regulation should be done elsewhere. However, we cannot define “media” narrowly to the extent that it may block the regulation of other media bodies.

Hon. Temporary Deputy Speaker, Sir, I also want to raise a very important issue that has been touched by the previous speakers. This is the issue of, one, appointment of the members of the Media Council and two, the constitution of the selection panel. I will bring amendments again on this issue. We cannot have a body being set up to interview then it gives so many names to the Cabinet Secretary, who then comes back and appoints without proper vetting. We need to look through this clearly and see who should be the person appointing. Is it the Cabinet Secretary or the President? In which case, if we say the President, then we give this House power to vet people. In the Media Council as opposed to the Law Society of Kenya, for example, the members are going to be appointed and not elected. Therefore, they should be vetted by this House. We should be making amendments to ensure that the members of this Council come before this House and we vet them. I agree with the Member that maybe, this is the only way out of making sure that the Media Council is not made up of Government apologists. We need independent people, whose main role and heart will be in making sure that the media acts responsibly and remains free and is not gagged.

If you allow me to go ahead, we have had a very interesting scenario in this country where thrice this House has rejected names of persons proposed to be members of the TSC and some of the reasons have come from the way we constitute the selection panel. So, it is important for us to be careful on how we constitute the selection panel. Again, I will move amendments to that effect to ensure that the panel is foolproof and it works well. Like my colleague has said, it does not give us names of people who were not interviewed. We should also have proper provisions in the Bill. We do not want to have an open-ended selection panel. We should provide for its creation and even for it to be discharged. So, we need to have provisions in the Bill on how the selection panel will operate, how we can remove a member if he or she is not doing the right thing and then how we discharge the panel from its functions once it has finished the functions. That is not there now.

The second part of that Bill is very crucial. It establishes something called the Media Complaints Commission. In this country, a commission means something very different in the minds of most people. I will be proposing that we change that to “Media Complaints Tribunal” and not “commission”, so that it is in tandem with other *quasi-judicial* institutions in this country and so that it has powers. If we are going to appoint a person who is qualified to be a High Court Judge in this country, again, that appointment

is by the Judicial Service Commission (JSC) and not by somebody else who may not know what a High Court Judge should have in terms of qualifications.

I may have much to say, but I want to leave it at the fact that the independence of the Media Council; the fact that the media must regulate itself, cannot be gainsaid. In doing so, this House must ensure that the laws that we pass here will not gag the media and vice versa. The media should not try to gag us in discussing issues.

I beg to contribute.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Well said. The next speaker is Metito Judah Katoo.

Hon. Katoo: Thank you, hon. Temporary Deputy Speaker, Sir. I rise in support of this Bill. The media is very important to the society as it has been alluded to by my colleagues who have spoken. It can be used for very many important and positive aspects. Let me just quote about four. One, the media can play a very critical role in bringing national unity and cohesion in the country. That is a very positive element of the media. It is also important to note that the media can be used to portray the country in a very positive way through imaging globally. You will remember when we were with you in Massachusetts the Speaker of the House of Representatives said: “We are ready to continue giving Kenya more aid on one condition; that they will not bring athletes to run in Boston again”. We asked him why and he said, “Because I have a son who is a runner and he will never win so long as Kenyan athletes are in the race”. That has been known because of the positive imaging of this country by our media.

Thirdly, the media can as well be used for economic development of the country by highlighting investment opportunities and tourism opportunities that are in a country. So, this is a very positive element that the media can be used for. Finally, the media can be used to build human resource capacity in the country through informing and educating the masses. An informed and educated society is very productive. The media can play that role. That summarises what I wanted to say, that we should, at all times, defend the freedom and the rights of the media as enshrined in the Constitution.

If you read Articles 24, 33 and 34 of the Constitution, they call for a law that tries to balance the delicate act enshrined in those articles of the Constitution, namely responsibility and accountability as much as the rights of the media and the rights of the society are concerned. We need to modify some of the positive elements that I have picked in this Media Council Bill like my colleagues have said through amendments during the committee stage of the Bill. If you start from Part I, the interpretation, my good friend and a lawyer, hon. Opiyo, who has just spoken, raised the issue that “journalist” is defined as any person who engages in the practice of journalism. Then he said that, that is a fake interpretation. But if you go back, just a little bit above that statement, journalism is already defined. So, a journalist is a person who practices journalism.

If you look at “foreign journalists”, maybe it is a matter of re-arranging the definition. That should have come below the definition of “journalism”. We need to, first of all, define “journalism”, then you go down to define “journalist” and then “foreign journalist”. Clause 2 is on interpretation and defines the issue of the code of conduct for journalists and should be read together with the Second Schedule. I fully agree with the Second Schedule on the code of conduct for the practice of journalism, the issue of accuracy and fairness when reporting, independence of journalism and journalists,

integrity of those who practise journalism, accountability of those who report news and opportunity to reply when they may have done an inaccuracy or misreporting. There is an opportunity for reply and report the item correctly.

The issues of confidentiality, misrepresentation of facts, recording, interviewing and telephone conversation and privacy, all these up to Clause 22 can mitigate the issues that people have been raising between the society and journalists. There is the issue of their independence and also the issue of being accountable to what they report as required in Article 33 and Article 24 of the Constitution. I think they are well defined. They may just need to be modified a little bit at the Third Reading of this Bill when amendments shall be brought.

Hon. Temporary Deputy Speaker, Clause 3 is about the guiding principles for those who practise journalism and it is really elaborate. Clause 3(2), for example, states: - (2) In exercise of the right to freedom of expression, electronic, print and all other types of media shall—

- (a) reflect the interests of all sections of society;
- (b) be accurate and fair;
- (c) be accountable and transparent;
- (d) respect the personal dignity and privacy of others;
- (e) demonstrate professionalism and respect for the rights of others; and
- (f) be guided by the national values and principles of governance set out under Article 10 of the Constitution.

Such things have been in the public domain but this needs to be brought to a logical conclusion.

Look at Clause 6 which talks about the functions of the Council, in my view, this Council is really independent from the Government, commercial and political interests. One of the functions is to promote and protect the freedom and independence of the media. This is to promote and enhance ethical and professional standards amongst journalists and media enterprises. This can show us that this is a very good Bill. There are over 10 functions of the Council.

Hon. Temporary Deputy Speaker, also look at Clause 7 which is about the powers of the Council, I want to disagree a little bit with those who think that there will be Government interference. There is establishment and maintenance of an internal mechanism for the resolution of disputes. It is not through the Government; rather it is within the Council. The Media Council itself is going to establish and maintain internal mechanisms for the resolution of disputes. It is also stated that it will receive, investigate and deal with complaints made against journalists and media enterprises. These are very important things that we should support.

Look at the composition of the Council, it is going to be competitively constituted. Look at the composition of the panel that will interview those who will be recruited, there is the Kenya Union of Journalists, Media Owners Association, Kenya Editors Guild, the Law Society of Kenya and so many others. Actually, there is no Government representation there. It is independent institutions that are going to form the selection panel and they will do their work independently.

Look at the powers of the Cabinet Secretary, I think it is really facilitative. The powers are---

(Loud consultations)

The consultations are high!

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, you should be absorbed in what the Member is saying.

Hon. Kato: Hon. Temporary Deputy Speaker, the powers of the Cabinet Secretary are really facilitative. Look at how he can reject the nominees by this selection panel; it is specific at Clause 11. Look at Clause 9(2); he cannot just reject somebody if these criteria have been met. If you have been a Member of Parliament or a County Assembly Member he will reject your name. If you are an official of a political party, he will reject your name. If for the last five years you have been holding a political office, if you are declared bankrupt by a court of law, if you have been convicted or committed a felony, he will reject your name.

If you look at the composition of the complaints commission and its decisions and how one can appeal if one is dissatisfied with its decisions--- Even that complaints commission is formed by the Council and it comprises of members outside the Council itself. The way you can forward your complaints and the way you can be given a hearing and reply is all stated there. Whichever party is aggrieved by the complaints commission can go to the High Court.

Let us support this Bill at this stage. If there are any issues that need to be thrashed, then we can do that at the Third Reading.

Thank you, hon. Temporary Deputy Speaker. I support.

Hon. Ogalo: Hon. Temporary Deputy Speaker, I recognize that this Bill is in its Second Reading and there are opportunities ahead to amend many clauses. Looking at the Bill generally, I am inclined to support it despite the few flaws here and there that we will have an opportunity here in the House to deal with conclusively when the Bill comes for Committee of the whole House. This Bill is a constitutional requirement pursuant to Article 34 and this House needs to pass it and send it to the President.

The media is a very important component of our governance structure. Indeed, it is called the Fourth Estate. The media helps us communicate with the people who elect us and the people we serve in the positions that we hold. It helps the Government to communicate to the people. All the decisions that we make in this House are communicated to members of the public through the media. In a way, the media and leadership and governance must work together for governance to be effective.

Hon. Temporary Deputy Speaker, the freedom of the media, however important, also has obligations. I think this Bill helps us create a mechanism through which the freedom of the media will be regulated by themselves in a manner that they do not go rogue. Media can build and media can also destroy. We know how the media was used in certain countries. It fuelled situations that those countries did not desire. So, in this country we must work with the media in a way that it will help us develop and be cohesive. The media should help us more to progress as a country than take us back. If we allow the media freedom to be freedom without obligation, we will, of course, have a problem.

I support the provisions in this Bill, for example, creating the complaints commission – whatever name we call it. I appreciate the provision that creates that body that will enable innocent Kenyans or members of the public or members of the media to have a channel of raising concerns and of having recourse to whatever action is taken by the media.

I have heard my colleagues here complain about the mechanism of appointing the Media Council. Looking at the system, we have a panel created by bodies that are currently practising in the media. These are the institutions that train journalists. These include the Editors Guild, the Media Owners Association, the writers and so on. If you bring all these people together to help decide who is supposed to be in the Council, you cannot turn again and say that if they choose three possible candidates for the chairmanship of the Council and the Cabinet Secretary picks one of those then the Cabinet Secretary will be making a mistake. Even if the third person in the line is selected, I do not think the Cabinet Secretary would have made a very big mistake to disable the Media Council.

So, the mechanism put in the Bill for selecting the six members of the Council and chairperson, to me, are sufficient. If members have certain technicalities that need to be addressed then the Committee of the whole House will have an opportunity to deal with that.

I know of very many Kenyans who have been hurt by the media. Yesterday, the son of a former Member of Parliament for Rangwe came to my office and said that recently he was on an expose in the media as being one of the flamboyant conmen that conned Kenya. This was in the series of *50 years Since Independence* which is running in our media. His name was there and this has caused him problems with his finances, business relationships and so on. He has completely no recourse to regain his reputation.

So, this Bill is very important. It will instill discipline. It will also bring responsibility and enable Kenyans feel safe with the freedom of the media. It will also help the media to regulate themselves and discharge their functions in a manner that is in tandem with our goals of peace and national prosperity. This being the Second Reading of this Bill, I welcome fellow Members of Parliament to be ready to scrutinise it thoroughly when it gets to the Committee of the whole House.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you very much.

Yes, hon. Samuel Gichigi.

Hon. Gichigi: Thank you, hon. Temporary Deputy Speaker. I rise to support this particular Bill. As my colleagues who have already spoken have indicated, we have issues with certain provisions in the Bill and it is only in order that we prepare to amend them. I am happy that you are encouraging the various hon. Members contributing to this Bill to prepare their amendments rather than just lament on its inadequacies.

I am a strong advocate of media freedom. I know that, as a matter of fact, democracy cannot be sustained unless we have freedom of the media. We would probably not be in this House today if we did not have a free media. Given some of the positions that we have taken in society would have led a dictatorship to prevent us from assuming leadership in this country. As it has been indicated, Article 34 of the Constitution is the bedrock of freedom of the media. Sub-Article (5) is very categorical that Parliament shall enact legislation that provides for the establishment of a body which

shall be independent of control by Government, political interest or commercial interests, reflects the interests of sections of the society and sets media standards and regulates and monitors compliance with those standards.

Having a look at this particular Bill, it is clear that we must reduce the powers that have been conferred on the Cabinet Secretary. While there is a very good list of the institutions that are going to provide the members to the panel that will select members of the Media Council, it is clear that the Cabinet Secretary has not been controlled on who to appoint. This particular provision says:-

“The selection panel referred to under sub-section (2) shall comprise of 13 members drawn from the following organisations---”

The list starts with the Kenya Union of Journalists and goes all the way to two persons nominated by schools of journalism. Other than the last nominations, the Cabinet Secretary can decide to pick anybody from the Kenya Union of Journalists, including a sweeper. From the Kenya Correspondents Association, he could pick a watchman. It is not indicated that those persons must be nominated by the mentioned organisations. Therefore, during the committee stage, we must indicate that these bodies must be permitted to nominate their representatives. It should not be upon the Cabinet Secretary to just pick anybody who claims to work with these organisations.

Secondly, the Bill also states that it is the Cabinet Secretary who will come up with the regulations. I do not think that is right. As a lawyer, I know that we are the people who come up with the regulations that govern us. It happens with other professional bodies. I propose that we permit the media to come up with the regulations. Since those regulations will come to this House for us to approve, if we find that they are too soft on members of the media, we have the power to put more teeth in them. So, it is important that we do not create an environment where the media operates in fear of punishment. We should not give the Government control over the media. In any case, doing so is unconstitutional. Any challenge in a court of law would annul the particular law.

Hon. Temporary Deputy Speaker, I have also had a look at Clause 15 of the proposed Bill. Again, it is not very good. It provides for the removal of a member of the Media Council. It says that a petition should be forwarded to the complaints commission. In other parts of the Bill, the members of the complaints commission are actually appointed by the Media Council. This law proposes that if somebody has complaints and wants to file a petition to have a member of the Council removed, he should go to the complaints commission, which will look into the petition. If it finds that the member of the Media Council is at fault, it recommends his removal to the Cabinet Secretary. This being a creation of the Media Council, I do not think they would, again, be the best people to look into such petition. We need to agree on a better mechanism of guiding the removal of a member of the Council.

I have said that I am an advocate of a free media but I think the media would be served better in this country if they could also have an element of discipline. I am surprised that the media has not been listed as one of the most corrupt sectors in this country. It is high time employers in the media industry looked into the salary issues. Any politician will tell you that in order for you to be properly covered by the media, you are almost required to part with something. It does not stop there. That person will tell you:

“This money is not enough. Part of it has to go to the editor.” So, some of us are not covered by the media because we have refused to be corrupt.

I am also aware that there are some people who give money to members of the media to ensure that their opponents are not covered. I am told that it happens even in this House. So, if the media continue with their corrupt practices, the Members of this House will turn against them. At the end of the day, measures will be taken and we will be forced to discipline them. We would want them to discipline themselves. So, we are going to support this Bill. We will ensure that the media is not controlled, so that it can be independent but it is also our duty to put processes and mechanisms in the law that will ensure that rogue media members are also dealt with.

Hon. Temporary Deputy Speaker, on the gutter press, as it has been said, people do not just wake up one morning, print a paper and start distributing it, claiming to be part of the media. Somebody is paid to tarnish the name and reputation of another individual. The worrying bit is that you cannot trace the publishers of gutter press.

Hon. Temporary Deputy Speaker, Sir, pretenders to the Fourth Estate are dealt with when they are genuine, authentic and recognized by members of the media.

I support this Bill, subject---

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you, hon. Member. I hope the stakeholders of this Bill are listening to the discussions of the House and they are able to tell the mood of the House.

Hon. (Ms.) Ghati: Thank you very much, hon. Temporary Deputy Speaker, Sir. I rise to oppose the Bill in its current form. I will not be party to it. I have been a journalist and once a journalist, always a journalist. We have always had the Media Council which has been regulating the work that journalists do in this country. They do their work fairly well.

Hon. Temporary Deputy Speaker, Sir, when we are talking about any democratic society, any country that boasts of having moved forward, independence of the media has to be guaranteed. When I look at this Bill, I do not see where media is seen as independent. We cannot talk of having a free and independent media council when we are having the Cabinet Secretary for Information, Communication and Technology having to appoint members to the Media Council. We are talking of an independent media council that can be paid through taxpayers’ money. Therefore, there is no way you can give freedom with this hand and you take it through the other hand. We need to ensure that freedom of the press or the media is guaranteed.

Hon. Temporary Deputy Speaker, Sir, the only thing I would suggest is that the role of a journalist does not come out clearly in this Bill. We have so many journalists in this country who are not well trained. What we need to include here is regulating the various training institutions that train journalists. We have so many bogus colleges in this country that purport to train journalists and then you find bogus journalists who are exhorting money here and there from every member. Those are the things that we need to regulate. We need to have benchmarks. What does a journalist really mean? We need to ensure that a journalist has a minimum training of a given qualification so that it is clear that this is a real journalist. These are people who have been trained to serve in the media.

Hon. Temporary Deputy Speaker, Sir, I know that this is the Second Reading, there is a Third Reading. We need a lot of panel beating of this Bill so that when it comes to the Third Reading, we are all unanimous that we need to make sure that the

media in this country is independent. I know very well that we are a democratic society; we have moved forward as a country, we have come a long way with the media freedom in this country. Therefore, I am very sure that once we panel beat and make sure that this Bill becomes clean, everyone is going to support it.

But in its current form, I beg to oppose, especially the hand of the Government in the Bill. I have seen the hand of the Cabinet Secretary for Information, Communication and Technology in this Bill. Let us be honest. If we want to give media freedom or if we want to guarantee media freedom, we need to remove the hand of the Cabinet Secretary in appointing or dismissing members of the Media Council. Therefore, I want to urge and ask that we do more engagements; there is the Media Council of Kenya, the Kenya Union of Journalists and so on. All these are included in the Media Council. We need further engagements so that we come up with a clear Bill that everybody is going to support.

Hon. Temporary Deputy Speaker, Sir, for now, I beg to oppose.

Hon. Kemei: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support the Bill. At the very outset, I must also mention that I have been a journalist and a firm believer in the freedom of speech and the media.

Hon. Temporary Deputy Speaker, Sir, Article 34 of our Constitution envisages a situation where media is free and independent. When we look at the cornerstone of our Constitution, it is about expansion of the democratic space. It is about enriching freedom in this country and accountability, the destiny of this nation and how we can get there.

Hon. Temporary Deputy Speaker, Sir, I support the Bill because for the first time, we are moving the media; which is just like any other industry towards self-regulation. I want to say that, just like the lawyers and engineers, professionals must be allowed to regulate themselves for growth and vibrancy. This is one major step that we are taking to have the media regulate itself.

Hon. Temporary Deputy Speaker, Sir, if you look at Article 35 of the Constitution, it talks about access to information. In this country we have relied more on the media to facilitate access to information. It is the kind of media that is envisaged in this Bill that shall make us realize the right to information. There have been issues about unfairness of the media and inaccuracy of the articles that they write. There have been issues about fairness, accuracy and objectivity.

It is now up to the Media Council to set and enforce the ethics that are to be observed by our media men and women. If you look critically, the media has always felt that they need to be given space. Indeed, that is true. But we must understand that space is within the context in which we as a nation operate. We must give the chance to the media to kick out the quacks and the half-baked journalists that have spoiled the profession. We must give the chance to the media to discipline errant practitioners and even to register foreign journalists who come to practise in this country.

Hon. Temporary Deputy Speaker, Sir, the role which has been played by the Ministry of Information, Communication and Technology and the Cabinet Secretary at the moment must be a thing of the past. That is what this Bill envisages. There will be amendments; I ask my colleagues in the Fourth Estate to engage us at this point in time so that the rancor that was created because of the Information and Communications Bill can be avoided. We have time to make the necessary amendments before we get to the Third Reading of this Bill.

Hon. Temporary Deputy Speaker, Sir, I support the Bill and I say, for the first time, we are making the journalists in this country to be the author and finishers of their own fortunes or misfortunes.

I beg to support.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Speaker, I rise to support with amendments. I want to agree with hon. David Ochieng. When I sit in the Opposition I do not just oppose for the sake of opposing. I have looked at this Bill and especially in light of the Constitution and just like the Matrimonial Property Bill that we passed, most of it is good but there are one or two parts that need amendment. However, again, of course, it depends on the extent. Sometimes it is only one little thing, like in the Matrimonial Property Bill the only thing that poisoned it was the word “joint”. Indeed, the Bible says the little foxes that spoil our vineyard. So, there are some little foxes here that are spoiling the vineyard of this Bill. So, I will be willing to support it with amendments.

I know when we were in the constitutional review process right from Bomas the issue of media regulation was very contentious then and at that point I was a very strong proposer for State control of the media and it is surprising coming from a civil society. However, the reason I did that was because that time the media was absolutely rogue. The media has since styled up. It is not absolutely rogue anymore. Indeed, I remember and it is on record that I said when PLO talked about the issue of not responding to a mosquito bite with a hammer, that you cannot also tie a rogue elephant with a shoe string. Right now, I do not think the media is a rogue elephant but I think there is still a lot that needs to be done for self-regulation of the media, borrowing for instance from professions like law. We are lawyers and we have been able to self-regulate and some of the bad members of the Law Society of Kenya have been disciplined by it. So, indeed, I am a very strong proponent now of self-regulation by the media.

Hon. Temporary Deputy Speaker, I would want to say that the media in this country needs to know that a lot of Kenyans have faith in it, more than they have faith even in God. That is for some of them. It is actually a fact. There are a lot of Kenyans who have more faith in the media than they have faith in God and because of that they need to understand that they can either unify the country or breakdown the country. In critical moments, the media has disappointed and indeed it is very unfortunate that sometimes when you raise it you become a marked person. I want to congratulate the hon. Member who is very brave to indicate the unspoken that the media would not want you to speak.

In this House we have been accused of many things and when we are wrong, we accept it. So, even when we correct the media they should not pinpoint a Member and say: “That is the bad one who talks bad of us.” We are all for a better country. We are all for freedom of the media but we want the media to also show that when they are given the opportunity to self-regulate, that they indeed are going to be able to do a worthy job.

Therefore, hon. Temporary Deputy Speaker for me, I would want to say that in the definition of the word “journalist”, I think that is one of the areas we need to bring an amendment. This is because as it obtains, the way the word “journalist” is defined here, even a blogger is a journalist and now with the internet there are too many bloggers around masquerading as journalists. So, we must protect the noble profession of journalism from all these people who are coming and again there are many Members who

have spoken to it. You have everybody who is able to pick a pen and paper calling themselves journalists. So, there must be a standard upon which we judge who a journalist is.

I know there are Members who have spoken here and said they are journalists. I almost became one but God decided otherwise. After I did my first degree in law, I was actually accepted in the School of Journalism but I got two scholarships. One was in Master's in Law and the other was in Journalism. So, I opted for the Master's in Law. I am a writer. So, I write a lot. So, I am still a neighbour to journalism. I am not a journalist. If I said here I am a journalist, I would be one of the quack ones because I am not. I do not have any training in journalism but I am a writer. We therefore want to be able to hold the true journalists to account and not spoil their names when we have the rogue people who purport to be journalists going around claiming to be journalists.

Hon. Temporary Deputy Speaker, the other thing I would also want amended as the Members have put their voices to is on the issue of appointment to the Media Council. Borrowing again from the LSK, I have never seen any Cabinet Secretary appointing for us the members of the LSK Council. So, we must have faith in the media to choose the people that they want because they must have faith in the people that are going to do that regulation. However, if you give the Cabinet Secretary some leeway to appoint people and the Council does not perform, whom will we hold accountable? Is it the Council or the Cabinet Secretary? We do not want to hold the Cabinet Secretary accountable because this is about self-regulation.

Hon. Temporary Deputy Speaker, the other issue that I want to speak to is Clause 9(2)(c) and this goes to us as Members of Parliament. We have a real bad name and not only Members of Parliament but politicians. We have a bad name and we have a tendency of legislating ourselves out of jobs. We are not going to be in this Parliament forever. None of us was born to be in this Parliament forever. We may be here today and gone tomorrow, as some of my colleagues were here in March this year and they are no longer here, and then you provide here that a person who has held a political office in the past five years cannot be in the Council. Why? *Kwani* there is--- Sorry for using the word "*kwani*". Is there some allergy that we have? Do we contaminate the public? We are from the public. We are not contagious. Indeed, I can give you examples. We had hon. Njoki Ndung'u from this House who passed the Sexual Offences Act and now is a member of the Supreme Court. She did not wait for five years. Now if she can manage the Supreme Court within five years, unless of course there are some other issues which I do not want to say but really if she did not wait for five years, why should we obligate people to wait for five years to serve in the Media Council? Even then it talks of: "If you have been involved in a political office." How wide is a political office? Kenyans are looking for jobs. There are some people who were serving in the Orange Democratic Movement (ODM) party and did not make it in the Government. They are hoping to get jobs. If they are good journalists, let them go to the Council. Why should we put them out there struggling to look for jobs because they were in a political office?

The other issue I am finding fairly curious is that the same Clause 9 provides a lot of standards and one of them which is good is the constitutional provisions, if you indulge me one minute.

The Temporary Deputy Speaker (Hon. Kajwang'): How many more minutes do you want me to indulge you?

Hon. (Ms.) Odhiambo-Mabona: Just one minute since I am winding up.

The Temporary Deputy Speaker (Hon. Kajwang): You will get one minute.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Speaker. One curious provision is Clause 9(2)(d) that says that if you have allocated land--- Land and journalism when we have talked about constitutional provisions? Is the Media Council going to be allocating land? I do not understand what this clause serves here.

Hon. Temporary Deputy Speaker, with those few remarks, I support but with amendments.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you very much. There is a principle in parliamentary practice called “ranking of Members”. Although hon. Angwenyi, you are down the list, I choose to bring you up. So, you have the Floor.

Hon. Angwenyi: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support this Bill. We want the Media Council to be independent but independence does not mean that another arm of the Government cannot contribute towards that unit or institution. For example, in this Bill, the Government will be providing funds to run this Council. Why are we saying that they should not get any public resources to run this Council?

We have a government system where we hold to account the Executive, the Legislature and the Judiciary. The Fourth Estate needs to be held to account. By being held to account, the Cabinet Secretary responsible for that sector of our country should also have some input in this Council. That is why we are saying that the Cabinet Secretary will be receiving names from an independent panel and if he rejects any of those names, the panel will again submit new names for appointment. The Cabinet Secretary cannot submit his own names to be appointed as members to the Council.

There is no total independence in any institution. This Parliament is supposed to be independent but we are also accountable. That is why you will find sometimes the Judiciary or the Executive getting hard on us. The Judiciary is supposed to be independent but only a week ago, we had matters relating to that arm of the Government. So, there is no total freedom.

I urge my colleagues here to support this Media Council because it is independent except where the Cabinet Secretary contributes in gazetting the names of the members who have been appointed by the panel.

Hon. (Ms.) Ghati: On a point of order, hon. Temporary Deputy Speaker, Sir. Unless my English does not serve me right and I stand corrected, the Bill reads that the Cabinet Secretary shall within seven days of receipt of the names by notice in the gazette, appoint a chairperson and six members of the Council. Unless I do not understand, this Bill is clear that the Cabinet Secretary has a leeway or a hand in appointing members to the Media Council. This is what I am opposing.

If we are really serious about giving independence to the Media Council, then what business does the Cabinet Secretary have in appointing members to this Council?

The Temporary Deputy Speaker (Hon. Kajwang’): I appreciate your point of argument. However, you know that you rose on a point of order. Yours is more of a point of an argument than a point of order.

Proceed, hon. Angwenyi.

Hon. Angwenyi: Hon. Temporary Deputy Speaker, Sir, we need to go for some induction. But be as it may, the Cabinet Secretary will appoint what has been presented to

him or her, and he or she cannot appoint out of his own will. The Cabinet Secretary only appoints from the names that have been presented to him or her. If he or she does not want to appoint, he or she will send that list back to the panel which is independent to select new names that will be appointed. It is like he signs the amount of money that will run this Council.

If you question the gazettelement of the appointed members, why can you not question the public funds being used to run this Council? It is not like the Legal Council or whatever name you call it that runs on its own resources because it does not get funding from the Government. Here, the Government is spending money---

The Temporary Deputy Speaker (Hon. Kajwang’): I want to tell you for free, hon. Angwenyi that the Law Society of Kenya is funded by the Government. However, continue.

Hon. Angwenyi: They are being paid by the Government?

The Temporary Deputy Speaker (Hon. Kajwang’): Yes. Continue.

Hon. Angwenyi: Hon. Temporary Deputy Speaker, Sir, I did not know that, otherwise I would have questioned it. That money should be used to do a road in my constituency.

(Laughter)

I am trying to say that we should harmonise our operations in this country and we cannot give total freedom to an institution to control itself. We should have some institutions that can play an oversight role over the performance of that institution, the same way we play an oversight role over the Executive.

I am saying that we should support this Bill, establish the Media Council and see how it works. We can amend the law later or repeal it if we feel that it is not working independently and purposely.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Irungu Kang’ata. We are mixing everybody, the young and the old. So, you are coming in to give us the perspective of the young.

Hon. Kang’ata: Thank you, hon. Temporary Deputy Speaker, Sir. I feel that this Bill needs to be improved. It has many grey areas. The first one is Clause 2 on the definition of the terms “journalism” and “journalist”. The profession of journalism appears to be a profession that has not given much credence to education. For instance, if you were to go to the engineering profession, you will find that we have standards, which are usually tied to qualifications. If you go to law, you cannot become an advocate unless you have a degree in law. The same thing happens to the nursing profession and other professional courses. In journalism, people who have done a Diploma in Journalism from the Kenya Institute of Mass Communication or a Degree from the University of Nairobi, School of Journalism, are not recognized.

It is funny because you find many jobless trained journalists. You also find people who are working in various media outlets being paid a lot of money and they have not attended a single journalism class. It is the only profession which appears not to give education a lot of credence. I am of the view that these definitions should be changed. For instance, when you are defining a journalist, at least, a diploma in journalism should be a

prerequisite in my opinion. If we were to do that, the effect would be that we are going to give credence to education. Why do we go to school? We go to school to certify that people have this knowledge. If you are interested in joining that profession, kindly, you are given that leeway to go and study.

Otherwise, I hear people saying that there are some people who have talent in journalism. If you were to argue that way, you can as well argue that there are people who can represent others in legal matters without necessarily going to a class of law. Even in engineering, you can argue that there are people who can even invent many good things, but they have never stepped in an engineering class. That is a fallacy. Ideally, everything must be trained. The knowledge which we purport to have, is usually taken out of books and experiences. It is something that needs to be certified by peers who have previously been in that profession. That can only happen within a school set up.

Therefore, I am of the view that for us to, at least, empower our schools, which are training journalists, the definition of “journalism” should be amended. This will ensure that a journalist must, at least, have some form of a certificate and training. It is very unfair when we hear people being paid millions of shillings and they have never stepped in a journalism class. It is very unfair to the many diploma and degree graduates who are coming out of universities and have no jobs. I am sure they can do a better job than those who have never stepped in a journalism class.

Another area that I would propose an amendment is Clause 5(3). It provides that the headquarters of the Council shall be in Nairobi. Why in Nairobi? You never know, after five years, the capital city of Kenya may be taken out of Nairobi. We have seen, for instance, the Machakos Governor coming up with funny drawings of a city. Maybe after five years, we shall all be going to the City of Machakos. In such instance, Nairobi may no longer be of use to us. This headquarters may as well go to the City of Machakos. You never know and it may as well come to Kiharu and Murang’a becomes the headquarters of Kenya. You cannot tell the future. So, therefore, this notion of fixing that the headquarters of the Council will be in Nairobi, to me, is very myopic. You never know what the future holds for this country. So, we should not fix in legislation the headquarters of a council.

Another area we need to change, in my own opinion, is the composition of the Council as provided for by Clause 8. Well, I agree with Members. I do not see why the people who are going to the Council should be appointed by any one. We are in a democracy. We should allow journalists to vote for their leaders. We have seen situations in other professions where people vote. For example, in my profession, we vote. Before, I remember we used to vote through ballots. We would send ballots to the headquarters and there was a lot of corruption in that system. We had to fight to ensure that we have a more democratic system of voting in leadership at the Law Society of Kenya.

In the same manner, I am of the view that we should allow journalists to elect members of the Council. Of course, I agree that we need to set the minimum requirements for a person to serve in a council. No wonder I am of the view that we need a person with a degree. Being a degree holder should be a prerequisite for one to serve in the Council. I do not see the rationale in appointing these people. The present law provides a Council that is overly controlled by the media owners; that is unfair. I would want a situation where the Kenya Union of Journalists has more say at the Council as

opposed to the present situation where you have KUJ and Media Owners Association with three members each at the Council and then one nominee from the Editors Guild.

I also agree that the Cabinet Secretary should not be involved in the process of nominating and appointing members of the Council. Under Clause 9, we have qualifications of the people who are going to be in the Council. In other professions, for instance, you will see law, finance, gender, performing arts and so on. In my own opinion, they should all come from a journalism background. I am also of the view that Clause 18 should be amended. We need to provide that the degree should not just be any degree, it should be a degree in journalism.

In Clause 24, I agree with my colleagues that funds should not come from the Government. It should be funds that are generated by the Council, but not funds coming from the Government. The Government has other areas that it ought to channel its funds.

Then there is Clause 28 on establishment of the complaints commission. I am of the view that we do not need a separate complaints commission. The Media Council itself can discipline its members. Just like with the advocates, we have a disciplinary committee of the Law Society of Kenya which does the disciplinary process. Of course, it has been amended to provide for a tribunal, but I do not see any problem with self-discipline.

I have also seen a schedule, that is, the Second Schedule provided by this Bill. It should be amended. It has problems. Take for instance, Clause 18, that is, financial journalism. It provides that journalists shall not buy or sell shares or securities about which they intend to write in the near future. I do not see the rationale of such kind of a clause. I do not know how you can enforce such provision. Again, at Clause 21, the Bill says that the media shall not identify victims of sexual assault. What if you want to be identified? We know of the case of the wife of Prof. Ngugi wa Thiong'o. She went on air and said: "Something happened to me." Are we saying that such person should not be published yet she is the one who wants her name to appear in the media to probably highlight the problem of rape?

With those remarks, I support the Bill with amendments, particularly the ones relating to the Second Schedule of the Bill.

Hon. Speaker: Yes, hon. Mishi Juma Khamisi.

Hon. (Ms.) Khamisi: Bw. Naibu Spika wa Muda, nimesimama kuupinga Mswada huu kwa sababu ingawaje ni Mswada mzuri, una tashwishi. Waswahili wanasema hata unapopika mchuzi wako mzuri, unapoingia jongoo hauwezi kuwa mzuri. Kama Wakenya, tunatambua kwamba tumekuwa katika mapambano makali sana kuhakikisha kwamba kumekuwa na uhuru wa habari na kuvipatia vyombo vya habari uhuru na kupata uhuru wa kujieleza. Katiba yetu, katika Sura ya Nne, Vipengele 33, 34 na 35, inazungumzia jinsi tulivyopata uhuru wa kujieleza, uhuru wa vyombo vya habari na uhuru wa kupata habari katika nchi yetu. Kwenye Mswada huu, kuna kipengele kinachosema kwamba kutakuwa na tume itakayopokea malalamiko. Tume hiyo imepewa nguvu nyingi ambazo zinaweza kumfanya mwanahabari asiweze kufanya kazi yake.

The Temporary Deputy Speaker (Hon. Kajwang'): Just a minute, hon. Mishi. Hon. John Lodepe Nakara, is that a mistake or are you on a point of order?

Hon. Nakara: Hon. Temporary Deputy Speaker, there is a concern. I logged in at 4.30 p.m. but there is a different system that you are using where people – both the old and the young – come and whisper things to you. The reason as to why we have this

digital gadget is to ensure that we operate on a first come, first served basis. Let there be chance for all of us to speak. I do not have to come and whisper to you that I need to talk. It is my right, once I log in, to talk when my turn comes.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker: Thank you. I appreciate but you should know that recognition of Members is in the Speaker's discretion. That is the tradition and practice of the parliaments in the Commonwealth.

Proceed, hon. Mishi.

Hon. (Ms.) Khamisi: Ahsante, Bw. Naibu Spika wa Muda. Nakushukuru sana kwa sababu hata sisi wengine tumekuwa tukijaribu sana kuzungumza katika Bunge hili lakini hatukupata nafasi. Nilikuwa nimeingiza kadi yangu halafu nikatoka nje. Sasa ndiyo nimerudi.

Jopo lililopendekezwa kwenya Mswada huu ili kuangalia nidhamu ya wanahabari ni jopo ambalo nguvu zake ni nyingi mno kiasi cha kwamba mwanahabari anaweza kupokonywa kibali cha kazi yake, na taasisi za uanahabari pia kupokonywa vibali vya kufanyia kazi na akaunti zao kwenye mabenki kufungwa na kuambiwa wasiendeleo na kazi yao. Hili ni jambo ambalo halitaweza kukubalika. Cha msingi ni kuweza kuangalia na kupima uanahabari ulio na nidhamu na uanahabari usio na nidhamu na wenye kutumia nguvu.

Naibu Spika wa Muda, pengine ningezungumza kwa Kingereza ili wenzangu ambao hawaelewi lugha sanifu ya Kiswahili, waweze kuelewa. *We need to address media so that there is a balance between aggressive reporting and responsible journalism.*

Hilo ndilo jambo ambalo linaleta utata katika Kenya kwa sababu wanahabari wengi ni wale ambao hawana taaluma ya uanahabari mwafaka. Hivyo basi, wanatoa habari ambazo zina uchochezi ama zinapita mipaka ya kisheria. Lakini tunapofuata njia sawa, tutaweza kuwa na habari sawa.

Wakenya wenzangu, lazima tutambue kwamba Kenya tuko miongoni mwa nchi ambazo zimesifika kwa kulinda haki za wanahabari. Ndio sababu katika nchi kama Ethiopia na Eritrea kuna wanahabari wengine ambao wamekimbilia Kenya ili kuja mafichoni na kupata afueni.

Naibu Spika wa Muda, ikiwa tutaweka sheria ambazo tutampatia Waziri nguvu nyingi katika baraza hili la wanahabari, basi tutarudi katika zile siku za giza; siku ambazo habari zitakuwa si sawa. Mfano mzuri ni juzi katika nchi yetu ya Kenya. Wanahabari wetu walitupatia matukio muhimu sana; matokeo ya uchaguzi wetu mkubwa, matukio ya uvamizi katika soko la Westgate ambayo ni mambo ya kigaidi na pia habari kuhusu kesi inayoendelea katika Korti la Kimataifa, ICC.

Iwapo jambo hili la wanahabari litakuwa chini ya himaya ya Waziri ambaye amekula kiapo kulinda Serikali yake, basi mambo mengi kuhusu kupata habari hayatakuwa sawasawa. Walalahoi Wakenya maskini hawangejua yaliyojiri katika soko la Westgate kama nguvu zote nyingi zitakuwa zimepelekwa katika ofisi ya Waziri.

Naibu Spika wa Muda, hata lile jopo la rufaa, ambalo kwa Kingereza tunaliita *tribunal* ni yeye ataliunda. Wakati jopo hili la kuangalia mambo ya utetezi litakuwa limepeleka mapendekezo yake kwa Waziri, basi Waziri anaweza kusema kwamba mtu fulani ua mwandishi habari amekosea katika jambo hili. Lazima tujue tutokako ni mbali na tunakofika ni karibu. Iwapo tunataka kubaki pale karibu tulipo, na kulinda wanahabari; kuhakikisha Wakenya walalahoi wamepata haki zao za kimsingi ambazo ni

Katiba iliowapa haki kama hizo, tuwache wanahabari wenyewe watengeze jopo lao ama baraza lao kuu la kuangalia haki za wanahabari.

Tunajua kwamba baraza hili, bila ya kuwa na hilo tume la malalamiko, lina nguvu zaidi. Mswada huu umezungumzia mambo mengi zaidi ambayo yameangazia vile watalinda wanahabari na vile watalinda nchi katika kuangazia habari.

Kwa hayo mengi ama machache, ninapinga Mswada huu. Ikiwa Mswada huu utaendelea, basi Wabunge wenzangu, tuweze kuupiga msasa, tufanye marekebisho madogo madogo, ndipo tuweze kupata Mswada ambao utawapatia hadhi wanahabari na sisi tunaosikiza habari.

Asante.

Hon. Kabando wa Kabando: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support this Bill and make a few remarks on specific sections.

On Section 61(h), there is a clause of conducting an annual review of the performance of the media and publish the results in, at least, two daily newspapers. That is well intended.

However, like my colleagues have said, we anticipate that we are going to input verbally, but we will give written suggestions on amendments. Just to emphasize, it is meant to conduct an independent review of the performance and the public opinion. This is because if we just leave it to be internal, then it will be the Media Council giving internal opinion. We know they will have the responsibility to contract, but in legislation, it will be important to emphasize that, for purposes of ensuring that the opinion is cushioned.

Hon. Temporary Deputy Speaker, on Section 9 and perhaps this is a wakeup call for us; you see in every Bill, we are saying that members of a certain institution be it quasi-judicial, judicial, State corporation or an agency shall hold a degree from an university recognised in Kenya. Perhaps, there is a rhetorical question that we should be asking. As legislators, you remember last year in the 10th Parliament we refused the requirement that Members of Parliament must have a degree, but we are telling bodies that are reporting to Cabinet Secretaries and Parliament that their membership should have a degree. So, even if you are a qualified veteran in a certain field, you cannot be nominated in this agency without a university degree. Perhaps, it is internal reflection that this Parliament needs.

You will see that emphasis is very much on social sciences, performing arts, journalism, law, advertising, public relations and religious communication. Are we saying, and this is in anticipation of amendment, that I am going to notify the Committee that somebody who is in medicine or engineering and actually does a medical journal or an engineering journal cannot qualify to sit in the Media Council? I think it is an omission and it is an overemphasis that journalism is all about social sciences. Increasingly, Kenyans and the developing world are getting captivated to journalism of science fiction and real science. In the *Sunday Nation* for instance, one of the most popular pages is *Surgeon's Diary* of Dr. Dawood and it is something that we need to think about very seriously.

Hon. Temporary Deputy Speaker, like hon. Millie mentioned, we are voting ourselves out of responsibility. I can see she was a journalist. My colleague hon. Savula was a journalist. They came from journalism to Parliament and we have seen people coming from Parliament to the Judiciary but we are saying that if you have come to this

Parliament or you got to be a member of the Senate or the county assemblies and you opt to cease participation in elective or nominated membership of those assemblies, you cannot be in this Council. It is outright discrimination and actually hinges on suggestive unconstitutionality. Being a Member of Parliament or a member of county assembly does not disqualify you from being a member of the Council; that you have to relax for five years without active journalism. We will be telling active journalists never to come and participate in parliamentary work.

Hon. Temporary Deputy Speaker, the other portion is Clause 9(f)(g) that talks of somebody who has benefited from or facilitated unlawful or irregular allocation, acquisition of use of land or other public property. Again, that is somebody who has been removed from office for contravening provisions of the Constitution or any other written law. If I was removed from office 10 years ago because of a certain bylaw but then I was acquitted in court, it means actually you are going to judge me to be guilty past the acquittal. Also we have reports from commissions like the Kenya National Commission on Human Rights (KNCHR) and the Kenya Human Rights Commission (KHRC) which is a Non-Governmental Organisation (NGO). The NGO and the State corporation have unanimity on the so called faces of impunity where allegations have been put on certain individuals to have participated in certain issues which have not been subject to any judicial process. I think we need to be careful in those matters, otherwise, I support this and I urge my colleagues that we think about amendments. I urge my friends in the Fourth Estate to engage us constructively so that we can get appropriate feedback.

Hon. Temporary Deputy Speaker, I made a decision seven years ago that not in my car, office and house will I ever have the so called gutter media because they exist with all manner of scandals. It is called yellow journalism. Therefore, self-regulation and participation of these agencies as listed is very necessary.

As I conclude, I would like to alert the person who has spoken before me that really this is not about collapsing media houses because I think she may have been addressing another law and not this particular one. I think her tone was that we are passing this and this law can lead to closure of media houses, deregistration of journalists and so on and so forth. I think as much as we want to promote press freedom, and this is what we are doing, we also would like to have the responsibilities, honour, dignity and respect required to build our democracy.

I sit down citing that if it were not the *Nairobi Law Monthly*, the *Finance* magazine, the *Economic Review*, the *Society* magazine, the *Bild* magazine, that arm that gave strong support to the Jaramogis, Matibas, Railas and Rubias of that particular time, things would have been very different. Therefore, media is a very indispensable institution in building democratic change and revelations including Goldenberg and the Kroll Report that we have been inquiring about in this Parliament. Media has responsibility to deal with research and independent surveys which is investigative journalism. Therefore, I support and I will be submitting some amendments at the appropriate time. Otherwise, thank you very much hon. Temporary Deputy Speaker, my former chairman in the Students Organisation of Nairobi University (SONU).

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, I still have several requests. You can see how this has been very exciting but we still have a few more minutes when the House resumes to discuss this Bill. So, I want to urge Members to be in the Chamber to use those few minutes to finish the discussion. Time is up and I have to interrupt debate at this point. The House is adjourned until Tuesday, 19th November, 2013 at 2.30 p.m.

The House rose at 6.30 p.m.