

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 20<sup>th</sup> October, 2013

The House met at 2.30 p.m.

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

### PRAYERS

### NOTICES OF MOTIONS

#### ESTABLISHMENT OF YOUTH INNOVATION FUND

**Hon. Mwaura:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that there are many talents amongst the youth of this country; having noted that these talents have been severally displayed through various inventions and innovations by the youth in platforms such as the Science Congress and the Annual Youth Innovation Week; concerned that most of these discoveries do not go beyond making sensational newspaper and electronic media stories; noting that most of these innovations are aimed at addressing the problems that afflict us as Kenyans on a daily basis; further concerned that there is inadequate enabling legislation and administrative measures to support these innovations; cognisant of the fact that the Kenya Vision 2030 seeks to make our country an industrialized middle income economy in the next 17 years; aware of the immense potential for wealth creation and job opportunities that such innovations would generate if well developed and commercialized; also recognizing that our imports are well in excess of Kshs1.3 billion, a gap that would be mild if we had our own local production; this House resolves that the Government supports innovations by creating an innovation fund and a national incubation system among other measures.

**Hon. Speaker:** Hon. Sarah Korere. Is the Member present? I have a list of Members who are meant to give notice of their Motions. That particular Motion is dropped until next week.

Hon. Omar Mwinyi. He is absent not desiring to be present. So, they forfeit their chances to give notice of their Motions.

### REQUESTS FOR STATEMENTS

**Hon. Speaker:** Hon. Members, from the Order Paper you can see that the first one is hon. Njogu Barua, but the information I have is that he is out of the country. So, he will make his request whenever it is that he is back.

## DONATION OF X-RAY MACHINE TO MATHARI MISSION HOSPITAL

**Hon. (Ms.) Mathenge:** Hon. Speaker, pursuant to Standing Order No.44 (2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Health regarding an X-ray machine that was originally in Nyeri General Hospital and was given to Mathari Mission Hospital.

In the Statement, the Chairperson should inquire and report on:

(i) the terms under which this X-ray machine was given to Mathari Mission Hospital;

(ii) the benefits the patients who go to this hospital get; and,

(iii) the policy under which the Government is donating equipment to private hospitals yet there are numerous health centres and district hospitals in dire need of such equipment.

**Hon. (Dr.) Pukose:** Hon. Speaker, I want to assure the hon. Member that we will look into that and we should be able to have an answer by next week on Thursday.

**Hon. Speaker:** And I want to direct that clearly this does not require a Statement. She is just seeking an answer. Whatever answer you get is what you are able to present, that is, the circumstances surrounding the movement of the X-ray machine.

## NON-INCLUSION OF TANZANIA IN SINGLE TRADE PERMIT AGREEMENT

**Hon. Nyamweya:** Hon. Speaker, pursuant to Standing Order No.44(2)(c) I wish to request for a Statement from the Chairperson of the Departmental Committee on Finance, Planning and Trade regarding the recently signed agreement by Kenya, Uganda and Rwanda authorizing a single trade permit amongst them. In this agreement, Tanzania was left out and yet she is our major trading partner as 24 per cent of our exports go to Tanzania.

In his Statement, the Chairperson should inquire into and report on:

(i) the impact of this policy as Tanzania has been left out as a major trade partner;

(ii) the economic growth and development that Kenya would achieve from this agreement considering the strain it has created with Tanzania;

(iii) the percentage of gross income the country is expected to earn from this trade agreement *vis-a-vis* the trade with Tanzania; and

(iv) The long-term implication of this trade move.

**Hon. Dawood:** Hon. Speaker, we undertake to give a reply in the next three weeks.

**Hon. Nyamweya:** Hon. Speaker, as you are aware, this is a very serious issue. It has serious economic implications for the country especially when it comes to how this is going to affect the ordinary person who takes a bus or train to go and do trade in Tanzania, Kenya and Uganda. This is an issue that this House needs to be seized of. This is a matter that is going to affect the small-scale businessmen. We are not talking about the big people, say, the tourists. We are talking about the impact it will have on this country.

**Hon. Speaker:** Maybe in addition, if indeed what you say is correct, if it is an agreement, it ought to have been tabled before this House. So, hon. Dawood, I hear hon. Nyamweya to be raising a very pertinent issue. Is it possible you can expedite?

**Hon. Dawood:** Hon. Speaker, Sir, I understand there is a very serious issue, but the Member should take into cognisance that this matter involves very weighty issues, which may not be dealt with as soon as he would want. But let me give it to the Chairman of the Committee and maybe, a minimum of two weeks would do. That is all I can say for now. More than that, it is not possible unless he addresses it to the Leader of Majority Party who would probably give him an answer faster than we could.

**Hon. Nyamweya:** Hon. Speaker, Sir, the issue is very weighty. This is the Parliament of the people of Kenya. The technocrats have signed an agreement which has not been deposited in this House. It has not been passed. We have a treaty which governs the East African countries on how to operate. A treaty has been signed against what forms the East African Community. This is a serious issue. Probably the House can debate it. The Cabinet Secretary can be called upon to give a response because it is a critical issue, which is going to have very serious negative impact on the country.

**Hon. Speaker:** Enough! I also want to advise that in as much as the issue is serious, the question is directed to your colleagues in the Committee. In fact, it would be much useful if on the day that they invite the Cabinet Secretary responsible and the various technocrats, whom you allege have signed the agreement, you are also invited to that sitting, so that you can also share with them your knowledge of the treaty establishing the East African Community and then try to also locate, if it is possible, this new agreement within the context of the East African Treaty. It will be important that, that matter is given weight, as you allege and I agree with you. Two weeks is not too far. Hon. Nyamweya, I would rightly advise that you also be there. Let us get some report that has your input. It will be useful.

What you are saying is indeed, correct. If there are people who have made mistakes, let them be exposed. So, the report of the Committee will be among other things revealing the mistakes which may have been committed by whomever it is that has signed the agreement, if any. I am not saying that there is a mistake, but in case there is any, then it will be revealed in that.

Hon. Members, for avoidance of doubt, I am sure all of you have a copy of the Order Paper. We are on Order No.7. Those of you who may be coming to tell me that you are late because you were in some committee; the committee is not superior to the plenary. So, we are on Order No.7. Order No.6 is gone. I am sorry you may have been doing very useful work in Committee, but I am sure all of you know that we start our sittings of the plenary at 2.30 p.m. We just have to get used to this. Sometimes we may feel that what we are doing elsewhere is much more important than being in the House, but you can imagine that your absence here could easily cause the House to adjourn. I would want you to give priority to appearance here even as much I know that you have very serious work that you are doing in Committees.

#### INSECURITY IN LOWER YATTA DISTRICT

**Hon. C.M. Nyamai:** Hon. Speaker, Sir, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairman of the Departmental Committee on

Administration and National Security concerning insecurity in the country, in particular in Lower Yatta District.

In the recent past, we have witnessed a wave of insecurity in the Lower Yatta District in my constituency, in particular Kyangi and Nthongoni locations. For example, on 15<sup>th</sup> February this year, armed gangsters attacked Muvitha Secondary School in Nthongoni Location and killed a watchman and stolen unknown amount of money and other valuables. On 16<sup>th</sup> June, this year, armed gangsters attacked Kyangi Secondary School, killed a guard and seriously injured another one. On 1<sup>st</sup> November, this year, armed gangsters attacked a petrol station and killed a bank branch manager. All these incidents occurred in an area which is about one kilometre away from an Administration Police camp which has about 10 AP officers.

In the Statement, the Chairperson should inquire into and report on:-

- (i) the cause of the rising insecurity in this area which has hitherto been very quiet;
- (ii) the measures the Government is taking to restore security; and
- (iii) the steps the Government is taking to assign more security officers and equipment in the region.

**Hon. Speaker:** Hon. Kamama.

**Hon. Abongotum:** Hon. Speaker, Sir, we will bring this Statement in two weeks' time.

**Hon. C.M. Nyamai:** Hon. Speaker, Sir, I am not sure about our calendar, but in view of the seriousness of this matter and in view of the fact that the House is handling almost similar matters and the same technocrats are appearing before the Committee, I would have requested the Chairman to ensure that the Statement is delivered before we go on recess.

**Hon. Abongotum:** Hon. Speaker, Sir, we will try to expedite within 10 days.

**Hon. Speaker:** Very well. Hon. Nyamai, I think it will be useful also if you know when the Committee is sitting so as to avail yourself, so that you can perhaps prosecute the matter before the Committee.

APPOINTMENTS IN MINISTRY OF AGRICULTURE,  
LIVESTOCK AND FISHERIES

**Hon. Kanini Kega:** Hon. Speaker, Sir, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Co-operatives regarding the recent appointments of directors and deputy directors under the Ministry of Agriculture, Livestock and Fisheries.

In the Statement, the Chairperson should inquire into and report on:-

- (i) whether the Public Service Commission was consulted in the appointment of director and deputy director in the Veterinary Services Directorate and the qualifications of those appointed;
- (ii) whether the said appointments in part (i) above were done in an open, transparent, free and fair manner as prescribed by the Constitution;
- (iii) whether there have been any transfers or deployments of senior staff in Job Group "Q" and above and if any, whether proper procedure was followed; and finally,

(iv) whether the State Department of Livestock established any new offices or directorates and if any, proper procedures were followed and whether the Public Service Commission was involved.

Thank you, hon. Speaker.

**Hon. Speaker:** Departmental Committee on Agriculture, where is the Chairperson, hon. Nooru.

**Hon. Nooru:** There are some transfers that are done internally and some that may require the Public Service Commission's involvement, but let me find out and we shall give an answer within the next one week.

**Hon. Speaker:** That is alright. Hon. Jessica Mbalu, you may take the Floor.

#### NON-ISSUANCE OF TITLE DEEDS TO SETTLEMENT SCHEMES IN KIBWEZI

**Hon. (Ms.) Mbalu:** Thank you, hon. Speaker, Sir. Pursuant to Standing Order No.44 (2)(c), I wish to request for a Statement from the Chairperson of the Committee on Lands regarding settlement schemes. The Government is currently issuing title deeds free of charge, however, land owners in settlement schemes with no potential such as Thange, Kinyambu, Utithi, Masongaleni, Kambu, Muthingiini, Ndatani, Kathekani and Kiteng'ei within Kibwezi East Constituency are required to pay Settlement Fund Trustee levies of up to Kshs.2,500 per acre. These schemes were created to resettle poor landless Kenyans or those who were relocated by the Government from their land for the purposes of creating game reserves and conservancy areas. This fee is too high and more citizens cannot afford to raise it.

In his Statement the Chairperson should inquire into and report on:

(i) the steps the Government is taking to ensure the demarcation and survey of unregistered settlement schemes and issuance of title deeds is conducted and concluded; and

(ii) the measures the Government is taking to ensure that no poor Kenyan is denied a title deed due to inability to pay the required Settlement Fund Trustee levies and other land registration costs.

Thank you, hon. Speaker.

**Hon. Speaker:** The Chairperson, Committee on Lands, hon. Alex Mwiru, the Vice-Chair or a Member from that Committee, give your response. Hon. Esther Murugi, take the Floor.

**Hon. (Ms.) Mathenge:** I shall convey the message to the Chairperson so that he can give us a report. I do not want to commit the time, because I know we are a bit loaded right now.

**Hon. Speaker:** That would mean you could give the report next year or what? Hon. (Ms.) Mbalu, take the Floor.

**Hon. (Ms.) Mbalu:** The hon. Member being part of the Committee, I request to be given time, she is equal to the task.

**Hon. Speaker:** So, anytime is okay? Hon. Members, I can see your names here but we must transact business in an orderly way. We do not have so much time that everything becomes a ground for a point of order.

**Hon. (Ms.) Mbalu:** I request to be given time before we go for recess. It is an important issue; the people of Kibwezi East Settlement Scheme have not been given titles, including me. I do not have a title deed and this issue should end once and for all.

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

**Hon. (Ms.) Mathenge:** I think what I said still stands and it is not that I am a smaller Member of the Committee, but the Chair has the authority to call for these meetings and I know how his desk looks like right now. Let me convey the message and perhaps in three weeks' time, we will give you an answer.

**Hon. Speaker:** Very well.

**Hon. (Ms.) Mbalu:** That is the voice of a very able Member. When she speaks, I see the Chair and now that she is going to convey the message to the Chair, three weeks are okay with me and they should remain three weeks. Hon. Member, I said you are equal to the duty and you represent the Chair.

**Hon. Speaker:** Very well, hon. Wamalwa, you have indicated that you have an intervention by way of a point of order.

**Hon. Wakhungu:** Thank you, hon. Speaker, Sir. I was just looking at Standing Order No.1, where I will seek your guidance. About two minutes ago, you mentioned that *Mhe*. Kanini Kega was to request for a Statement, but the hon. Member who was requesting for this Statement was not hon. Kanini Kega, so I wanted your clarification---

**Hon. Speaker:** Hon. Member that is not even a clarification. Members do approach the Chair and request others to seek Statements on their behalf.

**Hon. Wakhungu:** If that is the case then, is it in order?

**Hon. Speaker:** No need for further argument, yes, it is perfectly in order. Hon. Onyonka, take the Floor.

**Hon. Onyonka:** The issue I am raising has nothing to do with proper House business, I just wanted to mention that the Serjeant-At-Arms' office needs to find out why this place is freezing, and it feels very cold.

**Hon. Speaker:** Well, maybe hon. Onyonka is unwell. Your concern can be addressed if you approach the Clerk's desk. Hon. (Ms.) Ali, you are next.

Let us have hon. Tiyah Galgalo. The hon. Tiyah Galgalo! Absent and not desiring to be present. Statement dropped.

*(Statement dropped)*

#### HARASSMENT OF SQUATTERS FROM KAKUZI HILLS

**Hon. H.K. Njuguna:** Thank you, hon. Speaker, Sir. Pursuant to Standing Order 44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee on Lands regarding harassment of squatters.

Hon. Speaker, squatters across this country have undergone untold suffering. For instance, squatters who reside in Kakuzi Hills, Kakuzi/Kihumbuini Ward, in Gatanga Constituency are always harassed by the management of Kakuzi Limited. Kakuzi Limited has denied these squatters access to their homes unless they have gate passes, which they have to obtain from the Kakuzi Limited. The process of getting those gate passes is fairly tedious and dehumanizing besides being a huge inconveniencing to the squatters, especially during sickness and other emergencies.

Hon. Speaker, Sir, the Chairperson should inquire into and report on the following: Why Kenyans are required to obtain gate passes to access their homes; the measures the Government is taking to ensure that an access road is established in the said area; the steps the Government is taking to settle the above squatters; and the action the Government is taking against such companies that harass squatters.

**Hon. (Ms.) Mathenge:** Again, I shall convey the message to the Chairperson. I will make sure that within three weeks, the Questioner gets a statement from the Chairperson.

**Hon. H.K. Njuguna:** Hon. Speaker, Sir, I know hon. (Ms.) Esther Murugi Mathenge is a very able Member of the Departmental Committee on Lands. I trust that within three weeks, I shall get an answer.

**Hon. Speaker:** Next Order.

**Hon. Simba:** On a point of order, hon. Speaker, Sir. I had made a request earlier to the Chairperson of the Departmental Committee on Environment and Natural Resources and it has taken about five months now and I have not got a response. No statement or report has been tabled on the Floor of the House.

**Hon. Speaker:** Even if the report was ready, today is not the time for responses. Nevertheless, hon. Amina Abdalla is present, she can respond.

**Hon. (Ms.) Abdalla:** Hon. Speaker, Sir, hon. Simba Arati's request was on the management wrangles at Tana and Athi River Development Authority (TARDA). A report was done and it was laid on the Table four months ago, but it has not been given time by the House for debate.

**Hon. Speaker:** Then hon. Amina Abdalla and hon. Simba Arati, you should approach the Clerk's office so that the report is prioritized for debate; if it is a report.

The Deputy Leader of Majority Party proceed on Procedural Motion

### PROCEDURAL MOTION

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

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold Sittings on Thursdays, 21<sup>st</sup>, 28<sup>th</sup> November and 5<sup>th</sup> December, 2013, between 9.00 a.m. and 12.30 p.m. for the purpose of considering Bills.

Hon. Speaker, Sir, we are coming to the end of the First Session of the 11<sup>th</sup> Parliament. We have quite a load of pending business, more so pending Bills. These Bills need to be completed before we move to the Second Session which begins next year. According to Standing Order No. 141 (3), we cannot---

*(Loud consultations)*

**Hon. Speaker:** Order, hon. Members! This is important because you will be required to vote on it. So, if you cannot hear what is being proposed, and it has a bearing on what you do for the days proposed, how will you then vote? Please, allow the Deputy Leader of Majority Party to move.

**Hon. (Dr.) Shaban:** Hon. Speaker, Sir, Standing Order No. 141(3) states very clearly that a Bill in respect of which the Second Reading has not been concluded at the end of a session shall lapse at the end of the Session in which it was published, but may be republished in the same or a different form, in accordance with Standing Order 114. We cannot afford to work twice. This House, during this 11<sup>th</sup> Parliament has been mandated to make sure that we are able to pass laws which are going to suit our citizens.

Hon. Speaker, Sir, if we are going home while some of these Bills are pending; that is, they have not gone through the Second Reading, we will have a problem. We will have a backlog of issues that we should have completed. This session comes to an end on 5<sup>th</sup> of December, 2013. The Second Session will begin on 10<sup>th</sup> February, 2014. After people have been away for close to 70 days, it will be very difficult to start from where we left. Therefore, it is important for us to do as much work as possible so that when we start a new Session, we will have a fresh start.

Hon. Speaker, Sir, pending on the list are issues touching on the National Social Security Fund, the Insurance Bill, which is going to the Committee of the whole House, the Statute Law (Miscellaneous Amendments) Bill which should be coming very soon, two Bills on the National Police Service (Amendment) Bill which we need to debate, and the Wildlife Conservation and Management Bill, which we have started to debate but which we should be keen to complete before the recess.

Hon. Speaker, Sir, we need to have introduced our supplementary Budget at this point so that when we come back, we are ready to continue with business and allow the Government to spend money.

With those few remarks, I am asking my colleagues to allow this House to hold Sittings for the next three Thursdays so that we can complete all the pending Bills. As I move and sit down, I will ask the Deputy Leader of Minority Party, hon. Jakoyo Midiwo to second.

**Hon. Midiwo:** Thank you, hon. Speaker, Sir. I rise to support the Motion. As I rise, I want to impress upon hon. Members to hear me out. I know many hon. Members are jittery about donating their Committee time or the time that is, otherwise, used for other work for Government Business. I want to report to the House that we have just been deliberating in the House Business Committee and we talked at length. Some of the things which I have heard from hon. Members, we have actually taken care of them under your chairmanship. We agreed that there are so many Bills, including the most important Bill which is Value Added Tax (VAT) for hon. Members.

The VAT Bill will come before the House tomorrow for First Reading because there are many issues people are calling us about.

Hon. Speaker, we know there are Bills which many Members have expressed themselves on here that they do not want rushed, especially the Statute Law (Miscellaneous Amendments) Bill. We have agreed that under your leadership, this Bill is best discussed when we have more time because it has a lot of issues. It is a big Bill that seeks to amend many statutes and we need to do it in a bipartisan manner. It is a Bill we can deal with at a later date when we are ready to do so and when we have time.

However, hon. Speaker, there are Bills which are important and are not controversial. What Members need to know - and which I must admit I also did not know before the House Business Committee - is that the Session lapses immediately we adjourn on 5<sup>th</sup> December. With the lapsing of the Session, all Bills which will not have

gone through the Second Reading stand lapsed. So, it is important that we do that so that we do not look like we are creating controversy when there should be none.

Hon. Speaker, it is also good to report that we had a meeting between you, the Leader of Majority Party and I over the contentious Police Bill and there are two Bills which are supposed to be discussed by the House and disposed of. We have agreed that the House leadership will meet to iron out the contentious issues before that Bill is brought before the House. So, I think we have reached a compromise that does not require us to have controversy.

So, I want to support and urge Members that the things which we would have disagreed about on the Floor of this House on this Motion, we have actually ironed them out. I thank you and I support.

**Hon. Speaker:** Order, hon. Members. Those of you who are standing should sit down. Hon. Okoth, as usual, with your colleagues from Kiambu and hon. Moroto, you must remain seated. Let me propose the Question.

*(Question proposed)*

*(Question put and agreed to)*

Next Order. Hon. Members, it is important that there is not going to be any further communication. For those who have not been regularly looking at their Standing Orders, that is how the House works. It is a resolution. The resolution of the House supersedes what may be in the Standing Orders because the Standing Orders are also made by the House. So, we have resolved that on Thursday 21<sup>st</sup> November - which is tomorrow - you will all troop into the Chamber at 9.00 a.m. to transact business. On Thursday 28<sup>th</sup> November at 9.00 a.m. you will similarly come like you did today. Similarly on Thursday 5<sup>th</sup> December at 9.00 a.m., you have now resolved you will sit to consider Bills and it is important that it is known. You will be sitting to transact the business as indicated on those days. So, please, hon. Members, there may be no need for anybody else now to send text messages. So, tomorrow you will be here at 9.00 a.m.

Hon. Members, I am also aware that the Budget and Appropriations Committee has scheduled a meeting tomorrow but I am sure you can be here and there in the usual way. You know how best to do it. But both that Committee and the plenary will continue. Therefore, everybody is accordingly informed.

Next Order.

## MOTION

### ADOPTION OF REPORT ON VETTING OF NOMINEE FOR APPOINTMENT AS NACADA CHAIR

**Hon. Abongotum:** Hon. Speaker, the Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No.216(1) and has executed its mandate---

**Hon. Speaker:** Hon. Kamama, you need to move the Motion which is on the Order Paper. What you are moving is not on the Order Paper.

**Hon. Abongotum:** Thank you, hon. Speaker. I beg to move the following Motion:-

THAT, pursuant to the provisions of Section 6(1) of the National Authority for the Campaign against Alcohol and Drug Abuse Act (NACADA), (Cap.121B of the Laws of Kenya), this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of the Chairperson of NACADA, laid on the Table of the House on 19<sup>th</sup> November, 2013 and rejects the appointment of Mr. John Mututho as the Chairperson of NACADA.

Hon. Speaker, the Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No.216 (1) and has executed its mandate in accordance with the provisions of the said Standing Order No.216 (5) which mandates the Committee to, *inter alia*, vet and report on all appointments where the Constitution and other laws require the National Assembly to approve.

Hon. Speaker, according to the Second Schedule of the Standing Orders, the Committee examines the following subjects:- National Security, police services, home affairs, public administration, public service, prisons, immigration and the management of natural disasters and community service orders.

Hon. Speaker, Sir, the Committee oversees the following Ministries and departments: In the Office of the President, we have the Ministry of Interior and Co-ordination of National Government, Public Service Commission, National Police Service Commission and Independent Policing Oversight Authority.

We have 29 Members and you know all of them. Section 1(a) of the National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012, provides that the management of the Authority shall rest in the board, which shall consist of the Chairperson appointed by the President with the approval of the National Assembly, and who shall be a person with experience in public affairs either in the Judicial Service Commission, the Public Service Commission or the private sector.

Further, Article 124(4) of the Constitution provides that when a House of Parliament considers any appointment for which its approval is required under this Constitution or an Act of Parliament, the appointment shall be considered by a Committee of the relevant House.

Following receipt of the nomination of Mr. John Mututho to serve as the Chairperson of NACADA from His Excellency the President, the Hon. Speaker of the National Assembly on 7<sup>th</sup> November, 2013, referred the name of the nominee to the Departmental Committee on Administration and National Security for consideration prior to approval by the National Assembly.

Hon. Speaker, Sir, Section 3 of the Public Appointments (Parliamentary Approval) Act No.33 of 2011 provides for the exercise of powers of appointment under the Constitution. Under the Public Appointments (Parliamentary Approval) Act and the Standing Orders, the National Assembly is required to conclude the process of approval or rejection of the nominee within 14 days from the date of notification. After receiving the name of the nominee, the Committee commenced its sittings on Thursday, 14<sup>th</sup> November, 2013 to conduct the vetting exercise.

The Committee made reference to the Constitution, the Public Appointments (Parliamentary Approval) Act No.33 of 2011 and the National Assembly Standing Orders.

The Committee complied with the constitutional and legal requirements and established procedures for vetting. It ensured that public participation and openness in carrying out the proceedings was adhered to. Notifications inviting the public to submit memoranda were placed in the mainstream print media in tandem with the law.

Hon. Speaker, Sir, arising from the notifications, the public submitted presentation to the Committee over the nomination. Three memoranda were received. One of the memoranda was by a group called “Maisha Uhuru” while the other was by one Mr. Martin Njue Mwangi. The two memoranda were not in the form of sworn affidavit and were, therefore, not admissible before the Committee.

The other memorandum was by James Mwangi Ngatia of P.O. Box 3869 and the memorandum fulfilled the requirements as set out in the advert. Mr. Mwangi raised issues of objections on the nominee. The Committee made several findings during the vetting exercise and those findings guided it in making its final recommendations.

The Committee’s recommendation was solely based on the evidence and information from the proceedings of the Committee during the vetting exercise. This recommendation was agreed upon by the majority of the Committee Members during the adoption of the Report on Tuesday, 19<sup>th</sup> November, 2013. However, we had Members who had dissenting voices.

Hon. Speaker, Sir, the Committee wishes to thank the offices of the Speaker and the Clerk of the National Assembly for the logistical support accorded to it during the vetting exercise.

The Committee is also thankful to the media for the coverage of its proceedings thus enhancing accountability and transparency of the vetting exercise and process.

On behalf of the Committee and pursuant to Article 124(4)(a) and (b) of the Constitution, Section 8(1) and (2), there is----

*(Loud consultations)*

**Hon. Speaker:** Order, hon. Members, especially hon. Amina Abdalla. You are speaking to a Member who is very far away from you. Obviously, you are not helping the situation.

**Hon. Abongotum:** Hon. Speaker, Sir, I am sure that hon. Members will be debating this Motion and it is good to debate it from a point of knowledge and not from a point of ignorance. It is my pleasant duty to table the Report of the Departmental Committee on Administration and National Security on the vetting of the nominee, Mr. John Mututho as the Chairperson of NACADA and for debate and adoption by this House.

*(Hon. Abongotum laid the document on the Table)*

I will be very brief in my comments. First of all, I want to confirm to the House that in terms of qualification, Hon. John Mututho Njenga ticks the box.

*(Applause)*

In terms of qualification, the hon. Member is more than qualified and he has the requisite passion to prosecute the mandate of that Authority.

Hon. Speaker, Sir, you all know that in the Tenth Parliament, hon. Mututho worked very hard to come up with the “Mututho Law”. He did very well. I think he came up with close to five Bills. So, in terms of hard work, the gentleman is really hard-working. As a politician, normally, I am very sympathetic to politicians because once they get out of this Parliament, some institutions become allergic to them and most of them end up not getting jobs.

It was really hard to make this decision that hon. John Mututho be rejected by this Parliament on the basis of the report that was given. Here, I will not read out all the annexes but I will read out a letter by the Ethics and Anti-Corruption Commission (EACC). The letter reads as follows:-

“The criminal charges being Account No.2400 of 2005 arising from obtaining Kshs41,037,515 from Kenyatta National Hospital by falsely presenting documents that this company had paid tax on bedside lockers and thereby deserving refund.

Similarly, the predecessor to the Commission - that is the EACC - filed a civil suit being Nairobi/HCCC/No.1477 of 2005 on behalf of KNH claiming restitution and recovery of the said sum of Kshs41 million against Mr. John Mututho and Countryside Suppliers.

The civil suit is also pending before court and attached is a copy of the charge sheet for ease of reference.

Whereas the matters are pending before the court, the allegations touch on the personal integrity of the candidate and are likely to erode public confidence in the integrity of his office.”

This is a letter by the Chief Executive Officer, Mr. Halakhe Dido Waqo of the EACC.

Hon. Speaker, Sir, I want to conclude by saying that the cases against Mututho have taken too long and we call upon the Judiciary to expedite them. The civil suit has taken close to 12 years. The issue by the Ethics and Anti-Corruption Commission began around 2005. So, the Judiciary should also be merciful to that gentleman and conclude the case.

Hon. Speaker, having considered the suitability, capacity and integrity of the nominee; and pursuant to Section 6(a)(i) of the NACADA Act, 2012 and the Public Appointments (Parliamentary Approval) Act, the Committee recommends that the National Assembly rejects the nomination of Mr. John Mututho, EBS; as the nominee for the position of Chairperson of NACADA. Mr. Mututho is actually a personal friend. So, if I were a judge in the Judiciary, I would not even have presided over the case. In my current position, I had to prosecute my mandate in accordance with the provisions of our Standing Orders.

Hon. Speaker, I want to call upon one of my Committee Members, hon. Mwangangi, who supported the Committee’s position, to second the Motion.

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

**Hon. Kilonzo:** Hon. Speaker, I rise very much unwillingly---

**An hon. Member** (*off-record*)

**Hon. Kilonzo:** Hon. Speaker, I repeat. I rise very much unwillingly---

**An hon. Member:** Why?

**Hon. Speaker:** Proceed, hon. Mwangangi. Do not respond to them.

**Hon. Kilonzo:** Hon. Speaker, I second the Motion, the reason being that this same House previously did what we are doing today, through the Committee to which I am a Member. Looking at the reasons that were presented to us by the Ethics and Anti-Corruption Commission, personally, I do not think they are convincing enough for us to reject the nomination of hon. John Mututho. If we were to be fair, I do not think there is anyone who is as passionate as hon. John Mututho in this country today, as far as the fight against drug abuse is concerned. But because we have an institution that has been created to carry out this business, and largely by destroying the careers of certain people, I second.

*(Laughter)*

**Hon. Speaker:** Order! Order, hon. Members! Hon. Sakaja, hon. Okoth, hon. Wandayi and hon. Gaichuhie, the rules of the House are that when a Motion has been moved and seconded, the Chair will rise to propose the Question. I cannot rise to do so if hon. Mwaura, Gaichuhie and others are all over.

**An hon. Member:***(off-record)*

**Hon. Speaker:** Hon. Members, hon. Mwangangi has seconded. It does not matter what he says in the course of seconding. It suffices that he ended by saying "I second." That is enough. Remember that he could have even just risen and bowed without saying what he said in many words. So, why are you momentarily losing memory of things that you know very well?

*(Question proposed)*

Yes, hon. Harrison Kombe.

**Hon. Kombe:** Ahsante sana, mhe. Spika. Kwanza, ningependa kupendekeza mabadiliko katika Ripoti hii ili isiwe ni kumkataa bali kumuunga mkono mhe. John Mututho awe mwenyekiti wa bodi ya halmashauri ya kupambana na janga la madawa ya kulevya.

Kwa hakika, siku zote mhe. Mututho amekuwa katika msitari wa mbele kupigania na kuona kwamba matumizi mabaya ya madawa ya kulevya na ulevi wa kupindukia umepungua. Haswa, alileta Mswada Bungeni ambao ulipita na kuwa sheria – sheria ambayo imeweka masaa maalum ya mabaa kufunguliwa na kufungwa. Madhumuni ya sheria hiyo ni kuhakikisha kwamba watu hawanywi pombe wakati wote, bila kufanya kazi.

Kuhusu suala la kesi inayomkabili mhe. Mututho, inafaa tukumbuke kwamba kesi hiyo imekuwa ikiendelea kwa miaka 15 sasa. Je, watu hao walikuwa wanataka kumaliza kesi hiyo? Hawana haja. Hiyo inaweza kuwa njama ya watu fulani ya kumfungia nje ili asiweze kufanya kazi hii.

Mhe. Spika, kama inakubalika, ningependa tuifanyie Hoja hii marekebisho niliyopendekeza. Baadaye, pengine nitaiunga mkono Ripoti hii. Vile ilivyo hivi sasa, siiungi mkono Ripoti hii.

Ahsante, mhe. Ripoti.

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

**Hon. Gikaria:** Hon. Speaker, I rise to oppose the Report because if you look at the Report of the Committee very carefully, especially on page nine; you will appreciate that a former Chief Executive Officer of NACADA has recommended that hon. Mututho deserves to be the head of NACADA because of the passion that he has to stop drug abuse in this country.

Hon. Speaker, I come from a constituency where illicit brew was used in such a bad way that, to some extent, so many people were not able to do their business. Many young people were unable to go to school. Imagine a man and a woman waking up in the morning at 8.00 a.m. and going to a bar to drink. One may be a very healthy person but within two years, he becomes useless and unable to help to improve the economy of this country.

The Bill that hon. Mututho brought to this House, which was passed into law, is the one that contributed to him not being re-elected to Parliament. It is the brewers, especially, who have used their position to influence that Mr. Mututho does not get elected to Parliament again.

I want to agree with my colleague, Harrison Kombe, who has said that there is case which has been in court for over 15 years and yet, it has not been determined. Under the Bill of rights, it is indicated very clearly that the courts need to expedite cases so that if I am charged in a court of law within reasonable time, I should be cleared or sentence passed. This case, which has been in existence forever, should not be used as the basis to deny a passionate person who wants us to have a clean society and young people given an opportunity by prohibiting drinking and use of drugs.

The Report states clearly that Mr. Mututho is qualified in all aspects with the exception of that small little case. Mututho deserves an opportunity to clean this country by stopping this menace of illicit drugs and brews. The control of those substances has been left to the administration. However, enforcement has become part and parcel of the cartel because they go there to collect a lot of money from the brewers and drug peddlers. They do not even take any action. Mututho needs to be given an opportunity to work in NACADA. The former Permanent Secretary, I cannot remember his name, did a very good job. I think Mututho will do 10 times what Mr. Kaguthi did in the past.

With those few remarks, I am opposing the Report unless it is amended to give Mututho an opportunity to serve as the Chairman.

**Hon. Speaker:** Hon. Members, I can see there is a lot of movement. There is a lot of excitement. All that is okay; it is within your power to do. However, please, let us also be alive to the provisions of the Public Appointments (Parliamentary Approval) Act otherwise in the Tenth Parliament known as the “Mungatana Act”, and see what the consequences of some of the proposals that you are making may lead to. That is why I asked the Clerk to find out whether today is the last day. There is a context in which I am trying to draw your attention to this.

If, and hon. Mbadi knows this, today is the last day and you reject the Report and the name has been communicated to Parliament, what does that mean?

*(Loud consultations)*

No, if you reject you are perfect. It is important to know the net effect of what you are likely to do. I am just provoking every one of us to look at the implications.

**Hon. (Eng.) Gumbo:** Hon. Speaker, I stand to oppose this Report. I have been opposing it because the implications of what the Committee is saying are wider than what we think. I wish the Committee could have delved into telling us how Mututho does not qualify to hold that office on account of the cases that he has. This is fundamental. The reason the Committee is refusing to recommend Mr. Mututho is that he has cases in court. But why would it apply to Mr. Mututho and not all of us? Are we saying that the moment you have a case in court you cannot hold a public office?

The issue of alcohol and drug abuse in Kenya is a national issue. It is a cancer. Mututho has clearly demonstrated the passion that he has for fighting this national menace. Homes are being broken because of alcohol and drugs. I am in no way saying that Mututho is the only one who can do it, but he has demonstrated that he has the passion, he loves the job, he can do it, and he can make a difference in the country.

Fundamentally, as a House, we must know that whatever we pass here, we are setting precedent. If we say that the moment you have a case in court you cannot hold a public office, why should it apply to Mututho and not all of us? I would want to oppose this Report. What I would like the Committee to tell us is how Mututho will be unable to discharge his duties on account of a case which has been in court for 15 years. We have to be fair and recognize Kenyans who are doing a good job for the country. It takes contributions from a few of us to change the country. Alcohol is destroying families. Some of us are parents and we have teenagers. Our daily worry is what happens to our children in schools. If we can get a czar who can lead from the front in the fight against alcohol and drug abuse---

What happened to the principle that you are innocent until proven guilty? Is being taken to court enough proof that you are guilty? The case is in court. Why do we not let the case carry on so that if he is, indeed, found guilty then we tell him: You have been found guilty and you are not fit to hold public office? At the moment, as far as I am concerned, the man is innocent until proven guilty. He is fit to hold the post.

I oppose this Report.

**Hon. Speaker:** Hon. Members, from the list here, I have 62 requests. Can we agree on two minutes?

**Hon. Members:** Three minutes!

**Hon. Speaker:** Hon. Shidiye, please, come to the Dispatch Box.

**Hon. Shidiye:** Thank you, hon. Speaker, Sir, for giving me this opportunity. From the outset, I wish to reject this Committee's Report. When we sat as a Committee, we realised that hon. Mututho has passion and is a brave fellow. He has the gravitas, the energy, the zeal and he can do what most of us might not be able to do. When I was in Parliament, he was passionate about drug issues. Indeed, he moved a Motion on the same and I am sure when he moved this Motion, he became a celebrity in this country.

He lost the election because of the cartel; people who were out to make sure that hon. Mututho did not go back to Parliament. Justice delayed is not justice. Justice is the midwife of peace. You cannot deny somebody a job because he has a case in court. All of us have some issues in this country. All of us are not clean and have some problems here and there. That is a human weakness.

When you look at this country, you get a glaring grim picture. You realise that about 4 million Kenyans are consuming hard drugs and other substances like *chang'aa* and others. For instance, in Malindi, people consume about 20 tonnes of *cannabis sativa*.

The amount of money we use on drugs in this country is about Kshs240 billion. If you give this job to somebody who is colourless, has no zeal and is not passionate, the country will lose. This is a small job, but hon. Mututho will turn anything to gold. This is a job that pays about Kshs80,000. That is a very little sum of money, but I know he can do a wonderful job.

If you look at his academic background and experience, none can beat him. Again, the President had his own wisdom when he appointed hon. Mututho. I worked with NACADA as one of the directors and we could not move because we needed somebody who is very active, passionate and a go-getter. We needed to have somebody who knew what he wanted to do. If somebody thinks that because of cartels hon. Mututho will not be the Chairman of NACADA, that is a big mistake. It will be bad for this country. Central Province, Nairobi, Nyanza and Coast are burning. Families are losing value and they are suffering.

This is a time when we need to support somebody like Mututho and this House must come out openly. I know very well that there are some people who might think that hon. Mututho does not fit the bill but he, indeed, fits the bill. He is a man we know. He can deliver. We need results. Those are the results that will help this country.

With those few remarks, I reject the report. I do not support this Committee's recommendation. The House has a duty also to see to it that Mututho gets the job. I am sure he will do a good job for all of us and for this country.

**Hon. Simba:** Hon. Speaker, Sir, this is a country in which everyone is in court, starting from the top to the bottom. Therefore---

**Hon. Speaker:** Are you saying that everyone, including yourself, is in court? Anyhow, proceed, hon. Arati.

**Hon. Simba:** Hon. Speaker, Sir, I am saying that we know that court cases cannot stop anybody from holding an office as is the case with the President, the Deputy President and others. They are facing cases in an international court. Therefore, Mututho has to be given a chance. I do not know Mututho well. The other day, I saw people coming into my office and telling me: "Mheshimiwa, you go to Parliament and ask for extension of time for us to open our bars earlier". Therefore, I am sure hon. Mututho has done a great job for this country.

As my colleague has just put it, it will only be Kshs80,000 that he will be getting as a salary, but the work we are expecting hon. Mututho will do will be great. I urge the House that we reject in totality the Committee's Report and allow Mututho to serve our country.

**Hon. Speaker:** I hope everybody will be as brief as hon. Arati Simba.

Yes Hon. Kinyua Weru.

**Hon. Kinyua:** Hon. Speaker, Sir, I stand to oppose the Report. I oppose the Report in the presence of the Members of Nyeri County Assembly, whom we recognise and who will take this report home. I do not see why a Committee can sit, evaluate and even vet a Kenyan who is passionate, qualified and has what it takes to fight the alcoholism menace in this country.

I come from a county where we are struggling and always asking ourselves what can be done to defeat this helplessness and hopelessness in our youth. Mr. Mututho was in the same situation, but he never just sat; he came up with a law. I want to be brief; I want to tell Mr. Mututho, once we give him this job he should look for ways of ensuring

that alcohol handling is included in the national security and is brought back to the national Government, so that it can be handled across the board without necessarily leaving it to the counties, which are fumbling about how alcoholism should be dealt with. That is the assignment that I will give to the committee and Mr. Mututho once he takes office.

**Hon. Mohamed Diriye:** Hon. Speaker, Sir, I wish to support this Motion for valid reasons. Mr. Mututho might be passionate in fighting alcohol and other drugs; he might have the necessary requirements and be best placed to do the job, but he has also very serious issues of integrity as clearly put in the Report of the Committee. He has criminal and civil suits pending before a court. He was charged with the case whose number is given arising from obtaining Kshs41 million from Kenyatta National Hospital by presenting false documents showing that his company had paid Kshs5 million.

Somebody who has cheated Kenya on Kshs41 million is not good. Therefore, he should not be given this job. This contravenes Chapter Six of the Constitution at Article 73(2), The guiding principle of leadership and integrity at Article 73(2)(a) requires selection on the basis of personal integrity, competence and sustainability. Mr. Mututho might be suitable and competent but he lacks integrity and, therefore, he should not be given the job.

We are going to be setting a very bad precedent in this country if we do not enforce Chapter Six of the Constitution, since this is a very fundamental issue. If we do this then we are going to open a Pandora's box, and the Constitution will be abused right at our doors. Mr. Mututho might be fighting alcoholism, but even in his fight of drugs he is very selective. I do not know whether some of you are aware that he fights alcohol because it affects his community and he does not fight *miraa*. So, he is not the best placed person. Therefore, before Mr. Mututho is given the job, his name should be cleared in the courts; after that then his name can be submitted a fresh. There is no point of giving a job to somebody who has a case going on. I am actually very surprised by the Members of the Administration and National Security Committee.

*(Loud consultations)*

**Hon. Speaker:** Order, Members! Order, Members! Hon. Diriye must be heard, even if you do not like what he is saying. He has a right to be heard!

Hon. Diriye you cannot proceed; your three minutes are over.

Yes, Hon. David Kangogo Bowen.

**Hon. Bowen:** Thank you, hon. Speaker, Sir. I rise to oppose this Report. The menace of alcoholism and drug abuse in this country is a national disaster. There is no other Kenyan who has shown the passion to fight drug abuse and alcoholism except Mr. John Mututho. We have seen Members of Parliament in this House---- Quite a number of them have court cases, yet they are seated here honourably as Members of Parliament, and they want to prevent Mr. Mututho from chairing the Board of NACADA.

It is only in this House where we can fight the menace of drug abuse and alcoholism and we need to have a person of the calibre of Mr. Mututho to fight it. He has got all the qualification; we have seen affidavits from various Kenyans who have shown their support for Mr. Mututho. Since the operationalization of "Mututho laws" some women in various parts of this country have really appreciated it and even given birth.

They had stayed for so long without getting children, because their men had become very irresponsible due to drug abuse and alcoholism.

*(Laughter)*

We want to give Mr. Mututho the job and I hope when he becomes the Chairman of this important Authority, abuse of other kinds of drug, apart from alcoholism and heroine--- Drug barons and all others who do this business will be prosecuted.

With those few remarks, I wish to oppose this Report. Thank you, hon. Speaker, Sir.

**Hon. Speaker:** Hon. Millie Grace Akoth Odhiambo-Mabona, take the Floor.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Speaker, Sir, for giving me this opportunity. I wish to oppose the Report and in so doing I will try to be very brief. In this country we have very few people who are extremely passionate about anything. It is good coincidence that we are doing this today when it is the Universal Day for Children and tomorrow will be the World Fisheries Day. Mr. Mututho is very passionate about these two things. We have seen what “Mututho laws” have done. Every person in this House is affected directly by the issue of alcoholism. When this law came in the last Parliament, I remember sitting with at least two Members; one of them cried when we were talking about how everyone was affected very personally by alcoholism. We need more people in this country who believe very strongly in an issue that they can champion.

The reason why I would want to oppose this Report is that in the last Parliament, we set extremely high standards for accountability in this country. In March this year, we lowered those standards. The Constitution talks about equality, the standard used on one must be equally used and applied on the other. If he has been charged, he should serve in the position that he is seeking until he is proven guilty because we lowered the standards. I am not in any way encouraging corrupt practices, neither am I saying my standards have changed, I am consistent. We lowered standards and I am going by them. The day the courts will find him guilty, we should not even wait for him to be hounded out - my good friend, Mr. Mututho---

**Hon. Speaker:** Hon. Katoo, Majority Whip, take the Floor.

**Hon. Katoo:** Thank you, hon. Speaker, Sir. With your permission I am rising to move an amendment that the Motion be adopted, subject to the following amendment: -

(i) by inserting the following words after the figure 2013, “Subject to deletion of recommendation under paragraph 5.0 on page 15 of the Report”.

(ii) by deleting the word “reject” and replacing it with the word “approves”.

The reason why I am moving this amendment is because of what the Committee has recommended. When you read the whole report, one of the Committee’s recommendations and observations is that Mr. Mututho has extensive experience in public service and possesses the requisite qualifications for appointment as Chairman of NACADA. He displays the following qualities; passion, commitment, determination and zeal to deal with issues of alcohol and drug abuse.

You remember that Parliament one time rejected the nomination of one Kenyan for only one reason, that he had no passion. If he was rejected because of lack of passion - that was the time we were talking about what was called “passionmeter” - why do we reject the one who has passion? If you continue on the other page it says the only reason

why they are rejecting this nomination is because of a court case. The case has taken too long to conclude and needs to be finalized, but this is not of great interest. It is the Committee's view that Mr. Mututho is the best suited for the NACADA job. They continue saying, "We recommend to the appointing authority that he resubmits his name for reappointment once he has been cleared by the court". I also want to bring to the attention of the House the contents of Article 50 of the Constitution.

It deals with the issue of fair hearing. Article 50 (2) states as follows:-

"Every accused person has the right to a fair trial, which includes the right –

(a) to be presumed innocent until the contrary is proved, and

(b) to be informed of the charge, with sufficient detail to answer it."

That is the Constitution on fair hearing. I want to say that the Committee might have violated the constitutional rights of Mr. Mututho by presuming he is guilty yet he has not been proved guilty.

Finally, I have had the benefit of being with Mututho in the last Parliament. Just note that he was one of the most vocal hon. Members in the 10<sup>th</sup> Parliament. He attended 100 per cent whenever Parliament was in session and he was in the country. Overall, he was rated 4<sup>th</sup> best in the 10<sup>th</sup> Parliament, and first among the first-term hon. Members of Parliament.

Hon. Speaker, Sir, some of the laws that hon. Mututho sponsored, just look at the one where Parliament of Kenya put the research done by hon. Mututho at Kshs3.5 million while hon. Mututho put it at Kshs8.6 million. I would wish to ask my colleagues to support this amendment and approve his appointment.

With the Chair's permission, I kindly request hon. Chris Wakhungu to second the amendment.

**Hon. Speaker:** Hon. Wakhungu, it is your time to second.

*(Loud consultations)*

Hon. Members, even if something has been said which pricks, just relax.

**Hon. Wakhungu:** Thank you, hon. Speaker, Sir. I rise to support the amendment. In basic skills of report writing, there must be a logical flow in any report. When it comes to observations, they lead to conclusions and recommendations.

Hon. Speaker, Sir, the Committee Report, as my colleague has mentioned, says that hon. Mututho is the best suited for the position. So, logically, it shows that this is the best person for this position. The way it has been highlighted at Article 50 of the Constitution, the principle of being innocent until the contrary is proved, the issue here is for Mr. Mututho to wait and see if at all the court is going to rule otherwise. If it rules against him, it is my humble submission that he will have to resign. But in this case, I support.

*(Question of the first part of the amendment,  
that the word to be left out be left out, proposed)*

**Hon. Abongotum:** Hon. Speaker, Sir, as I said earlier, my good friend Chris Wakhungu, who is also a very good researcher has talked about methodology and logical follow on as the way things are supposed to move.

I wish to say that we have been very consistent and fair to the person of John Mututho, but there is something I want to correct that was raised by the Chief Whip. He read page 15 and did it selectively. I want to take you to the same page, page 15 paragraph two – of course the House knows the consequences of what they are going to do. It is good you should be prepared to carry the cross as a House. “Further, the Committee is of the view that Mututho is best suited for the NACADA job, save for the criminal charges facing him, and recommends that the appointing authority resubmits his name for re-appointment once he is cleared by the court.”

I am saying this because there is a precedent in relation to Mumo Matemu of EACC and the former TSC nominees. Therefore, there is a precedent to this. That is the clarification I wanted to make.

Thank you.

**Hon. A.B. Duale:** Thank you, hon. Speaker, Sir. I support this amendment. I want to take the House through the history lane. I am sure, after I am through with that, as we go about law-making, we will be very careful.

Hon. Mututho, in my opinion, is the man suited for this job. Of course, from where I sit as a Muslim, if I was given this job, I would not do it. Hon. Mututho brought a lot to this Parliament. Hon. Ng’ongo and hon. Shebesh will agree with me that one afternoon, hon. Mututho brought an amendment to the law. He said that the House must approve the Chair of NACADA.

I remember hon. Charles Kilonzo, Dr. Nuh, the great Speaker of Tana River County and I took him back. We asked him why he wanted to subject the Chair of NACADA alone to Parliamentary approval. He said: “You know, drug dealers can be appointed to be the Chair of NACADA.” Little did he know that the same amendment he brought before this House would today haunt him.

I am sure hon. Charles Kilonzo, the former MP for Yatta, will bear me witness if he is watching this debate. He went further and brought another amendment to this law and said: “The person to be given the job must be a person of high integrity”. Little did he know that amendment would haunt him.

I think the House must accept the fact that having a criminal case in court cannot bar you from leadership. There were many hon. Members of Parliament who stood for their seats when they had pending cases before court, and today they are great leaders in this country. Owing to the framing up of our two leaders by the International Criminal Court (ICC), people went to court. They were framed by some Western powers, who abstained from voting and who again went to the Assembly of State Parties and wanted to remove---

**Hon. (Ms.) Odhiambo-Mabona:** On a point of order, hon. Speaker.

**Hon. A.B. Duale:** Hon. Speaker, protect me from hon. Millie Odhiambo because we have a long history. I do not want to go into the details. The history is in the details.

*(Laughter)*

Hon. Speaker, the case that hon. Mututho is facing is a classical example of a judiciary which is not functioning. How can you have a case for 15 years? Of course, it is not the whole Judiciary but that Judge who is presiding over the case. This is because hon. Mututho was elected to this House in 2007 and the case had been going on for five

years before he became a Member of Parliament. So, it is just like the Truth, Justice and Reconciliation Commission (TJRC) Report. Hon. Nkaissery, who is sitting here, is framed for something which he was not even aware of when he was a good general; that is why we are saying that Parliament cannot be a conveyor belt and pass the TJRC Report.

So, hon. Speaker, I am sure the Ethics and Anti-Corruption Commission will raise issues, but I want us to give this guy this job, so that he deals with *chang'aa*, *busaa*, the other one of my neighbours in Ukambani, and *miraa*. Of course he will have to deal with them. He also will have to deal with these drugs in order to make sure that the likes of Chinedu do not come back to Kenya. We should give him this job in order for him to make sure we do not lose our young people of Kisauni in Mombasa through drugs. I think we should give Mututho this job and ask him that he continues with the zeal with which he brought the law. He must do that work.

Hon. Mbadi, one day you might look for a job as the Chairperson of Kenya Revenue Authority (KRA). So, when you bring laws, make sure you make laws for posterity and that you do not make laws that will hang you tomorrow.

Hon. Speaker, I beg to support the amendment and urge this House to support hon. Mututho to get the job.

**Hon. Speaker:** Hon. Dalmas Otieno.

**Hon. Anyango:** Hon. Speaker, thank you for giving me the opportunity to comment on this amendment. I am a member of this Committee and the mood in the House now is exactly the mood that was in the Committee yesterday. Mr. Mututho is not in court because of any crime. It is a crime of the category described as economic crime. It is the crime that made Mwiraria and other members of the Cabinet to step aside just for investigations the moment they were charged. What is about to happen in the House is that we are undertaking to move two amendments.

One is that if the Judiciary is going to take so many years to determine a case, you will acquit the person in the House. Second, we are undertaking that if you recommend we appoint Mututho, we are automatically amending the Economic Crimes Act. Now that the Leader of the Majority Party is listening to me and he is the one who raised this, I expect him to publish two Bills. One will provide that if any case takes a period, we shall agree in the House that all the accused shall be innocent. Two, under the Economic Crimes Act anybody with a charge of a financial nature that would impact on his integrity will be presumed innocent in all respects until proved guilty.

I only want to caution that impunity is the crime generally committed by those of us who are effective and efficient performers, and who are in power and cannot be challenged by the ordinary *wananchi*. So, we are going towards a reversal of the judicial reform process that was going to strengthen the rule of law in this country.

Hon. Speaker, we agonised. I saw Kamama, the Chair of the Committee, shedding tears when the word “reject” was going to be written.

**Hon. Speaker:** Hon. Members, you said you wanted three minutes. So, you must organize your thoughts and speeches within those three minutes.

**Hon. Dawood:** Thank you, hon. Speaker. I wish to support the amendment by hon. Katoo and I would like to say that the Committee should amend this Report by inserting “accept” and deleting the word “reject”. I would like to correct some hon. Members who have commented that *miraa* is a drug. *Miraa* is not a drug and that should

be stated categorically until it is proved otherwise, because there is no scientific research that says *miraa* is a drug. I think people who purport to say that *miraa* is a drug are wrong. We are even contemplating making *miraa* cigarettes in future and *miraa* gums as well.

With those few remarks, I wish to support the amendment by hon. Katoo and we should give hon. Mututho this job. He deserves it and he has done all that can be done. I do not think any of the hon. Members who are here can really be more passionate about alcohol-related laws than hon. Mututho. So, let us give him the job; let us pass this amendment. Thank you.

**Hon. Speaker:** Hon. Members, I am allowing debate on this amendment because it is of great importance. It portends a lot and, therefore, I will hear a few more people. Hon. Manson Nyamweya.

**Hon. Nyamweya:** Thank you, hon. Speaker for giving me a chance. I am going to oppose the amendment. As we stand here today Kenyans are watching us. If we want to do this, then let us amend Chapter Six of the Constitution. Let us pluck it off. If we pluck it off then we can sit here as Members who follow the rule of law and regulations and pass this name. I have nothing against Mututho. I have nothing against what he can do for this country, but the law is very clear. Members, this is how dictatorship comes; it comes when we do what we want to do today. Let me read a section here. He says that: "Please if you are defending me---

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

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

**Hon. Sakaja:** Is the Member in order to mislead the House that there is a provision in Chapter Six of the one and only Constitution we have that would bar Mr. Mututho from taking this office? He should show us any provision in Chapter Six that says that a Member, or a person, who has a case is unsuitable for any public office. Kindly show us the express provision in the Constitution.

**Hon. Nyamweya:** Thank you. I am going to the section where the person who was being interviewed told the panel not to use it and I am going to quote. He said:

"My humble request, therefore, is that you restrict the approval and not vetting within Section 6(2) of NACADA law and, perhaps, one day when I am lucky to get a constitutional office then Parliament can do the vetting under Chapter Six of the Constitution."

It is him who was saying, that if he was going to be vetted that section should not be used.

Another point is that when the nominee was being interviewed he said this---

**Hon. (Ms.) Abdalla:** On a point of order, hon. Speaker, Sir. Is it in order for the hon. Member to state that hon. Mututho refused to be vetted? I, as the Mover of the NACADA Act put Section 6(2) to deal with the fact that we feared that the persons appointed to this position would be drug dealers or persons who work with the people in the alcohol sector. I was on record as saying that I was disappointed with the work done by the previous Chair of NACADA, because he was a consultant for responsible drinking. That is the basis on which Section 6(2) of the NACADA Act was enacted.

**Hon. Nyamweya:** Thank you, hon. Speaker, Sir. I would like to inform hon. Members that I am quoting the letter written by hon. Mututho and not me. This is the letter he gave to Parliament. If he said so, he knew that he was guilty. He said do not---

**Hon. Onyonka:** On a point of order, hon. Speaker, Sir. With all due respect I would like to tell my colleague and friend, Hon. Manson Nyamweya, that he was in this House two years ago when we diluted Chapter Six of the Constitution. Its standards and benchmarks were lowered. This House legitimized the fact that hon. Mututho can keep the job until he is found guilty and then he can leave the job.

The point that hon. Nyamweya is belabouring here about Mr. Mututho's illegality--- Mr. Mututho is still innocent until proved guilty.

*(Applause)*

Could the Member stop misleading this House?

**Hon. Nyamweya:** Thank you, Hon. Speaker, Sir, for being kind to me.

He has said that he wants this matter to end on 20<sup>th</sup> November, which is today. Why can hon. Members not wait for him to get a ruling from a court - I am going by the Report of the Chairman – so that the President can submit his name if this matter is concluded and we give him the job? Somebody else can be given the job if hon. Mututho is convicted.

Hon. Speaker, Sir, I oppose the amendment.

**Hon. Njenga:** Thank you, Hon. Speaker, Sir. I support the amendment. Section 6(1) of the NACADA Act makes Mututho more qualified. He has been in this Parliament and he has also been in the private sector. However, Section 6(2)(a) states that a person shall not be appointed under sub-section (1)(a),(h), (j) and (k) unless such person is of impeccable character and high moral standing in relation to drugs and chemical substance abuse, and has the capacity to inspire and achieve the objective of the Authority.

Hon. Speaker, Sir, as I speak today, Mr. Mututho is not a pretender. He really fought for the “Mututho” Act in this House. That law is a credit to this House today. That law also addresses a national disaster today. Almost every home in this country is affected either directly or indirectly by alcohol and drug abuse.

Considering the enormous size of the cartels in this country, the size of the brewers and what they can do for us, and considering that Mr. Mututho is innocent until proved guilty, and that he has shown passion and the Committee agrees, I support the amendment that, probably, the only person who can do the best job is hon. Mututho.

I, therefore, support the amendment.

**Hon. Ng'ongo:** On a point of order, Hon. Speaker, Sir. Hon. Kigo has just repeated what other Members have said before, that Mr. Mututho is innocent until proved guilty. I want to ask whether the hon. Member is in order when the Anti-Corruption and Economic Crimes Act is very clear. This is what this Act says under Section 6(2). It says:-

“A public officer who is charged with corruption or economic crime shall be suspended at half pay with effect from the date of the charge. A suspended officer who is on half pay shall continue to receive the full amount of any allowance.”

I also want to be on record as saying that hon. Mututho is my friend but as former President Moi once said about the late George Saitoti, friendship is different. Are we going to appoint Mututho and then suspend him immediately on half pay? Could I get a clarification based on this provision of the law, or are we going to amend the law as hon.

Dalmas said? This is because the law requires that if you are charged in court, you are supposed to be suspended on half pay. Could someone clarify to me that?

**Hon. Speaker:** Obviously, hon. John Mbadi purported to rise on a point of order but went on to argue his case. Hon. Members, you must make up your mind about this.

*(Question of the first part of the amendment, that the word to be left out be left out, put and agreed to)*

*(Question of the second part of the amendment, that the words to be inserted be inserted, put and agreed to)*

*(Question of the Motion as amended proposed)*

**Hon. Speaker:** Hon. Members, I know that we are not like the last Parliament or even the previous Parliament. We are now 349 Members and this is a challenge. In terms of what we have passed if every Member was to speak for the full 10 minutes in any given day like today when we sit from 2.30 p.m. to 6.30 p.m., even without saying prayers, we can only have 24 Members speaking.

Of course, you are right to go and complain anywhere, even in churches and mosques and everywhere else, but it is your own rules. Even if we did not say prayers and we started at 2.30 p.m. on the dot--- You have passed a resolution that every Member speaks for a maximum of 10 minutes, only 24 Members out of 349 Members will contribute on any given day.

Sometimes it is only fair that you yourselves and the country appreciate this. These are things that they do not know even when they write in the newspapers and make comments. It is for that reason that from time to time, you, hon. Members, do agree to reduce the time that a Member will take to contribute so as to accommodate as many of you as possible.

Hon. Members, I am saying this because I can see that there are 53 requests and that will require more than two days' sittings. This is the magnitude of the problem that is there. We will get five Members from each side to contribute for two minutes each. You must allow me to recognize counties so that if hon. Dalmas Otieno comes from the same county as hon. John Mbadi, Hon. Mbadi will not get a chance to speak.

Yes, hon. (Dr.) Pukose from Trans Nzoia County.

**Hon. (Dr.) Pukose:** Thank you, hon. Speaker, Sir, for allowing me to contribute to this Motion. I rise to support the Motion as amended.

Article 50(2)(e) of the Constitution presumes that every accused person has the right to a fair trial, which includes the right to have the trial begin and be concluded without unreasonable delay.

Hon. Mututho's case has taken between 13 and 15 years. In this case, if we allow the Ethics and Anti-Corruption Commission to continue this way--- Today it is Mututho but tomorrow it will be somebody else.

By writing a letter to say that they have delayed their cases or that they are facing any corruption charges, it means that many Kenyans out there are going to lose opportunities to get jobs for which they are qualified. We have not seen anything. Even

talking of the Economic Crimes Act, it deals with a serving public servant being suspended. Hon. Mututho is not yet in office. The case of a public servant is acted upon as a result of him performing his duties in the office he holds. That is when you can ask him or her to resign and clear his or her name, when earning a half salary. Hon. Mututho cannot be on a half salary because he does not have a job. We are asking this House to approve his appointment.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. James Gordon Kwanya Rege.

**Hon. (Eng.) Rege:** Thank you, hon. Speaker. I want to add my voice to all voices that are supporting my friend, hon. John Mututho. I just wanted to oppose hon. Mbadi on what he was saying as well as the doctor's remarks. You cannot be suspended if you do not have a job. How can that happen? Hon. John Mututho has not been given the job. He should be given the job on the basis that he is qualified. I know that John can do the job.

**An hon. Member:** We give him the job today and then he gets suspended tomorrow?

**Hon. (Eng.) Rege:** No, he is not going to be suspended tomorrow because his court case has taken 15 years. Using probability function, we do not know when this case will be brought to an end.

Hon. Speaker, I urge you to put the Question, so that we can end this thing.

Thank you.

**Hon. Speaker:** Yes, hon. Timothy Wanyonyi.

**Hon. Wetangula:** Thank you, hon. Speaker. I wish to support the Report as amended.

Hon. Speaker, when hon. Mututho appeared before our Committee, he exhibited a lot of passion for the job. He is committed to eradicate drug abuse in this country. I believe that justice delayed is justice denied. If we are going to deny him this job simply because he has a case pending in court, we will be doing injustice to this man. I support the idea that we approve his nomination and give him a chance to serve this country and eradicate the vice of drug abuse in our country.

With those remarks, I beg to support.

**Hon. Speaker:** Yes, hon. Samuel Moroto Chumel.

**Hon. Chumel:** Thank you, hon. Speaker, for giving me this opportunity. I also rise to support the Report as amended. Some of us have known Mututho for a long time. We have also seen what he has done. As some hon. Members said, this could be like encouraging others to do what hon. Mututho has done. His work is now rewarding him. It is not that we are putting him in that position because of the name "Mututho" but rather because of what he has done. This is a challenge to all of us. Even if he is given the opportunity to do the job, if other people do not support him, his effort will be in vain, because nothing useful will come out of it.

We all know that alcohol and drugs have ruined the youth of this Republic. In our upcoming urban centres, everybody is "dead". There was a time I visited some parts of this country, where I found that there were no pre-school children because the people who were supposed to make babies to fill classrooms were no longer there. You find women beating up men not because they are violating men's domestic rights but rather because of alcohol and drug abuse. If we support hon. Mututho, we will make it and our

country will revert to its healthy status. Even as we sit here, some of us are suffering from high blood pressure and diabetes because of what they do every evening.

*(Laughter)*

With those remarks, I beg to support.

**Hon. Speaker:** Yes, hon. James Opiyo Wandayi.

**Hon. Wandayi:** Thank you, hon. Speaker. Even though the direction that the vote on this Motion will go is clear, I must go on record that we cannot, as a House, afford to apply the law selectively. We cannot live in selective amnesia. What is the purpose of Parliament asking for the opinion of the Ethics and Anti-Corruption Commission? Is it for academic purposes? Is it a mere ritual? This is the first time the Ethics and Anti-Corruption Commission has given a qualified opinion. For a long time, we have been complaining that they have not been emphatic enough in their responses to Parliament's inquiries. There is no doubt whatsoever that under the law, especially under Article 73(2) of the Constitution – and given what the Ethics and Anti-Corruption Commission has recommended – despite his eloquence, passion and competence, hon. Mututho cannot be given this job. It is important that we go on record that even though we love hon. Mututho, given the law and the precedent that has been set in this House, he cannot be given this job. Just the other day, the CEO of the IEBC was sent home because he was taken to court on account of corruption-related charges. We cannot afford to apply the law selectively. On that basis alone, I want to oppose the Motion as amended. Hon. Mututho should wait for the court to acquit him before he can be given this job.

Thank you, hon. Speaker.

**Hon. Speaker:** Well, of course, you must be heard.

Yes, hon. Mary Wambui Munene.

**Hon. (Ms.) Munene:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to say something about hon. Mututho but, first of all, I want to thank the various leaders of Nyeri County who are here today to see how we work.

Hon. Speaker, I rise to support the Motion, as amended, because of one thing. Where we come from, our children are suffering because of alcoholism. Mr. Mututho has shown this country that he is the one who can do this job. Women and their children are crying that their husbands and fathers are not going home. They are not paying school fees for them. Women have been left at home, doing their work. People are crying.

Refusing to give this job to Mr. Mututho is not doing justice. There are people in this House who have pending court cases. As we passed the new Constitution, we were told that even if one is charged in a court of law, one would not be guilty until proved guilty by a court.

We know there are people who are opposed to this because they are making money. They have become rich as our children suffer. We have read in the Bible about the woman who was to be stoned, but Jesus told the people if any one of them had not sinned then they should be the first to throw a stone at the woman. Nobody threw a stone at the woman. So, let us not pretend here. If somebody is good let us give that person the job. He is going to save this country from alcohol and drugs.

May God bless you. Thank you.

**Hon. Onyango:** Thank you, hon. Speaker for giving me this chance. I happen to fall within the generation that is mostly affected by drugs in this country. I will be the last person to oppose anybody who is so passionate about fighting drugs in this country. However, as a House, hon. Members must take responsibility that we are all collectively responsible for laws that emanate from this House; whether bad or good.

So, if today we agree that hon. Mututho is passionate about fighting drugs then this House must also come up with mechanisms for curtailing his passion for other things like economic crimes; he may have passion for other things that we may not know and so on. Personally, I know that from the point of law and as things stand now, until somebody exhausts the possibility of appeal we must presume that the person is innocent. As a youth, I would be so much happy--- Passion can be passed genetically; hon. Mututho could allow his son, who is my age mate and who has the same passion as the father, to carry on with this responsibility.

I support Mr. Mututho for this job, but I also want us to look at the other side and ask: For his passion of other things, what do we do?"

**Hon. Speaker:** So, you are proposing to replace his name with that of the son?

**Hon. Onyango:** Yes.

*(Laughter)*

**Hon. (Dr.) Shaban:** Ahsante Bw. Spika. Nasimama kuunga mkono Hoja hii baada ya kurekebishwa kwamba mhe. Mututho apewe nafasi ya kufanya kazi ya kupigana na shida hii kubwa humu nchini. Kwetu sisi tunaotoka Pwani, hili ni suala la kusikitisha. Watoto wetu kule Pwani wanazaa watoto kabla watoto hao hawajafika muda wao. Watoto wanazaliwa wakiwa vilema na matatizo kibao kwa sababu ya matumizi ya mihadarati.

Ukienda kule Mkoa wa Kati na hata Mkoa wa Pwani utawakuta vijana wakiwa wamelewa mchana na hawana habari kuhusu yanayoendelea. Tunamtaka mtu kama Mhe. Mututho apigane na mihadarati na pombe nchini Kenya. Haiwezekani kumkataza kazi na hali tunamsifu kwa kazi nzuri aliyofanya akiwa Bungeni kupitia sheria aliyoleta dhidi ya shida kubwa iliyotukabili humu nchini. Sisi tumemwona hata kule vijijini akiangalia kunaendelea nini.

Ningependa kuwaambia wenzangu kwamba Mhe. Mututho hata kabla hajateuliwa kwa wadhifa huu alipitia kule kijijini kwangu Taveta kuangalia ni njia zipi zinatumiwa kupitisha pombe haramu ambayo inaumiza watu. Vile vile, anaelewa njia za kupitisha *bhangi* zi wapi. Kusema ukweli si kawaida mtu kutumia hela zake kufanya kazi zile isipokuwa ni vile yeye anajua vijana wetu maisha yao yataharibika kwa ajili ya kutumia madawa ya kulevya na pombe. Je, ikiwa mtu kama Bw. Mututho hawezi kupatiwa hii kazi, nani mwingine atapatiwa?

Bw. Spika, mtu akiwa na kesi kortini isiwe sababu, kwa sababu korti itaamua ikiwa mtu anafaa ama hafai. Kwa sasa hivi tumpe Mututho nafasi ili afanye kazi atusaidie, hasa sisi wazazi tulio na kilio na uchungu.

Naomba kuunga mkono Hoja hii.

**Hon. (Maj-Gen.) Nkaisery:** Thank you, hon. Speaker. I stand to support the Motion as amended. When I look at the observations and findings of the Committee it is very clear that this gentleman fits the bill. The Committee in its finding states thus: "Hon.

Mututho is committed. He displayed passion in this job.” We need somebody who is very passionate. The Committee also said that hon. Mututho is best suited for this job. We need a person like that to fight the war on alcohol and drug abuse.

I have been with Mr. Mututho for the last five years and he is a warrior in this war. The war against alcohol and drugs is worse than the war on terrorism. We need somebody who is courageous enough. We need somebody who can bite the bullet. We need somebody who can stand and fight this serious war. In this country, today there is nobody, in my view, who is more of an icon in this war against alcohol and drug abuse than hon. Mututho. He is a real warrior. He is czar.

I know the hon. Member behind me said that he could be having other passions. I know we need to look at the law, but what is very important is the fact that justice delayed is justice denied. If the Judiciary knew that Mututho had a case, they should not have been waiting for the last 15 years.

We need to approve the name of this hon. Member, so that he goes and fights this menace.

With those many remarks, I support.

**Hon. Speaker:** Finally, let us hear somebody who, in my opinion, represents the youth. Hon. Barchilei.

**Hon. Barchilei:** Hon. Speaker, I rise to support this Motion as amended. It is very clear that the House is of the view that Mututho is the best person for this job. We have read in the Report of the Committee that this gentleman is able, but only that he has a court case. This should not deny him this opportunity since he is the champion of the famous “Mututho laws” that shaped this country.

There are so many people who have pending cases in court starting from the President of Kenya and our beloved Deputy President; they have a court case based on propaganda, yet they are performers. Therefore, Mututho should not be denied this opportunity. He has shown that he can perform. He brought the law that has really helped many people. As a representative of the interests of the people of Soi Constituency and the Republic of Kenya, I want to say that pending court cases should not be an issue.

I support this Motion as amended.

**Hon. Speaker:** Hon. Members, whatever has a beginning must have an end.

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

*Resolved accordingly:*

THAT, pursuant to the provisions of Section 6(1) of the National Authority for Campaign against Alcohol and Drug Abuse Act (NACADA), (Cap 121B of the Laws of Kenya), this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of the Chairperson of NACADA, laid on the Table of the House on 19<sup>th</sup> November, 2013 subject to deletion of the recommendation under paragraph 5.1 on page 15 of the Report and approves the appointment of Mr. John Mututho as the Chairperson of NACADA.

## BILL

### *Second Reading*

#### THE WILDLIFE CONSERVATION AND MANAGEMENT BILL

*(Hon. Katoo on 20.11.2013)*

*(Resumption of Debate interrupted on 20.11.2013- Morning Sitting)*

**Hon. Speaker:** Hon. Members, this Bill was moved and seconded, but debate had not commenced. Therefore, the first opportunity goes to the Chairperson of the Committee responsible, hon. Amina Abdalla. You have 20 minutes. So, make good use of them.

**Hon. (Ms.) Abdalla:** Hon. Speaker, Sir, I stand to support the Wildlife Conservation and Management Bill that was moved by the Leader of Majority Party and seconded. I want to acknowledge those 20 minutes because we have a lot to say. If we were allowed the normal time for contribution, it would have been a disservice to the work that my Committee has done. I wish to thank Members of my Committee for the great work that they put in, in reviewing this Bill.

As we are all aware, Kenya is rich in natural resources and many of our wildlife conservation areas are categorised as of mega diversity. Others are recognised as world heritage sites and historic sites. About 70 per cent of our tourism revenue emanates from wildlife-related tourism. It contributes 25 per cent of our GDP and 10 per cent of our formal employment. Most of our water towers are also found in protected areas like the Mau and the Cherangani hills. All those water towers are protected areas. The protected areas and wildlife resources of this country are important for our economic development.

Despite us having a substantial size of protected areas, much of our wildlife are found outside the protected areas. Because of the existing laws, communities living around wildlife areas see wildlife as a burden rather than an opportunity. So, because of this challenge that is facing our wildlife, and the fact that recently there has been more sophisticated weapons and methods used by poachers to eradicate this very vital resource in our country, it was felt that there was need to review the Wildlife Management Act, Cap.376, that was initially passed by this House in 1975. It was found to be inadequate to address the challenges and complexities of wildlife management in Kenya.

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

*[The Temporary Deputy Speaker (Hon. (Ms.) Mbalu) took the Chair]*

It is for this reason that in the last 10 years, Private Members, the Ministries and all successive Governments, have tried to amend this law. I want Members to note that because of divergence in opinions of stakeholders and the fact that we, as a country need to make a very substantive decision as to whether we want to allow conservation of wildlife or continue with the colonial, the protectionist approach to wildlife, we have had

a lot of opposition to having this law amended. Fortunately, the new Constitution has provided us with opportunities that allow us to marry the two conflicting views and come up with a middle ground, hence the contents of this Bill.

This Bill received substantial public input prior to the 2010 Constitution and after the massacre of some lions in the Tsavo. The Cabinet moved very fast and approved a Bill for publication. At that point, some of the stakeholders felt that the Bill that was approved by Parliament and subsequently published under the name of the Leader of Majority Party, had left out a few things that were of concern to them. However, I am pleased to report that after consultations with these stakeholders and even the Ministry, we have agreed to almost 95 per cent of the concerns of the stakeholders, and have subsequently included amendments that will address their issues.

The list of institutions that we have consulted with is very long. They include the Wildlife Conservation Association, the East African Wildlife Society, Vision 2050, Wildlife Direct, Walk with Rangers, Kenyans United Against Poaching, Kenya Land Conservation Trust, COMESA, Narok Wildlife Conservancy Association, Taita Taveta Wildlife Conservancy Association, Youth for Conservation and Network for Animal Welfare among others. We had long discussions and agreement with the Ministry of Environment, Water and Mineral Resources and Environment.

As a Committee, we have agreed with the stakeholders on the following things that must be done for this House to pass this Bill: One, the Bill must be aligned to the provisions of the Constitution on the management of natural resources. Two, we feel that we have to strengthen compliance with wildlife conservation by all parties, so that we are able to curb the poaching menace. Three, we are proposing the reduction of human-wildlife conflict through focus on co-existence and promotion of some level of consumptive use. Four, we believe that part of our problem is purely from regulations. So, we are proposing some strengthening of regulations. Fifth, we are dealing with revenue generation and sharing, so that we can have communities living with wildlife co-existing and not seeing it as a burden.

Hon. Temporary Deputy Speaker, more importantly, wildlife conservation in the past, prior to the 2010 Constitution was not considered as an acceptable land use system. To increase investment in this sector, we will be proposing amendments that will increase incentives for persons living with wildlife or wishing to set up conservancies to do the same. I wish the Members, especially those from wildlife areas, will be here because there is a very vital issue that we have addressed. The Constitution, in the Fourth Schedule, declares management of wildlife as a function of the national Government. That means that every single protected area should be under the KWS. However, a very important aspect that even the members of the Commission on the Implementation of the Constitution had to be made aware of by hon. ole Kenta is the fact that many national reserves are found in community land, which makes it illegal or unconstitutional for the KWS to want to use this law to be the protectors of wildlife resources.

So, we will be proposing an amendment to retain national reserves in appreciation that Samburu, Narok and many other county governments currently managing national reserves that are community owned will prefer to retain them.

Therefore, hon. Temporary Deputy Speaker, we will be proposing an amendment to retain national reserves in appreciation that Samburu and Molo county councils and many others, currently managing national reserves that are community owned, would

need to retain them. Should we pass this Bill without that scrutiny, we will have started on a very bad footing.

Secondly, the fact that it is the responsibility of the national Government to manage natural resources means that payment for the activities of managing wildlife must be done by the national Government. So, we are explicit that the allowances for county conservation committees will be paid by the national Government. That is one of the main reasons for aligning this Bill with the Constitution so that we do not have counties fighting for resources.

Thirdly, for somebody who has worked in this sector, the institutional framework of the wildlife management in this country has been the reason for failures that we may be having. I am happy to report that my Committee was very clear that we were going to propose rationalization of establishing new institutions. We will therefore, be deleting the proposal by the Ministry to set up a conservation directorate. It is our view that a directorate is not necessary. The job of the Ministry is to do policy and everything listed under the job description of the conservation directorate. Should anything change in their job description that would again require an amendment, it will not be necessary. Therefore, I would urge hon. Members that any Bill that proposes the formation of a directorate, would amount to over-legislation.

Fourthly, we will be proposing amendments that will strengthen the Kenya Wildlife Service (KWS). In strengthening their core mandate, we have removed the regulatory role from KWS, which they have now. The Bill had suggested the formation of a regulatory council. As a Committee, we would want to propose to this House that the regulatory council is unnecessary. It is the work of the Cabinet Secretary to manage policy and regulation. Therefore, we will be giving that assignment to the Cabinet Secretary to strengthen his function in wildlife conservation.

The other issue is that, we felt that the Bill proposes unnecessary duplication of roles. We will be proposing the collapse of the County Wildlife Conservation Committee because we feel that additional functions and two members will handle the work that the compensation committee will be doing.

Fifthly, as I said, I have worked in this sector and one of the things I have noted is that all the major players happen to be graduates of WCSA (Wildlife Conservation Society of Tanzania) Moshi. Any time you go to a conservation conference, whether it is in Ethiopia, South Africa or whichever other place, they all say they went to WCSA. We feel that Kenya needs to have an institution similar to WCSA, if not stronger. Therefore, we will be proposing to this House that we establish the wildlife research and training institute.

I want us to note that the research institute is very important because as of now, if you talk about research you will be talking about Dr. Paula Kahumbu and Dr. David Western, but you will not talk about an institution. What if these people die? As a country, where are we going to have a depository of the research that we have been doing in this sector? So, with that institute, we would be able to have both Government and university academia and players in the sector doing research that has a home. Therefore, we urge hon. Members to support.

Hon. Temporary Deputy Speaker, I have already talked about the regulatory council. The fact that we want to tighten and strengthen the regulatory mechanism, we do not believe that we need to set up an extra institution as has been proposed by the Bill.

Hon. Members should note that even the Ministry of Environment, Water and Mineral Resources has finally agreed with us that this was not necessary. All we need to do is to make the role of Cabinet Secretary easier. What we have done is that we are proposing that every five years, there will be a strategic plan for the sector developed so that, that could then be the basis on which we measure the output of Cabinet Secretary, rather than have no strategy and no management plan. Therefore, we will be proposing that.

Hon. Temporary Deputy Speaker, to deal with the issue of human-wildlife conflict, and to further the spirit of mutual co-existence between wildlife and communities, we have proposed some amendments that would improve ownership of resources by communities. The Committee will, therefore, be proposing an elaborate compensation plan.

Let me begin by what has not been there in the past. Due to abuse by some people, the Wildlife Act of 1975 was amended to reject compensation for crop destruction by wildlife. We are recommending reinstatement and also saying we look for mechanism of capping abuse. There were cases where farmers in Narok complained of crop destruction, especially large-scale farmers who use helicopters and airplanes to spray their crops. They would drive wildlife into their farms so that the Ministry would compensate them. Therefore, we are protecting the Government while at the same time ensuring that small-scale farmers who are really affected by destruction of their livestock and crops are compensated.

We have heard a lot of complaints about the low compensation when community members living around wildlife areas are killed, maimed or disabled by wildlife. We were torn between going to the extreme of giving very high and very low compensation that was proposed by the Ministry. We reached a middle ground by appreciating that the money to compensate these people will come from the Exchequer. For us who hold the purse, we must take our responsibility of ensuring that we balance the two; that the Exchequer is not overtly punished and the people who have been affected are adequately compensated.

So, we are proposing an amendment to ensure that compensation for death is pegged at Kshs3 million. It is currently very low. I think it is Kshs200,000. The compensation for permanent disability is pegged at Kshs2 million and any injuries is pegged at Kshs1 million. Kindly note that these are similar figures to those that were proposed in the last Bill on third party insurance.

Hon. Temporary Deputy Speaker, on offences and penalties, we have enhanced them significantly. We thought that it was important to categorise the offences and we have increased the offences of killing wildlife that are in category "A", that is elephants, rhinos, lions and the rest to Kshs20 million or life imprisonment. A fine of Kshs5 million or imprisonment for category "B" and offence under category "C" would attract a fine of Kshs1 million.

Hon. Temporary Deputy Speaker, there is a report I had tabled in this House on complaints about drought and famine and communities wanting to use wildlife areas. Arising from the input from members of the pastoral communities, we will be proposing some amendments on increasing accessibility to those areas so that animals do not die during famine but it has to be declared a national disaster.

On incentives and benefits, we have enhanced them so that people with land and would want to get into conservation, it would be possible to do so. After the review of the

process we talked to a Member, hon. Mwadime, who gave us input about benefit sharing. We received similar inputs from the Commission for the Implementation of the Constitution (CIC) that we intend to add to the amendments.

Hon. Temporary Deputy Speaker, we will be recommending amendments that would decriminalize non-compliance to a management plan. If you have your land and you give it for conservation and you are then penalized, if you do not adhere to that, then it would be going against the current standards where environmental crimes are not seen as criminal. They are dealt with as civil. So, we will---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Amina Abdalla, you have 40 seconds left. You should be finishing.

**Hon. (Ms.) Abdalla:** In conclusion, I want to thank all the stakeholders for their input. I also want to thank my members for taking time and I want to note my appreciation to the Ministry of Environment, Water and Mineral Resources and especially the Principal Secretary who, when we did not have a consultant to facilitate a workshop, he took up the assignment and did a very great job.

With those very many remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, hon. Amina for your intensive contribution to the Motion. Hon. Samuel Nderitu.

**Hon. Nderitu:** Thank you, hon. Temporary Deputy Speaker. I rise to support. Having been a member of the Committee, I must admit and thank our hon. Chairperson for the great contribution and leadership she has provided in getting this Bill to this point. We understand that it has been in previous Parliaments and that it has taken long to come here.

I will only talk on a few parts of it but I feel a great step in the management of our wildlife has been taken. For example, Part IV, that is sections 24 and 25 have dealt with devolution. We see the Bill has introduced Wildlife County Committees with membership that has been detailed, which is going to be of great help. We know that with the new setup of Government and even having observed that wildlife is a national Government function, the county governments still feel that as the keepers they need to have a hand in it. There are proposals in the Bill where we are going to have Wildlife County Committees that are going to work on the wildlife user rights. They are going to work on management plans because there are elaborate management plans that have been proposed by this Bill. There is distribution of resources. They will bring stakeholders together whenever they want to make decisions relating to the management of wildlife at the county levels and they will also participate in land use planning. This is very important because wildlife conservation and management has been identified now as a land use. It is a form of land use and that is why there is a lot of emphasis on people and even encouraging people to start conservation areas.

The Chair has talked about compensation. We know this is one of the problems that have made people view wildlife as a menace and not as a resource. I remember even when we were having a retreat on this Bill, a member of my constituency called me and told me that 25 of his sheep had been mauled by a leopard and I felt very helpless. However, where we have reached now, the common person and those people living next to the wildlife have been taken care of and the endowment fund will be established. It will get some money from Parliament and levies that may be charged by the KWS from

the investors who are going to make investments in wildlife conservancies and many other investment opportunities that will come.

The compensation scheme will also get money from the Budget which shall be appropriated by Parliament. We did not know how much until we thought of the insurance and it has been well put. People may say that even if you pay Kshs3 million or Kshs5 million it will never bring back lives, but as a responsible Parliament and Committee, we had to do something. I think that has been properly said by our Chair.

Hon. Temporary Deputy Speaker, then there is the management of that compensation. It is going to be done by the County Wildlife Conservation Committee. That way, we are taking services down to the counties. People will not need to come to the KWS Headquarters for compensation. It will be the responsibility of the Government.

The other point I would like to talk about is the human-wildlife conflict and this occurs because wildlife have neighbours who are human beings in most cases. We know there has been a lot of effort to fence parks but it has not happened everywhere. The Bill recognizes that somebody might kill an animal either in self protection or because it has invaded human territory. It clearly says that if such a thing happens, wildlife rangers will remove that animal either by way of killing or trapping it. I am not saying that there will be severe penalties for killing animals but the law has recognised that you can also kill an animal in self protection.

I have only given a few examples of what I have seen. There was a Private Members' Motion that came here urging the Government to do something about human-wildlife conflict. I remember Madam Chair saying this morning that this is our actual work and not those Motions of requesting and urging the Government. This is what becomes law and this is what the Government can work on and not those Motions that urge the Government to do certain things. I believe this should be given more seriousness than the Motion. I remember we were very passionate and all of us including myself contributed to that Motion. This Bill will take wildlife conservation and management many steps forward.

Hon. Temporary Deputy Speaker, with those remarks, I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, hon. Nderitu. Hon. Members, I can see from my request list that you really want to contribute to this Bill. From now to 6.30 p.m., we only have six Members to contribute on the Bill. Do we agree to reduce on the time a Member contributes on this Bill? So, we agree on five minutes per Member to contribute.

*(Question, that time be reduced, put and agreed to)*

Hon. Members, we have five minutes each to ventilate and discuss this Bill. I can see many requests. I am sure that this is one of the areas that most of us came to Parliament with promises to address.

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Speaker, I rise to support this Bill. As the Chair has said, it has taken a very long time for us to have a Bill or a Motion on wildlife in this House. I think this Bill is very timely. I congratulate the Chair for moving this Bill.

First of all, I am delighted with what she has said. This is because this Bill will provide legislative framework for the protection of wildlife which is very important. Some of us who have had a chance to go out of this country when you say that you are coming from Africa and particularly Kenya, they tell you that this is a country of wildlife.

I think this Bill will go a long way to help us conserve some very important wild animals. For example, we used to have white elephants in Mount Elgon but they are not there today. I have had a chance to see white rhinos in Embu but they are not there these days. They have almost become extinct. We had tigers in this country but because of lack of a legislative framework, some of them have become extinct.

Hon. Temporary Deputy Speaker, I want us to take this Bill very seriously and have these amendments as soon as possible because wildlife provides employment. Most of our children are employed at the KWS and private conservancies. This country has also benefited in terms of foreign exchange. Let us take it very seriously and have punitive measures against those who are involved in poaching. You can see how dangerous it has been because we have been losing a number of wildlife.

The other thing that has been mentioned that I also want to talk about is the water towers. This Bill will, again, help us to protect water towers like the Mau and Cherangany, and I can see my neighbour from this place is here. We get water from Cherangany all the way to Lake Victoria. That water tower has been destroyed because of encroachment by human beings.

We also have human-wildlife conflict but this Bill, as moved by the able Chairlady, will take care of this problem.

I support this Bill because I know that it will make us proud as Kenyans. I saw wild animals in a zoo when I was in the Far East whereas here in Kenya, you will go to Nairobi Animal Orphanage if you want to see all the wild animals. I am saying this because I want my grandchildren and great grandchildren to see wildlife the same way I have done and they will appreciate. This should be the case instead of reading in the books about wildlife.

Lastly but not least, I am not happy with the compensation aspect. You cannot compensate human life with Kshs5 million. That should be improved when the Bill comes to the Third Reading.

Hon. Temporary Deputy Speaker, I support the Bill.

**Hon. Mwadime:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. This is a very important Bill especially to my constituents who border the national game parks. This Bill has come at the right time. I have gone through it and there are some amendments which should be moved so that it can be in line with what is happening in our country today.

The implementation of this Bill is in the principles of devolution because it devolves protection of wildlife to the owners and managers of land where there is wildlife. In line with these principles, it is also important at the establishment of the service to also establish something equivalent to the Kenya Police Reservists or homeguards. In this case we should call them “home rangers”. The establishment of home rangers should involve communities that live in areas where there are wild animals. This will lead to the protection of all wild animals. This is because we are at the moment protecting the big animals like elephants, lions, buffaloes *et cetera*. However, small wild animals like dikdik, antelopes--- If I get these animals, I can eat them because I used to

be a hunter. However, if we recruit home rangers because they are the ones who live with these animals, they will mitigate that problem.

If we engage these home rangers and pay them some emolument, it will be more cost-effective because it is very expensive to employ the rangers. This is because rangers also require vehicles to cover vast area like Tsavo National Park. It will be more cost-effective if we engage the communities to protect wild animals.

Part (V) of the Bill talks about the establishment of Wildlife Endowment Fund and Compensation Scheme. It is disappointing to hear that communities that border national parks like Tsavo National Park do not benefit despite giving over 60 per cent of their land. We know that at least 70 per cent of the tourists who visit this country come to watch wild animals. Therefore, I suggest that we take 10 per cent of the revenue that is realised from tourism by the Ministry responsible for tourism and appropriate it to the communities living in the neighbourhoods of national parks. This amount should be apportioned proportionally to the land mass contributed by the various communities. If we do this, the communities living around game parks will benefit and appreciate the importance of wild animals. As it is now, if you talk to me about the importance of elephants and lions, I cannot see it. I receive telephone calls all the time---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is up, hon. Mwadime. I want to appreciate the amount of information that you have, and for your contribution to this debate. Thank you very much.

Let us now have the Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, my colleague, the Majority Whip, will respond to this debate. I want to join the Chairperson of the Committee and my colleagues in saying that this Bill has come of age. It is a very important Bill. What does it provide? First and foremost, the Bill seeks to enhance the penalties for wildlife crime, something we have not had since independence. Secondly, for the first time, the Bill is aligned to Vision 2013 and the Constitution of Kenya. Thirdly, for the first time, the Bill also provides for an institutional framework, with clear separation of the functions, the institutions, communities and other players.

Some of the salient features of this Bill include the vesting of the management of wildlife in the State, on behalf of the people of Kenya. It creates institutions which will be distinct in terms of scope and functions. In compliance with the Constitution, the Bill seeks to establish several guiding principles to ensure very good corporate governance, effective and efficient conservation and sustainable utilisation of our resources. The Bill provides for both incentives and benefit sharing amongst the various stakeholders. More fundamentally, it provides for an integrated ecosystem approach in conservation of wildlife.

Hon. Temporary Deputy Speaker, the institutional arrangement that this Bill seeks to address is informed by the various concerns raised by members of the public on the need to streamline the functions and policy formulation; streamline the regulations on wildlife conservation and come up with an effective licensing structure, which has never been there. To address all these, the Bill contains a framework aimed at restructuring and strengthening the KWS.

The Bill provides for a more fundamental role to the KWS. It also enhances the capacity of the wildlife training institute. For the first time, the Manyani Field Training and Research Institute is establishing a wildlife regulatory framework at both the national

and the county levels. More fundamentally, it is envisaged that County Wildlife Conservation Committees will be established. In Clause 8(2), the Bill talks about compensation schemes, conflict management and endowment fund. The current wildlife policy and the law have proved to very insufficient in terms of addressing the issue of conflict management.

This Bill appreciates loss of life and property. The mandated institutions must, first, appreciate that there is loss of life and property. Secondly, the Bill proposes an improved framework on the compensation rates for loss of life and property. It also proposes innovative ways of reducing the ever emerging human-wildlife conflict phenomenon. The Bill provides for a framework of dealing with the development of the ecosystem in terms of management plans. Finally, the Bill seeks to establish a wildlife conservation endowment fund and a compensation scheme to be financed by the income from investments, grants, donations and friends of conservation.

Hon. Temporary Deputy Speaker, I am sure that the Committee and this House will re-look at Clause 9 of this Bill, which is on penalties. The Bill proposes punitive penalties. For example, it says that if you contravene a management plan, you will be fined Kshs500,000 or serve a two-year jail term. Polluting wildlife areas attracts a fine of Kshs2 million and a two-year jail term. Contravening licences attracts a fine of Kshs200,000 or a one-year jail term. Offences of poaching of endangered species for trophies will attract a fine of Kshs10 million or a 15-year jail term. There are also offences of subsistence hunting or hunting for bush meat, and offences of import and export of wildlife.

We need to balance. When an elephant or lion walks out of a game park, goes to a homestead and kills the little livelihood that a family was keeping, for example, from a pastoralist's point of view, some 10 or 20 goats that that family was surviving on and it is killed, it should be comparable to a situation when a farmer fences his small farm to keep off wildlife. If wildlife is killed in such an encounter, the case should be totally different from killings by poachers. Of course, as a country, we must deter people from killing wildlife. We must provide for very harsh penalties for poaching in our country and in the region. However---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Duale, there is an intervention by hon. Amina Abdalla.

**Hon. (Ms.) Abdalla:** Hon. Temporary Deputy Speaker, I just wanted to inform the Leader of Majority Party that the Bill provides for compensation for destruction of livestock and crops. We will be proposing an amendment that, that compensation should be at the market value.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, I am happy that the Chairperson has clarified that matter. What I was saying is that a lion would get out of the park and kill, say, 20 goats of a very poor family. The farmer or livestock keeper then kills the lion in defence of his livestock. I agree with the Committee, and we have no choice, that we must defend our wildlife and render punitive penalties to poachers.

With regard to participation, I would like to tell my colleagues that the preparation of this Bill took a very long time. That is a fact, particularly for Government. However, God is great. The preparation of this Bill started in 2006. Now we have a Bill which after amendments we will have a good legislative framework for our country.

As we debate this Bill, there is a Bill before Senate by a Private Member referred to as “G.G. Kariuki’s Bill”. The Speaker needs to consult his colleague in the Senate and ask whether this Bill from the Senate by Senator Kariuki is a duplication of this Bill or is negating the gains that we are going to make in this particular Bill. The House should be aware that there is a Bill in the Senate which has a lot of similarities with this particular one. I am sure the Speaker, after consultations with his colleague will give direction.

I beg to support.

**Hon. (Ms.) Korere:** Hon. Temporary Deputy Speaker I want to echo the sentiments of hon. Adan Duale for saying that this Bill has come of age. This Bill seeks to bring a human face to the conservation of wildlife. Communities that live alongside the wildlife have for a long time suffered. They have felt that the Government takes the wildlife to be more important than human beings.

Recently, in Laikipia County, an elephant walked comfortably into a homestead and killed the owner of the home. I am not talking about the bush. This happened right inside his home and in front of his children and wives. This is very painful. I must congratulate the Committee because of the clause on compensation. It is a good aspect of this Bill. However, Kshs3 million for human life is very little. I urge the Committee to look into that. As it is now, even the little money that is paid by the Government for compensation, it takes the families ages to get it. I know of families who have members who were killed more than two or three years ago and they are yet to get any cent in form of compensation. So as we finalize this Bill, it is important to note that we can even set the timeframe within which compensation for death caused by wild animals should be done.

We have to relook at the clause on punishment to be meted out to poachers and hunters. I hope my friend who said that he is a hunter is no longer a hunter and that he is neither hunted. I want to believe that these measures are punitive. I do not know why we want to uphold double standards in this House. What our media was crying loud about, even coming up with big headlines such as “Draconian Bill” is simply because they were not happy with the fines. I do not support poaching, but we can also understand that sometimes some communities or some people can end up killing animals for one reason or the other or during famine. So, if you tell such people to pay a fine of, say, Kshs20million or else go to jail, I do not think it is fair.

I want to take the issue of community involvement in wildlife conservation. We must appreciate the communities in Kenya which have made wildlife survive. It has been because of the traditional institutions that recognize wildlife conservation. It will be important for the national Government and the county governments to give the communities incentives so that they continue using their traditional institutions in the management and conservation of wildlife.

Hon. Temporary Deputy Speaker as I finish, I want to take issue with the management of national parks and game reserves. In places like Laikipia, we need to revisit the issue of the big pieces of land that are managed by private individuals who inherited this land from the colonial masters and up to date they continue to enjoy the wildlife that was preserved and conserved by our people and yet the communities there do not get a cent.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Your time is up. Hon. Konchella.

**Hon. Konchella:** Thank you, hon. Temporary Deputy Speaker. I want to support the Committee for this honourable Bill. I know there were a lot of consultations with all the stakeholders. This addresses the issues of wildlife conservation and wildlife management.

Clause 64(3) talks about the killing of wildlife. Any person who may kill an animal, the clause talks about the penalties and circumstances under which that person has to pay whatever damage.

The hon. Member has said that a wild animal walked comfortably into a homestead and killed the owner. For the first, it is not illegal now in terms of self-defence or protecting your family and property. For the first time, this Bill has created a human face in managing our wildlife. Let it be known to everybody that wildlife is there because people are there. When you look at the wildlife areas, there are communities that protect the wildlife and not the other way round. Therefore, when we talk of the KWS playing the role and the mandate of protection, they must know that the communities which live with the wildlife are the real protectors of this wildlife and this is what this Bill has provided.

*(Hon. A.B. Duale stood at the gangway)*

If the Leader of Majority Party is asked to go back to his seat, then I can continue.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): The Leader of Majority Party, they need you seated. We missed you yesterday and we are happy to see you in the House.

**Hon. Konchella:** Please, ask him to go back to his Chair because he is a problem. On the same note, when you look at the issue of pollution, when you go to some parks, some of the hotels and lodges discharge effluent and waste into the rivers and the environment. They will be made accountable for the pollution of wildlife habitat and the ecosystem. That means that hotels and lodges will be accountable for any pollution and, therefore, we will have a cleaner environment and ecosystem for our wildlife to thrive. That is what the Bill has provided.

I am also happy because coming from a community that grazes and lives with wildlife, we can now recognise that grazing within the park can only be done with authority. In other words, you cannot graze animals in a park without permission. It means that when there is drought and calamities, we will not allow our people and livestock to die because there is no grass where they live. They should be allowed to graze with the wildlife because without these people, even the animals will not be there. Right now, if you look at some of the conservancies, you will find that most of the animals are not in the park. They are where human beings live simply because they co-exist with human beings. This is a phenomena a lot of people do not understand, that wildlife thrives because of the communities.

On the issue of compensation and indeed, destruction of property, when you look at the Third Schedule, baboons are not included. Baboons are very destructive and they should be included in this list of compensation. I support the Bill.

**Hon. (Ms.) Shebesh:** Thank you, hon. Temporary Deputy Speaker. I am sure people would wonder what Nairobi County would have to do with wildlife conservation management, but what has shocked me is that even the Committee, in their very good

report, did not realise that we have a national park in Nairobi and that there are issues surrounding this particular national park. I want to start by saying that in the construction of the bypass along Mombasa Road, the previous regime saved the elite and the big business owners along Mombasa Road and diverted the bypass to the game park. Up today, that road is not complete because of the controversy.

I do not see any form of compensation or management in this Bill when it comes to the Government violating---

**Hon. (Ms.) Abdalla:** On a point of order, hon. Temporary Deputy Speaker. Is it in order for the Member for Nairobi to claim that the Bill forgot Nairobi when under the Tenth Schedule, No.7, Nairobi National Park with its 107 square kilometers is part of this Bill?

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Shebesh, are you satisfied with the information, that you are included in the Bill?

**Hon. (Ms.) Shebesh:** Hon. Temporary Deputy Speaker, of course, I am satisfied that it is mentioned, but whether its issues are raised and whether in the discussion the Committee looked at the issues that affect it, is what I am saying I do not see the input of the Committee. That is why I am asking the Committee that when it is relooking and bringing amendments to the Bill, they relook at what happens when land owned by the Government is used by the same Government to build roads, for example.

Hon. Temporary Deputy Speaker, why I say this was unfair and went against the Constitution is because the protection of the national park is guaranteed. But this was done because of not wanting to touch the big shots; the rich people in Nairobi. When roads were being built in areas where commoners lived, buildings were brought down in the name of constructing the bypass. But this particular one, because you know the owners of the buildings that are along Mombasa Road, it was bypassed. I would want to see this happen again.

Hon. Temporary Deputy Speaker, in Nairobi when you want to buy meat from a butchery you pray to God that it is beef because most of the time you can be eating wild meat. I cannot see how we can stop the rampant abuse of game meat in Nairobi because most Nairobians love eating *nyama choma*. This may not be something big in terms of wildlife conservation and management, but it affects Nairobians and Kenyans.

Therefore, I would want the Committee to look at bigger issues. Women in Tana River are always attacked by crocodiles when they go to fetch water. I think compensation for such cases is a joke. I do not think Kshs3 million is enough to repay the life of a woman. Therefore, I am asking that Nairobi be considered in the issues we have enumerated.

**Hon. ole Ntutu:** Thank you so much, hon. Temporary Deputy Speaker, for giving me this opportunity. Today is a great day for this nation. I say so because the Bill that has been in existence was enacted in 1975. You can imagine what issues were there at that particular time.

Hon. Temporary Deputy Speaker, I must thank the hon. Chairperson of the Departmental Committee on Environment and Natural Resource for the work they have done. They have done a superb job and they said that they have 90 per cent which is good. I want them to amend the 10 per cent so that this Bill can be 100 per cent good.

Hon. Temporary Deputy Speaker, when you look at the challenges the wildlife sector has been having since independence, there has been persistent poaching because of

the laws that we have as a country. This Bill is going to address the issue of poaching by bringing to book offenders. It will go a long way in making sure that the menace in this country is finally stopped. As much as everybody has been crying because of the Kshs20 million fine or life imprisonment sentence for poaching, I must say that we must do something as a country. One of my colleagues from Western Province said here that they used to have animals but now they are not there. It is the same problem that we are having in Maasai Mara today.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Order, hon. Members! Even if you are rising on a point of order, please, use the right system.

*(Hon. (Ms.) Gure crossed the Floor  
without bowing to the Chair)*

**Hon. Mwaura:** On a point of order, hon. Temporary Deputy Speaker. I am on a point of order because some hon. Member has just crossed the Floor without bowing to the Chair. Hon. (Ms.) Gure has just crossed the Floor without going to the Bar.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you, hon. Mwaura. It is quite out of order, I agree with you. It is quite out of order to cross like that. Hon. Member, please do the necessary. I do not like mentioning names of hon. Members, but when it comes to the necessity, I will always do it.

*(Hon. (Ms.) Gure bowed to the Chair)*

Hon. Members, we are not students any more. Continue hon. Ntutu. You have one minute.

**Hon. ole Ntutu:** Not one minute because two of my minutes were taken away. Let me say that I think this time round the KWS has been strengthened. It was actually inherited from the colonialists. The way they have been treating the communities around the national parks has not been good and I think this particular Bill will address that.

Hon. Temporary Deputy Speaker, I am also very impressed with the compensation scheme that the Committee is suggesting even though the Kshs3 million will be rejected by our communities that live around the parks. We will actually suggest Kshs5 million as compensation but then we will do that at that particular time.

Hon. Temporary Deputy Speaker, I also like the fact that we will now have a wildlife research and training institute. When you think about it, nobody in this country knows how many wildlife we have. This research institute will help us have scientific information and data on wildlife resources that will be critical for informed decision-making for managers and other stakeholders.

I would also like to say that when you look at the Cabinet Secretary for Environment, Water and Mineral Resources, she has been given powers so that we can have what is called a wildlife conservation management plan which will be used in these wildlife management areas. We did not have anything before. Everybody was doing their

own things. So, I think this Bill will bring that and it will really be welcomed by the communities around the national parks.

**The Temporary Deputy Speaker** (Hon.) (Ms.) Mbalu: Your time is up, hon. Member. Just finish. You have 20 seconds.

**Hon. ole Ntutu:** Let me finish then. Let me say that on changing land tenure and land use in wildlife rangelands, I think this Bill will help communities that are around the national parks to manage their land because most of the land has now been divided and people have title deeds. So, the only way that we can manage our wildlife is to encourage these communities to also provide the land that they have for management of wildlife.

Otherwise, thank you hon. Temporary Deputy Speaker for the opportunity.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Thank you. Hon. Millie Odhiambo. Are you not ready?

**Hon. (Ms.) Odhiambo-Mabona:** It is okay, hon. Temporary Deputy Speaker. It is only that you got me off guard. Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. I want to support but in doing so, I would want to say that I know that one of the biggest problems that we have had with the old Act is especially on issues of compensation. Compensation for human-wildlife conflict, if you look at Clause 9 against Clause 79, is very imbalanced. We are giving more value to animals than we are attaching to human beings and I think that is why the Leader of Majority Party was opposed to the fines and punishment as obtains now. I do not think that there is anything that is wrong with the punishment as obtains but I think what we need to do is enhance the compensation that is given to human beings so that we are not punishing you when you hurt an animal but when the animal hurts you we put a lower premium on your life as a human being.

I come from an area that is prone to human-wildlife conflict especially attacks from hippopotamus and crocodiles from the lake and the issue of compensation is usually very problematic. First of all, it takes too long. So, we must define very clearly in the Act a timeframe because there are families which spend 20 years seeking compensation which they are not paid and yet their relatives' lives were lost. I, therefore, agree with the Members who are talking about enhancing the money. I also want to talk about the issue that a Member raised about what the Senate is doing that is similar to this.

We must find a mechanism of harmonizing the work of this House and that of the Senate. This is because I also noticed that the Senate was moving a Motion on a matter that we passed as law in the last Parliament. Really, why would we like to waste so much State resources to do work which is useless? This is because, to me, it is useless if there is already a law and you are passing a Motion which is at a lower level in terms of legislative effect.

Hon. Temporary Deputy Speaker, I would like to say that as a matter of urgency, instead of the Senate and us fighting over our mandate and roles, we need to sit and very quickly harmonize our roles. If the Senate is not very clear about their roles, they have very brilliant lawyers and so do we. We can put out heads together and help the country move forward.

I am very happy that this talks about *in-situ* and *ex-situ* conservation because it will ensure that we do not just focus on the natural habitat but also have regard to the fact that the natural habitat is over-exploited and, therefore, we must find new ways of

ensuring that there is conservation. I am also happy with the provision on sustainable conservation because it takes care of our children and the future.

I will be proposing amendments, if the Committee has none, to Clause 9(3) so that where you have the chair as a man, the vice-chair should be a woman. That is a standard that we set in the last Parliament but we seem to be lowering standards in this Parliament. Let us not lower standards.

This Parliament is relatively young in terms of age. So, we should not be thinking about stone age but we should be thinking more progressively than the old Parliament. I am very happy with the provisions on ensuring benefit sharing with the communities. I had a lot more but I can see my time is up. So, I will leave it at that. I will propose the others through the amendments.

Hon. Temporary Deputy Speaker, I support this Bill.

**Hon. Abdiinoor:** Thank you, hon. Temporary Deputy Speaker. First, I would like to thank my able Chair and support the Bill.

Clause 4 of the Bill recognizes county governments. I do not know why the Senate is doing another Bill while this one takes into account county issues. If you go to Clause 67 of this Bill, you will find that it talks about benefit sharing incentives. Clause 229 establishes Endowment Fund which will be used for research purposes while Clause 68 gives any person the right to access resources of wildlife. Clause 71 facilitates movement of wildlife to reduce human-wildlife conflict. Clause 31(3) talks about compensation of damaged crops, livestock and all properties. Clauses 25 and 38 talk about compensation for personal injuries. Clause 61 talks about recovery plan of endangered species. This was not in the old Wildlife Bill but it is now in the Bill that we are debating.

The Bill also takes into account establishment of compensation and conservation committees at the county level which were not there. So, all compensation will now be done at the county level.

Thank you, hon. Temporary Deputy Speaker.

**Hon. (Maj-Gen.) Nkaisery:** Thank you very much, hon. Temporary Deputy Speaker. I stand to support this very important Motion.

Hon. Temporary Deputy Speaker, I want the Chairperson of the Committee to listen to what I am going to say.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Committee Chairperson, hon. Nkaisery wants you to listen to what he is saying.

**Hon. (Maj-Gen.) Nkaisery:** Thank you, hon. Temporary Deputy Speaker. It is very important that he listens to what I am going to say.

The owners of wildlife are the pastoralists. I want to correct the Member for Nairobi County that Nairobi National Park actually belongs to Kajiado East Constituency. It is only that the boundary has not been done properly.

Looking at this Bill, I personally think that the Committee should have considered recommending the devolution of wildlife to the county governments. I am saying this because wildlife is managed by pastoralist counties. We are not benefiting from these resources. Let us take the example of Amboseli National Park. The animals from Amboseli National Park migrate to even my farm. They eat my cows and everything else but I do not benefit.

Now that some compensation clauses have been included in this Bill, I want to say that the compensation is very low. If a wild animal kills somebody, her family should not get less than Kshs5 million. If he is seriously injured, the compensation should not be less than Kshs2 million, and the package should be inclusive of off-setting of medical expenses until full recovery of the victim. This is a very important thing that we must consider.

Hon. Temporary Deputy Speaker, the other thing is about the penalties---

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Nkaissery, there is an intervention from hon. Wanyonyi. What is out of order, hon. Wanyonyi?

**Hon. F.K. Wanyonyi:** Hon. Temporary Deputy Speaker, I want to give information to the hon. Member on the Floor.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Nkaissery, do you want to be informed by hon. Wanyonyi?

**Hon. (Maj-Gen.) Nkaissery:** Hon. Temporary Deputy Speaker, I am not ready to be informed.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Wanyonyi, hon. Nkaissery is not ready for your information. So let him continue.

**Hon. (Maj-Gen.) Nkaissery:** Hon. Temporary Deputy Speaker, the issue of penalties is very appropriate. If we really want to mitigate the killing of wild animals in this country, we should maintain the proposed penalties because they are very appropriate.

As I was saying, on compensation, the Committee should come up with an amendment schedule and bring us all on board, so that we can develop this very important Bill. Once it is passed, with proper amendments, it will transform conservation and management of wildlife in this country and make wildlife a useful resource for this country.

With those very remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Yes, hon. Mule of Machakos County.

Hon. Members, it must be appreciated that we are many. I must thank you for your interest to contribute to this Bill.

**Hon. Mule:** Thank you, hon. Temporary Deputy Speaker. I want to congratulate the Committee which worked very hard on this document. I believe that it is time that, as Kenyans, we protected these resources through laws that are applicable to Kenyans.

There are three issues that we need to address in order to bring on board the stakeholders, so that we can harmonise them. One of them is the issue of compensation. I have heard hon. Nkaissery speak about it. It is important that we look at the issue of compensation for human life losses. Just imagine a bread winner of a household being harmed or killed by wildlife. We are proposing that we give his family a compensation of Kshs1 million or Kshs3 million. That was the only bread winner in that household. What will happen to the generation behind that person? We need to look for ways of providing for clear compensation to such families, so that they can continue with their normal lives. As hon. Maj-Gen. Nkaissery said, probably, the communities surrounding these parks do not benefit from those parks. We should anchor everything within the law so that these people who live around the parks benefit from the resources.

Thirdly, we need to look at the issue of quarrying and mining. Very soon people will not have to go to the ground to do geographical surveying for this mining. People sit in the office and use satellite to discover major minerals in the parks. However, you will find somebody, because of their position in Government, being given licence to go and mine in the park. It is high time we came up with laws that would ensure that those with high technology do not rob Kenyans during daylight. They need to be controlled. It is important that we put that in law.

Lastly, it is about investors. We have been having issues with quite a number of people who want to come and build hotels within the Maasai Mara. This has to be done within the law. Let us come up with laws that protect the interests of tomorrow's Kenya. Let us not have people walking into our country and then walking away with the credit of what is our nature.

I support this Bill. I would like the Committee to engage all of us so that we move together as a country. That way, we will come up with a Bill whereby we will not be looking to amend the law. When we pass the entire Bill, let us pass it together with the amendments.

**Hon. Waiganjo:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity although I notice that I do not have much time. This is a very important Bill we are discussing this evening. Of course, this Bill is coming to replace the Wildlife Conservation and Management Act, Cap.376 of 1975 which is the operational statute.

I would like from the outset to congratulate the Committee for doing a good job. This new Bill is coming to take care of the challenges that have ensued since the passage of the new Constitution. One of the challenges that are rampant is poaching. It is decimating most of our wildlife. We also have pollution of wildlife habitat. Human-wildlife conflict is also an issue that is addressed in this Bill. There is also the issue of compensation and insecurity.

The Constitution under the Fourth Schedule makes the protection of wildlife and wild habitat a preserve of the national Government. This, of course, gives a challenge to the Committee. My main worry with this Bill is Clause 67(3) where we are talking about cropping and culling. These two things are a pain in the flesh. Of course, "cropping" means harvesting of animals and wildlife for their products and game meat. "Culling" is a selective removal of wildlife based on ecological and scientific principles for management purposes. We only need to look at our past experiences to know that if we include cropping and culling then we risk opening up our game reserves and parks to poachers. We know that KWS does not have the capacity to regulate cropping as has been demonstrated by the failure to prevent poaching. If KWS and the Government are not able to prevent the poaching of elephants and other animals, how then do you expect them to regulate cropping? Do you trust KWS to take care of our elephants when we know that a whole population of our elephants is now being decimated by poachers? Of course, cropping contradicts wildlife conservation principles and efforts of the past and should be left out of this Bill. I urge this Committee to reconsider---

**The Temporary Deputy Speaker (Hon. (Ms.) Mbalu):** Hon. Member, your time is up. You can contribute next time. I must appreciate your enthusiasm to contribute, but you may contribute in the next sitting. It is a Bill that many of us would like to ventilate on. Even I, if I was on the other side I would have wanted to contribute.

## **ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Mbalu): Hon. Members, the time now is 6.30 p.m. This House stands adjourned until tomorrow, Thursday 21<sup>st</sup> November, 2013 at 9.00 a.m.

The House rose at 6.30 p.m.