

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 23rd July, 2013

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

The following Papers were laid on the Table: -

The Annual Report of the Commission on Administrative Justice, 2012.

The Report of the Auditor-General on the Financial Statements of Karatina University College for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Pwani University College for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya National Highways Authority for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Jomo Kenyatta University of Agriculture and Technology for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya Copyright Board for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

The Annual Report on the Financial Statements of the Privatisation Commission for the year ended 30th June, 2012 and the Certificate of the Auditor-General therein.

(By hon. A.B. Duale)

The Report of the Departmental Committee on Education, Research and Technology on Vetting of Nominees to the Teachers Service Commission. The nominees are Dr. Salome Wanjiku Gichura and Ms. Saadia Abdi Kontoma.

(By hon. (Ms.) S.W. Chege)

Hon. Deputy Speaker: Next Order!

NOTICE OF MOTION**ADOPTION OF REPORT ON VETTING OF NOMINEES
FOR APPOINTMENT TO THE TEACHERS SERVICE COMMISSION**

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, I beg to give notice of the following Motion: -

THAT, pursuant to Section 8 of the Teachers Service Commission Act and the provisions of Standing Order No.45, this House adopts the Report of the Departmental Committee on Education, Research and Technology on Vetting of Nominees for Appointment to the Teachers Service Commission, laid on the Table of the House on Tuesday, 23rd July, 2013 and approves the appointment of the following persons as Commissioners: -

- (i) Dr. Salome Wanjiku Gichura; and,
- (ii) Ms. Saadia Abdi Kontoma.

Hon. Deputy Speaker: Next Order!

REQUESTS FOR STATEMENTS**DISMISSAL OF NATIONAL SOCIAL SECURITY FUND MANAGING TRUSTEE**

Hon. (Ms.) Nyasuna: Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(b), I would like to request for a Statement from the Leader of Majority Party regarding the circumstances surrounding the sudden dismissal of Mr. Tom Odongo, the Managing Trustee of the National Social Security Fund (NSSF). In his Statement, the Leader of Majority Party should clarify the terms of contract under which the Managing Trustee was serving and state the specific breach of contract that led to his summary dismissal.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Leader of Majority Party, when will you respond to the Statement request?

Hon. A.B. Duale: Hon. Deputy Speaker, I will respond on Thursday, next week.

Hon. Deputy Speaker: Do we have any other Statement request or any responses to Statement requests?

Hon. Marcus Muluvi, is it a request for Statement? Remember that all requests for Statements must have been approved.

Hon. Muluvi: Hon. Deputy Speaker, I am waiting to hear from the Leader of Majority Party on a request I had made in this House. When I made the request, the Chairperson of the Departmental Committee on Administration and National Security was not in. So, the Leader of Majority Party had promised to respond to the request today. Please, I am waiting.

Hon. Deputy Speaker: Okay.

Yes, hon. Gladys Wanga!

Hon. (Ms.) Nyasuna: Hon. Deputy Speaker, the Leader of Majority Party has committed himself to respond to my Statement request on Thursday, next week. I would

wish to request that he responds sooner, probably Tuesday because Thursday is very close to our recess. If he could do so on Tuesday, it would be much better for us.

Hon. Deputy Speaker: That depends on whether he is able to get the information. Remember, he does not have it at his fingertips.

Hon. A.B. Duale: Hon. Deputy Speaker, whereas the recess is being anticipated, a Motion on the same has to be brought here for approval. However, let me do it on Wednesday so that I may get more information from the Government.

As regards the one on security, I promise to do it tomorrow afternoon. That is because they are yet to give more information. With your indulgence, I will do it tomorrow afternoon.

STATEMENTS

Hon. Deputy Speaker: I want to give a chance to hon. Kamanda to respond to Statements that had been sought by hon. Losiakou and hon. Kiuna.

MEASURES TO CURB CONGESTION AT WEIGHBRIDGES

Hon. Kamanda: Thank you, hon. Deputy Speaker. I have two Statements to respond to. On 29th May, 2013, hon. Ng'ang'a requested for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing with regard to traffic jam in Mariakani, Nairobi and Gilgil weighbridges that is caused by public transporters.

The Committee summoned the Cabinet Secretary for Transport and Infrastructure on 4th July, 2013 to appear before it and answer the Member's question. The Committee also invited hon. Ng'ang'a to come for the meeting. I wish to report to the House the following: -

On the causes of the traffic gridlock at Mariakani, Nairobi and Gilgil weighbridges, the Committee established the following: -

(i) That the Ministry of Transport and Infrastructure is aware of the traffic jams at Mariakani, Mlolongo and Gilgil weighbridge stations, but this is partly caused by increased enforcement of the axle load on heavy goods vehicles by weighbridge operators. The Committee heard that the traffic gridlock is, sometimes, caused by impatient truck drivers who overlap on the opposite lanes thereby causing a total blockade. It is this situation that inconveniences other road users, causing delays which are not good for the conduct of business in Kenya and the region.

(ii) That there has been a notable upsurge in the volume of traffic using our roads attributable to increase in economic activities within the region. There has also been improved surveillance to ensure that all heavy goods vehicles are diverted to weighbridges thus causing the perennial long queues experienced at those weighbridge stations.

(iii) The impression of continuous congestion is partly caused by transporters who choose to park their vehicles a few kilometers from the weighbridge and then approach the weighbridge stations at once, particularly in the late afternoon when other road users are leaving work for home. Most of the time, the weighbridge stations are free of traffic in their 24 operations cycle.

(iv) That the traffic snarl-up is stage managed by brokers who work in cahoots with rogue truck drivers, weighbridge operators and police officers attached to those stations. They mostly create jams by deliberately blocking opposite lanes used by other road users to precipitate public outcry thereby causing the Director-General to allow trucks to pass without being weighed.

(v) That machine breakdowns reduce the number of trucks weighed at a particular station. Such situations often occur thereby causing snarl-ups.

The poor performance of the Kenya Railways Corporation has also forced 97 per cent of cargo to be transported using the road.

On action taken to mitigate the traffic gridlock at Mariakani, Nairobi and Gilgil weighbridges, the Committee established the following: -

(i) The Cabinet Secretary for Transport and Infrastructure has issued the Gazette Notice No.97 revising the allowable axle load and gross vehicle load limits from 48 to 52. The axle and gross vehicle weight limit are in harmony with those of other East African countries. The Gazette Notice is already being implemented at the weighbridges. It will go a long way in allowing small points of departure which were catalyst to standoffs between transporters and weighbridge operators thereby creating traffic snarl-ups.

(ii) That the Kenya National Highways Authority (KeNHA) has issued a notice to the weighbridge operators to enforce the presidential directive of weighing custom sealed containerized transit cargo at the point of entry and exit only. This will ensure faster movement of cargo along the corridor and reduce the number of trucks diverted at the intervening stations.

(iii) The Kenya National Highways Authority has earmarked funds under the ongoing management contracts for acquisition and installation of modern scales which include High Speed Weigh-in-Motion (HSWIM) and multi-deck scales at the weighbridges along the Northern Corridor to ensure that there is an improvement in the speed of weighing, thus decongesting the weighbridge areas. Those improvements are planned to be in place by November, 2013.

(iv) That the agency has instituted a facilitative approach in axle load compliance monitoring by allowing cargo redistribution if a vehicle is established to be overloaded on an axle or axle group but within the gross vehicle weight limits. Such vehicles are allowed to proceed with the journeys after complying without being charged.

(v) That the Ministry is working closely with the Traffic Police Department to enforce traffic rules so that trucks can be discouraged from parking besides the roads awaiting specific times to come to weighbridge stations thereby causing traffic snarl-ups.

(vi) That all those measures are being implemented to achieve a maximum of five days cargo movement between Mombasa to Malaba as directed by His Excellency the President.

Before, cargo used to take more than 12 days from Mombasa to Malaba but as we speak it is taking about five to six days. So, there is improvement to that effect.

The Committee made the following observations: -

(i) That corruption and attitude are leading causes of congestion at the weighbridges, a fact that was supported by the Ministry.

(ii) That the numerous weighbridges are not necessary. Compliance to axle load requirements can still be met at the point of loading and exit. If the axle load can be measured at the port, delay would be minimized.

(iii) That the Ministry's plans to introduce High Speed Weigh-in-Motion and multi-deck scale at all weighbridges is long overdue. As we speak, this is the time they are installing those machines and the Committee observed that it had been overtaken by events.

There seems to be coordinated effort among those State officers in weighbridge stations such as police officers and Kenya Revenue Authority officers for the purpose of streamlining and controlling the operations at the weighbridge stations.

Hon. Deputy Speaker: That answer is really too long. Is there no way of summarizing it so that we can finish this matter?

Hon. Kamanda: In fact, we need to give the entire information so that hon. Members can understand.

Hon. Deputy Speaker: I think some of them are even getting a bit lost. See how you can summarize, hon. Kamanda

Hon. Kamanda: Thank you, hon. Deputy Speaker. Even in some areas like Gilgil, we are going to introduce some diversion so that we do not have long queues anymore.

With those many remarks, I beg to lay this Statement on the Table. There is another Statement and it is better to lay both of them on the Table.

Hon. Deputy Speaker: Yes, I did say that you had two Statements for two different hon. Members.

REHABILITATION OF ROADS IN WEST POKOT COUNTY

Hon. Kamanda: The other Statement was sought by hon. David Losiakou requesting the Chairperson of the Committee on Transport, Public Works and Housing to find out whether the emergency money that was promised by the Permanent Secretary, Ministry of State for Special Programmes to Pokot leaders for fixing the roads that were destroyed by rains in the entire Pokot area was forwarded and what had been done in the specific roads that were to be repaired. Two, since the money was for emergency intervention, how much was allocated to fix the dilapidated roads in the entire Pokot County? If the money has not yet been allocated, could that issue be treated as emergency? Three, he asked whether the Committee could assure the House that something will be done urgently to assist farmers in Pokot who have lost milk and other produce due to the poor state of infrastructure.

Hon. Deputy Speaker, the Committee also met on 4th July, 2013 and we also summoned the Cabinet Secretary and the hon. Member also attended.

(Loud consultations)

Hon. Deputy Speaker: Order! Order, hon. Members! There is too much loud consultation.

Hon. Kamanda: Hon. Deputy Speaker, we did agree with the hon. Member that there is the Kenya Rural Roads Authority (KeRRA) and the Kenya Urban Roads

Authority (KURA) money whose matter has not been resolved and the hon. Member agreed with the Committee. We agreed that we pursue KeRRA and KURA money. I want to report to this House that we had a meeting today between all responsible people from the Ministry of Transport and Infrastructure and even officers from the Transition Authority also attended.

We agreed that KURA money will be returned to the Ministry of Transport and Infrastructure. I want to assure the hon. Member that as soon as we get the money - we are hoping to get it, maybe, this week - we are going to sign the document on Thursday and the work will be done in West Pokot.

Thank you, hon. Deputy Speaker. I now lay the two responses on the Table.

(Hon. Kamanda laid the documents on the Table)

Hon. Deputy Speaker: I can see hon. Losiakou's hand. There are several clarifications to be sought because there are several Statements being given today. Please, let us reduce our clarifications from the Chair.

Hon. Losiakou: Thank you, hon. Deputy Speaker. I attended the meeting of the Committee when they summoned the Cabinet Secretary. What came out of that meeting, which I think the House needs to note is that, we were called as the leaders from Pokot; all hon. Members from this House and the Senator. Before that, we had visited the Ministry of Special Programmes and they were ordered to intervene in those programmes. In fact, we knew the figures that they were supposed to use in our county, which is about kshs11 million.

When we appeared before the Committee, they looked like they were not even aware. I believe this is a different Government. Once leaders, hon. Members seated here have been told something by the Executive, it should be something that we should trust. I think we feel that we were conned.

Secondly, what is happening with KeRRA? The Chairman used to come to the House with clear clarifications. Monies that are destined to the constituencies are in danger and hon. Members here need to know that. When we were in the Committee, it looked like some people diverted our money from our constituencies to counties, without passing through the normal procedures and even without consulting the House. So, as much as I agree with the Chairman of the Committee on Transport, Public Works and Housing that I wait, he needs to assure this House because the hon. Members seated here need to know that money meant for repair of roads in our constituencies is in danger. We were told that money was going to the counties without conditions. Therefore, the governor can divert the money and build his house or buy cars and our roads will still remain dilapidated.

(Applause)

Hon. Deputy Speaker, I think the Chairman of the Committee needs to assure this House and hon. Members should stand firm otherwise, we are endangered species.

Thank you.

Hon. Deputy Speaker: Okay. Let us have the hon. Chairman of the Committee on Transport, Public Works and Housing.

Hon. Kamanda: Hon. Deputy Speaker, I want to say this to this House; my Committee has fought so hard and I want to confirm that the money is now back. We are just waiting so that on Friday we get documentation. You will even see a letter from the Cabinet Secretary directing all hon. Members to constitute committees. So, you need to thank the Cabinet Secretary. We have fought hard to make sure that the money is there and I want to guarantee so. The money is there and hon. Members need to go ahead and constitute committees and hopefully, before the end of this week, work will start in your respective constituencies.

Hon. Deputy Speaker: Thank you hon. Chairman. I would like to go to the next Statement. I can see hon. Njuki. Are you intervening or you want to speak? What is the matter? You have a Statement on which you want to seek clarification?

Hon. Njuki: Hon. Deputy Speaker, I am seeking your indulgence and kindness because on 6th May, 2013, which is 10 weeks ago, I sought a Statement from the Committee on Education, Science and Technology, and that time it had problems because teachers were on strike. Now that the teachers are back to class, will it not be in order for them to give me the answer to the question, or at least, be invited to the Committee? The question was about the criteria the Government normally uses to determine which areas should get hardship allowances and which ones should not. I am asking this because in Chuka/Igambang'ombe, there is a division called Igambang'ombe which shares the same climatic conditions with Tharaka and Mbeere, which is in---

Hon. Deputy Speaker: You need to give us those stories when the Statement comes before the House, hon. Njuki.

Hon. Njuki: Yes, hon. Deputy Speaker. Those two constituencies usually enjoy hardship allowance yet that particular area does not. I will be willing to go to the Committee when they call the Cabinet Secretary but I have not been invited in this particular case.

Thank you.

Hon. Deputy Speaker: Hon. Chair of Education, Science and Technology, really 6th May, 2013, is a long time to be waiting for a Statement. When can you give it in the earliest possible time?

Hon. (Ms.) S.W. Chege: Thank you hon. Deputy Speaker, I think the hon. Member really wanted just to have time to raise the matter on the Floor because I have had a discussion with him outside this House.

The hon. Member knows the problems that we have been facing. The schools were opened yesterday and I had explained to him that some of those issues made teachers to go on strike. So, I would not like to invite him when we have nothing on the table. The first thing is to tackle the issue of the strike and make sure that our children are back to school. Those are issues that have already been discussed by another Committee with TSC and other stakeholders in the education sector.

When consultations are done, we shall invite the Cabinet Secretary and ask the hon. Member to attend. So, I kindly ask him to be patient. I am very sure, by next week, now that children are back to school, we will be able to address this issue.

Hon. Wakhungu: Thank you, hon. Deputy Speaker. I was just reminding my friend, the Chairperson of the Departmental Committee on Education, Research and Technology that it is not the Minister, but the Cabinet Secretary. We should get used to those changes.

(Laughter)

Hon. Deputy Speaker: Hon. Kamama, do you have a Statement?

RESETTLEMENT OF INTERNALLY DISPLACED PERSONS

Hon. Kamama: Hon. Deputy Speaker, just about the same time the Statement from the Departmental Committee concerned with education was sought, my good friend, Njenga Kigo of Gatundu requested for a Statement. He wanted to know when, how and where the Internally Displaced Persons (IDPs) of 1991 and 1992 who were displaced from Enosupukia, Burnt Forest, Njoro and other places will be settled. He wanted to know when, how, and where the integrated IDPs living all over Kenya will be settled.

After consulting with the Ministry of Interior and Coordination of National Government, we established that this question can be handled properly by the Ministry of Devolution and Planning. Since this matter is very dear to those very poor Kenyans who have been displaced, I want to confirm that we have redirected this question to the Committee on Finance, Planning and Trade so that they do a better job and settle this matter.

PUBLIC SCHOOLS PROGRAMME AFTER TEACHERS' STRIKE

Hon. (Ms.) S.W. Chege: Hon. Deputy Speaker, on Thursday 18th July, 2013 hon. Kajuju requested for an answer from the Ministry of Education regarding the closure of schools and essentially the terms. The Cabinet Secretary for Education has replied.

The public primary schools were opened yesterday. Today there was an education stakeholders' meeting where it was agreed that the second term will be extended by one week so that instead of schools closing on 9th August, 2013 they close on 16th August, 2013. Term three will also be extended by one week. Therefore, the term closure is adjusted and schools will close on 22nd November, 2013 instead of 15th November, 2013.

Instructions to the schools will be done by the County Directors of Education who were part of the meeting today. This will be followed with a circular to all the schools. This arrangement affects the dates of the national examinations timetable.

I thank you, hon. Deputy Speaker.

Hon. Bosire: On a point of order, hon. Deputy Speaker. My colleague's card is not functioning and if you can allow him, he could raise a point of order using my card.

Hon. Deputy Speaker: That is okay. I think something needs to be done about the cards. Hon. Members have the cards, but they are not working. We need to rectify that situation.

Hon. Wandayi: Hon. Deputy Speaker, I rise under Standing Order No.47(3)(b). If you allow, I will read it:

“(3) If the Speaker is of the opinion that any proposed Motion –

(b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;

the Speaker may direct either that the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the Motion be

referred to the relevant Committee of the Assembly, pursuant to the relevant article 114(2) of the Constitution.”

The current Motion, without indulging into its merits, is of course in reference to the two published Bills, one on the National Police Service Act and the other one on the National Police Service Commission Act. My contention is that since those two proposed Bills are contrary to the Constitution--- If you read the two Bills carefully as published, you will come to the realization that they are attempting to amend the Constitution through the back door.

Hon. Deputy Speaker I will invite you to read Article 245 of the Constitution which spells out the roles of the Inspector-General of Police. Then read Article 246 of the Constitution which spells out the functions of the National Police Service Commission. Those Bills as currently crafted are in direct violation of the Constitution. Unless an appropriate constitutional amendment Bill---

Hon. Sakaja: On a point of order, hon. Deputy Speaker. I rise on the strength of Standing Order No.85. Is the hon. Member in order to anticipate debate on Bills that we are not even aware of? We have neither seen the Bills nor discussed them at this point. I think he is grossly out of order. Standing Order No.85 states that it shall be out of order to anticipate the debate of a Bill which has been published as such in the *Gazette* by discussion upon a substantive Motion or an amendment, or by raising the subject matter of the Bill upon a Motion for the adjournment of the House.

Hon. Deputy Speaker, we cannot be discussing this at this point. The Motion has not even been moved.

Hon. Wandayi: Hon. Deputy Speaker, I am sure you will protect me. What I am talking about is on the procedure. This House cannot even contemplate discussing a Bill which is unconstitutional. Hon. Deputy Speaker, Sir, your Chair cannot accept that the House proceeds to discuss a Bill which has the effect of altering the Constitution. In any case, last week, the Speaker of the National Assembly read a petition from the public which petition was asking this House not to discuss those Bills.

Hon. Deputy Speaker: Hon. Wandayi, allow a point of order from the Leader of Majority Party.

Hon. A. B. Duale: On a point of order, hon. Deputy Speaker. This is a House of rules. We must go by the Constitution and the Standing Orders. This Procedural Motion is in this House based on Standing Order Nos.126 and 127. The Bills the hon. Member is talking about, whether they are constitutional or unconstitutional, are not even a property of this House. They have not even been introduced at the stage of the First Reading. It is after this Procedural Motion, whether the House agrees with the Leader of Majority Party or not, that the Bills will be introduced at the First Reading stage and then they will go to the Departmental Committee on Administration and National Security.

Secondly, we need to guide Members. Before Bills reach the august House, they go through a constitutional process and one of the serious commissions that have been appointed by this House is the Commission for the Implementation of the Constitution (CIC) which has assented to this Bill. So, we have not reached the stage where the Committee or the House can say that where we are now is within the Standing Orders. We need to go to the next important item. At this stage, I want to guide my good friend that yes, you are valid but at the stage where you stood, your timing is bad. You are coming to the roundabout when you have not reached the roundabout.

Hon. Wandayi: May I continue, hon. Deputy Speaker?

Hon. Deputy Speaker: Let hon. Opiyo finish.

Hon. Wandayi: Yes. Thank you, hon. Deputy Speaker. It is on record that last week the Speaker referred a petition from the public to the Departmental Committee on Administration and National Security to deliberate on the merit of that public petition. Those two Bills have got the effect of transferring powers from the Police Service Commission to the Office of the Inspector-General (IG) of Police, in effect transforming Kenya into a police state without amending the Constitution. We cannot even discuss about shortening the period of publication of those Bills because, in my view, that is tantamount to discussing the Bills. Therefore, you need to make a ruling on this matter, whether this House can proceed and discuss those two Bills which negate the letter and spirit of the Constitution. There are attempts to amend the Constitution through the back door and transform Kenya into a police state in the full glare of the public. The public has petitioned this House to stop any discussion on those two Bills and the Departmental Committee to which the petition was referred has not come back to this House with a report.

Hon. Deputy Speaker, I, therefore, urge you to rule that this debate cannot go on and, therefore, the Procedural Motion on the Order Paper be withdrawn forthwith. Thank you.

Hon. Deputy Speaker: Hon. Members, for the sake of us moving forward, I would like to indicate that what is before us is the issue of the publication period. It has nothing to do with the constitutionality or not. What we are discussing is that publication period. So, in that case I think you are out of order, hon. Opiyo Wandayi. At this stage, we will allow the Leader of Majority Party to continue because he is talking about the publication period. Hon. Wandayi, you have valid points to raise but you are raising them at the wrong time. Wait for the time when you will be able to raise them and you will have ample time to then ventilate further on the matter. So, hon. Leader of Majority Party, proceed.

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD

Hon. A.B. Duale: Thank you, hon. Deputy Speaker. I beg to move the following Procedural Motion: -

THAT, pursuant to the provisions of Standing Order 120, this House resolves that the publication period for the following Bills be reduced from 14 to 7 days: -

(i) The National Police Service Commission (Amendment) Bill (National Assembly Bill No. 17 of 2013); and

(ii) The National Police Service (Amendment) Bill (National Assembly Bill No. 18 of 2013).

Hon. Deputy Speaker, the National Police Service Commission (Amendment) Bill (National Assembly Bill No.17 of 2013) and the National Police Service (Amendment) Bill (National Assembly Bill No.18 of 2013) were published on 16th July, 2013. Pursuant to Standing Order No.120, "No Bill shall be introduced unless such a Bill together with

the memorandum referred to in Standing Order No.117(*Memorandum of Objects and Reasons*), has been published in the *Gazette* (as a Bill to be originated in the Assembly), and unless, in the case of a Consolidated Fund Bill, an Appropriation Bill or a Supplementary Appropriation Bill, a period of seven days, and in the case of any other Bill a period of fourteen days, beginning in each case from the day of such publication, or such shorter period as the House may resolve with respect to the Bill, has ended.”

Hon. Deputy Speaker, the National Assembly Bill No.17 of 2013 provides the recognition of the IG of Police and both the Deputy IGs of Police as substantive members of the National Police Service Commission, which is in accordance with Article 246(2)(b)(c) of the Constitution. I want the hon. Member to listen to me. He has raised an issue of constitutionality and I am giving him the areas within the Constitution that provide the existence of this Bill in this House. If he can listen to me, I will be very happy but I can repeat. The amendment to the National Assembly Bill No.17 of 2013 provides for the recognition of the IG and the two substantive Deputy IGs as members of the National Police Service Commission, which is in accordance with Article 246(2)(b)(c) of the Constitution of Kenya 2010. It also provides for the consultation between the IG and the Cabinet Secretary for Interior and Coordination of National Government. The Commission will deal with the human resource function. This National Assembly Bill No.17 of 2013 again provides for the limits of the Commission while undertaking its function. So, this is what that amendment for the first one talks about.

Hon. Deputy Speaker, the second one; the National Police Service (Amendment) Bill (National Assembly Bill No.18 of 2013) provides for the procedure of appointment of the IG of Police by the President, ranking of the National Police Service and training of police reserve officers by the IG. It is against this background that I seek the indulgence of the House to shorten the publication period of those two Bills so that they can be read for the First Time pursuant to Standing Order No.126 and this will make the House refer those two Bills to the Departmental Committee on Administration and National Security, according again to Standing Order No.127.

Hon. Deputy Speaker, finally, I want to make it very clear before I ask the House to debate that if this House agrees to shorten the publication period of those two Bills, this Departmental Committee on Administration and National Security will have time to look at those Bills. It will invite stakeholders. It will go round the country. It will do the public participation and will prepare a comprehensive report and table it before this House so that we can then go to the Second Reading of those Bill. Basically, that is what we are saying. We are going on recess if the House agrees next Thursday for a whole month. We want this Committee to move round the country to meet stakeholders. It should go to every county and even raise the issue that we want. We want a serious demarcation between the command structure of the National Police Service and that of the IG. We cannot, at any given time in our history, play around with security. The command centre is so sensitive. So, by shortening the period, we are giving the legal mandate to the Committee to look at this Bill even as we go on recess so that when we come back in September, this House can go through the Second Reading and the Committee stage and finalize it.

With those few remarks, I ask the Majority Whip to second this Procedural Motion.

Hon. Katoo: Hon. Deputy Speaker, I second this Procedural Motion. First of all, you have dealt with the issue of being constitutional or not very well. The Standing Order No.47(3)(b), as cited by hon. Wandayi, clearly states that unless the Bill is expressly going to amend either the Constitution or an Act of Parliament, I see nothing wrong or out of order in placing the Bill on the Order Paper. So, the Mover of the Procedural Motion has given all the reasons why we need to shorten the publication period of this Bill.

Without debating the contents of the Bill and without anticipating the much talked about recess, which is in public domain because the House gazettes its calendar, I support the Procedural Motion. It is in public domain that from 2nd August to 2nd September, this House is supposed to be on recess. Members are talking about the recess and not risking violating our Standing Orders which provide that we should not anticipate debate because it is already known that Thursday next week, this House is supposed to be on recess unless it is resolved otherwise. If we go on recess without having this Bill for First Reading and taking it for public views, it means that it will have to wait up to September and that is when the Committee on Administration and National Security will own the Bill.

So, we are kindly requesting this House to reduce the publication period from 14 days to seven days, such that should we be on recess from Thursday next week, the Committee will be in possession of this Bill and can use the recess to collect views from the public. That does not mean that the Bill will come to the Floor of the House quicker than earlier arranged. It will depend on the Committee that will immediately take ownership of the Bill as to when they will place it on the Order Paper.

With those few remarks, I kindly ask my colleagues that we have moved such Procedural Motions before and it is just a procedure. The details of the Bill will be debated when it comes to the Floor of the House.

I beg to second.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, please, confine yourselves to the Procedural Motion and not the contents of the two Bills.

Hon. Abongotum: Hon. Deputy Speaker, first of all, as a Committee, we ventilated on this matter this morning and we had a different opinion, especially on the timeframe. We wanted to go the whole hog to have the 14 days---

(Applause)

Wait a minute, but I just want to confirm to my Members that after further consultations with the Leader of Majority Party and the Whip, we found out that this Procedural Motion will not have any impact or rather will not affect the movement of this Bill up to when we are going to have the First Reading and the Second Reading. So, I just want to confirm to my Members that we have consulted and it will do no harm if we take this direction.

Having said that, I just want to confirm to the Members that nobody is intending to change the Constitution. Articles 245 and 246 are expressly provided for in the

Constitution and the Articles are very clear. We are trying to amend the National Police Service Commission Act and the National Police Service Act. I want to be very clear at the very outset that this is what we intend to do. I want to urge the Members to approve this Procedural Motion, after which I want to confirm to them that we will do a thorough job to ensure that we consult with Kenyans, of course, through memoranda because we do not have the time to go round the country. I do not think Parliament has those resources. We will receive memoranda from Kenyans, scrutinize and analyze and forward our report to Parliament.

Again, I want to confirm that we will also consult with the CIC. We intend to see them sometime on Thursday this week. I know you will debate this after the Second Reading and if any Member has any issue, you can still bring a memorandum to our Committee. I want to be clear that we are not touching on the Constitution. We are dealing with the two Acts and that is our position. So, I beg that we support this Procedural Motion.

Hon. Kaluma: Hon. Deputy Speaker, there is a good reason in law and in practice as to why we have the publication period of 14 days. In my imagination, it is to enable the House and the concerned people to thoroughly understand what the Bills intended to be brought to the House for legislation would mean.

No good reason is being given as to why the period for the Kenyan people to consider the merits and demerits of the intended Bill is to be reduced from 14 to seven days. Without anticipating debate, I do not see how the issue of giving additional powers to the Inspector-General and taking powers from the National Police Service becomes an emergency that necessitates our reducing the period for proper consideration. In any event, without contemplating debate, if you look at our Order No.11, we have the Media Bill, which is a very critical Bill. We are seeking to extend the period for its publication by four months. A trend is developing in the country that is already beginning to worry the country that when it comes to consolidating power in particular regions and removing from some, it becomes an emergency.

Those Bills are merely to take power from Mr. Kavuludi to Mr. Kimaiyo. I wonder what the Government side would be doing and whether this hurry would exist if, indeed, the person holding the office Mr. Kavuludi is holding was from Central Kenya or Rift Valley.

Hon. (Ms.) Wahome: Hon. Deputy Speaker, is the hon. Member in order to impute improper motive to regions by suggesting that proposing amendments to the Act is tantamount to removing powers from a constitutional office in Central Kenya region and not Nyanza region?

(Loud consultations)

Hon. Deputy Speaker: Order! Order, hon. Members!

Hon. (Ms.) Wahome: Hon. Deputy Speaker, I think hon. Kaluma would be quite comfortable if the orders had been removed from Central Kenya region to Nyanza region.

Hon. Waititu: *(off-record)*

Hon. Deputy Speaker: Order! Order! Hon. Waititu, please get out of the Chamber! You are excluded from the Chamber for the remainder of today's session.

(Hon. Waititu withdrew from the Chamber)

Hon. (Ms.) Wahome: Hon. Deputy Speaker, therefore, the hon. Member should withdraw the remarks because they amount to incitement. In fact, they amount to hate speech and that should not come from the hon. Member.

(Loud consultations)

Hon. Deputy Speaker, I am not sure whether I have been heard.

Hon. Deputy Speaker: Proceed and finish what you are saying.

Hon. (Ms.) Wahome: Hon. Deputy Speaker, I was urging the Chair to direct hon. Kaluma to withdraw the remarks he had made because they amount to hate speech. Such remarks should not come from an hon. Member contributing from the Floor of this House. He suggested that by this amendment, we are proposing to remove powers from the Office of the Inspector-General and transfer them to Central Province. That is unfair.

Hon. Deputy Speaker: You have made your point, hon. Chege.

Hon. Kaluma, I had already indicated that you should restrict yourself to the publication period. We are not debating the Bills at this point in time. So, withdraw those remarks so that we can move on.

Hon. Kaluma: Thank you, hon. Deputy Speaker. I will withdraw the remarks with the indication that the State security machinery in this country is tribalised right from the top to the bottom, with two tribes taking up senior positions. By the way, this is just compounding the matter. Therefore, I withdraw the remarks.

In conclusion, I beg to indicate that there is already the perception in this House that there is the possibility of those Bills clashing with the Constitution. Therefore, we need to have the 14 days publication period retained in order for them to be considered by the relevant Departmental Committees.

With those few remarks, I oppose the Motion.

Hon. Deputy Speaker: Hon. Members, we do not need to have a long debate on this Procedural Motion. Let us get over with it.

Yes, hon. Eric Keter.

Hon. Eric Keter: Thank you, hon. Deputy Speaker. I think the hon. Members are out of the way. What we are supposed to be doing right now is discussing the question of reduction of the publication period of the Bills, and not their contents.

Thank you.

Hon. Deputy Speaker: Hon. Members, if you are in agreement, I will put the Question.

Hon. Members: No! No!

Hon. Deputy Speaker: Order! Order, hon. Members! This is a Procedural Motion. There is nothing more to be said about it. As a House, we should either agree or disagree about the publication period. Therefore, I will put the Question.

(Question put and the House divided)

The hon. Members standing are over 20. Therefore, I order the Division Bell to be rung.

(The Division Bell was rung)

Please close the doors and get settled down in your places. We want to begin the division.

(Loud consultations)

Order, hon. Members! Standing Order No.70(1) clearly states that unless the Speaker, for the convenience of the House otherwise directs, voting on a division in the House shall be by electronic voting. So, we will use our cards. For those who do not have cards and intend to say “no”, we will do a line on one side and for those who intend to say “yes”, we will have a line on the other side. This will help us to speed up the process and help us make use of those electronic devices that we spent a lot of money on.

Hon. Members, let us start and make sure all of you have your cards ready and you have logged in. I should be able to see hon. Members either saying “yes” or “no”, lining up on this end so that the Clerks can assist us with that.

Hon. Members, you may start the voting.

Hon. Cheptumo: On a point of order, hon. Deputy Speaker. You have not put the Question.

Hon. Deputy Speaker: I have put the Question. So, hon. Members we may begin. After you have all inserted your cards and put in your personal identification number, you may begin. You will press “Yes” or “No”.

(Loud consultations)

Order, hon. Members! Just a minute!

So, you have clearly seen that there is “Yes”, “No” and “Abstain” buttons. All those three buttons are there.

Hon. Member: The buttons are not working!

Hon. Deputy Speaker: You are saying that the buttons are not working?

Hon. Member: Yes, they are not.

Hon. Cheptumo: Hon. Deputy Speaker, I wanted to make a contribution. I would like your direction. Those who do not have cards, as you said, should be ahead there because we fear a situation where one would vote here and go to make a line there.

Hon. Deputy Speaker: Okay, we do not want to be the ones practising rigging in the House. So, any of you that does not have a card should be up this side. Please, come now before we start. Anybody without a card or with a faulty card, please come here and say: “Yes” or “No”, the ones saying “No” and the ones saying “Yes” to the publication period being shortened.

Let us have everybody here that does not have a card. You know hon. Members that it is against the Standing Orders for any hon. Member to vote twice. So, there is always a printout of the list. So, at the end, if you have voted twice, it will show.

So, hon. Members you may vote now.

(Hon. Members voted)

DIVISION

Hon. Deputy Speaker: Thank you, hon. Members. Those are the results of the Division. The ones through the electronic voting are 122 for the Ayes plus the nine that voted from the front. The total is 131 votes. The Nays are 58 votes of those who voted electronically plus five who voted at the front. The total is 63.

(Question carried by 131 votes to 63)

AYES: Messrs. Abdi, A.B. Duale, Mohamed Abdi, Abongotum, Angwenyi, Baiya, Barchilei, Bedzimba, B.K. Bett, Bii, Bitok, Bowen, Chanzu, Chepkwony, Cheruiyot, Ms. Chebet, Messrs. Cheboi, J.N. Chege, Ms. S.W. Chege, Messrs. Chepkong'a, Cheptumo, Dawood, Dido, Dukicha, Ekomwa, Emanikor, Gakuya, Gethenji, Gichigi, Gimose, Gitari, Huka, Ichung'wah, Injendi, J.K. Bett, Kahangara, Ms.Kajuju, Messrs. Kangara, Koinange, Gikaria, Gitau, Kariuki Ndegwa, Kariuki Ndirangu, Katoo, Kanini Kega, Erick Keter, Kiaraho, Ms. Kipchoim, Ms. Kiptui, Messrs. K.K. Kinyanjui, Otsiula, Osman, H.K. Njuguna, Ms. W.K. Njuguna, Ms. Ng'etich, Messrs. Sane, Ndirangu, Ngunjiri, Murgor, Alfred Keter, Ms. Kering, Messrs. Kamanda, Kamau, Ms. Kanyua, Messrs. Karani, Karithi, Kihagi, Kinyua, Kiptanui, Ms. Korere, Messrs. Langat, Lati, Lemein, Lentoimaga, Limo, Linturi, Manoti, Ms. Mathenge, Ms. Machira, Eng. Mahamud, Messrs. Manga, Manje, Ms. Mitaru, Messrs. Muchai, Murungi, Musimba, M'uthari, Mwadime, Nderitu, Ngahu, Ms. Ng'ang'a, Mr. Ngare, Ms. Ngeny, Messrs. Njenga, Njomo, Njuki, Nooru, J.M. Nyaga, Ms. B.N. Nyaga, Messrs. Nyumu, ole Ntutu, Opopo, Ms. Otucho, Mr. Pkosing, Dr. Pukose, Messrs. Robi, Rop, Rotino, Sakaja, Sambu, Dr. Shaban, Ms. Seneta, Messrs. Serem, Serut, Ms. Shebesh, Messrs. Shehe, Sitati, Ms. T.G. Ali, Ms. Sunjeev, Messrs. Theuri, Tiren, Tonui, Ms. Tuya, Ms. Wahome, Messrs. Waiganjo, Wambugu, Wangwe, Wanjohi, Ms. Wanyonyi, Messrs. Washiali and Were.

NOES: Messrs. Aburi, Aden, A.O. Ahmed, S.S. Ahmed, Ms. F.I. Ali, Ms. Amolo, Messrs. Anami, Andayi, Anyango, A.T. Anyanga, Arama, Bosire, Bunyasi, Chea, Gaichuhie, Ganya, Ms. Ghati, Eng. Gumbo, Messrs. G.W. Omondi, Ibren, J.O. Omondi, Ms. Juma, Messrs. Kaluma, Kitungi, Lessonet, Mati, Mbui, M.D. Duale, Mlolwa, Mohamed Diriye, Mukwe, Mulu, Muluvi, Ms. Mutua, Messrs. Mwamkale, Mwanyoha, Mwashetani, Ms. Mwendwa, Messrs. Naicca, Ndiege, Ng'ongo, Ms. Nyamunga, Mr. Nyenze, Ms. Ombaka, Messrs. Onyango, Muzee, Dr. Simiyu, Ms. Kedogo, Messrs. F.K. Wanyonyi, Odanga, Ms. Odhiambo-Mabona, Messrs. Ogalo, Okoth, Ogolla, Onyura, Otaalo, Ottichilo, P.E.O Anyanga, Saney, Simba, Wandayi, Wangamati and Wetangula.

BILLS

First Readings

THE NATIONAL POLICE SERVICE COMMISSION (AMENDMENT) BILL

THE NATIONAL POLICE SERVICE (AMENDMENT) BILL

(Orders for First Readings read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

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

Hon. Ng'ongo: Hon. Deputy Speaker, my point of order, which I raised earlier, was at Order No. 9 and Order No.10.

Hon. Deputy Speaker, you remember hon. Wandayi, the Member for Ugunja had raised a substantive issue. Even though he raised it at Order No.8, his point of order should have been raised at Order No.9.

The Constitution is very clear and so are our Standing Orders. Any legislation that is introduced to the House whether to the plenary or Committee that violates the provisions of the Constitution should not be allowed to be transacted by the House. By taking those Bills to First Reading we are in a sense embarking on a very serious exercise of debating those Bills through the relevant Departmental Committee. Those Bills are likely to offend the provisions of the Constitution.

Hon. Deputy Speaker this House has a duty and obligation to protect and defend the Constitution of the Republic of Kenya. The people of Kenya, in their wisdom, decided to give powers--- Allow me to read one provision of the Constitution. Under Article 246 (3)(a) the power to recruit, appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service is an exclusive function of the National Police Service Commission.

Hon. Deputy Speaker, if we allow any debate on a Bill that is likely to interfere with that particular provision, it is unconstitutional. Therefore, I would ask the Speaker to make a ruling whether proceeding either in Committee or plenary of the House to debate those two Bills would not violate the provisions of the Constitution and thereby that can only happen if we come up with a specific amendment to the Constitution.

Hon. Deputy Speaker, as we normally say, this is a House of rules.

Hon. A.B. Duale: Hon. Deputy Speaker, with your indulgence, I want you to guide the House. This afternoon we are breaking our own Standing Orders. Hon. Mbadi should know that we are at Order No.11 which is a different Motion. However, having said that, for record purposes, this is not the first Bill that has come to this House. Bills go through a conveyor belt before they reach the House. Constitutionally, procedurally, a Bill, once it is subjected to the stakeholders, the Kenya Law Reform Commission and others such as the CIC, it goes to the Cabinet. When it comes here, after the First Reading as we have done today, it goes to the Departmental Committee where hon. Members can appear and raise issues.

When you say that a Bill of this nature is unconstitutional, I have raised it here that this amendment is in conformity with Article 246(2)(b) and (c). You cannot stand here and say that this Bill is unconstitutional. Give us the provisions. Let us respect the law and the procedure. Now we are at Order No.11. My dear colleagues, let us respect the dignity of the House. Let us respect our own laws. If we break our own laws then where are we heading?

Hon. Ng'ongo: Hon. Deputy Speaker, when I started you pointed out that you had a problem with your machine. I was up on my feet and very early enough on Order No.9. When I started, I said that I was raising this point of order with regard to Order No.9.

(Loud consultations)

Hon. Deputy Speaker we need to learn how to debate in this House. It is now four months. This is not a *baraza*.

Hon. Deputy Speaker: Give a chance to the Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Thank you, hon. Deputy Speaker. I rise on a point of order with regard to Standing Order No.83. I am surprised that you are entertaining my good friend, hon. Mbadi. He has been in this House. The Standing Orders are very clear. He has not quoted any particular Standing Order when rising on a point of order. Why he should be entertained when raising an issue concerning the Constitution--- He is supposed to rise on a point of order. Right now, you cannot even allow him to rise on a point of order, it is *functus officio*. A decision has been made unless he applies for review in a High Court and then he can come back.

(Laughter)

Hon. Deputy Speaker: Please, proceed and summarise, hon. Mbadi.

Hon. Ng'ongo: Hon. Deputy Speaker, you know when I listen to my friend talk of the High Court in the National Assembly which is a separate and distinct arm of the Government, I wonder whether he knows where he is sitting today.

(Applause)

Hon. Deputy Speaker, if hon. Chepkong'a cared to listen, I started by saying that hon. Opiyo Wandayi raised a point of order which was fundamental and very significant only that he raised it at a wrong point. He should have raised it at Order No.9. Then I proceeded to transact my business. So, I am asking for your ruling whether it would be procedural and whether we will not be violating the oath that we took as Members of this Assembly by debating Bills that are expressly contravening the provisions of the Constitution which I have cited. I have already cited Article 246(3)(c), if the Leader of Majority Party cared to listen. I appeal to the leadership that when they are appointing Leaders of the Majority Party, they should appoint people who can listen. This is because if I am making a contribution and the Leader of the Majority Party is not listening, it is difficult to understand why he was even given that position. I wish it was given to hon. Sakaja.

(Laughter)

This is because hon. Sakaja is more attentive. Thank you.

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

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

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Deputy Speaker. First of all, I want to thank you for giving me this opportunity. I rise on Standing Order No.47 and I want to rise with a lot of respect to your ruling. I also stand guided because if I

understood your ruling well, you said that the hon. Member was raising his point of order on weighty issues at the wrong time and if I understand hon. Mbadi well, he has purported to try and now raise the point of order at the right time. It would be useful if, and I would urge you, the issues that are being raised here are issues that are weighty and that will inform the operation of this House not just for four years but for a lifetime because you actually create precedents when you sit on that Chair. So, whatever you say on that Chair will be quoted by several Chairs long after you are gone and because of that I want to read Standing Order No.47(3)(b). It states: -

“If the Speaker is of the opinion that any proposed Motion -

(b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament...”, then you will see what hon. Wandayi is talking about.

So, hon. Deputy Speaker, what I am asking is this: This same House has ruled in the past and I can actually give you citations one of which was in the case of the Chief Justice, Attorney-General and the rest and several others. I am sure the Office of the Legal Department could advise the House. You need to advise us whether you are departing from the previous rulings of this House or whether we are creating new precedents because that is what is usually done. What I am therefore asking is that if a matter is unconstitutional, it should not even appear before this House. I want to raise an issue that the Leader of Majority Party has raised and he has said that this issue does not speak to the Constitution but speaks to an Act of Parliament. Acts of Parliament give effect to the Constitution. So, you do not have to amend the Constitution by going directly to the Constitution but you can purport to amend the Constitution through subsidiary legislation which is unconstitutional and that is what we are saying, that by this subsidiary legislation we are actually purporting to amend the Constitution.

Hon. Deputy Speaker, I want to urge that you give a very considered opinion. I would plead and urge that you take time and give us a considered ruling on this matter. Thank you.

Hon. Gichigi: On a point of order, hon. Deputy Speaker. I have been listening to hon. Mbadi and hon. Millie talk of violation of the Constitution. They were very categorical. They are mentioning the provisions of the Constitution that are purportedly likely to be violated by the intended amendments but they are not saying which provision in the intended Acts is likely to violate that Constitution. There is none. They are actually not saying any. So, I think they are completely out of order.

Hon. Kamau: On a point of order, hon. Deputy Speaker. I want to raise two points here. One is Standing Order No.40. This is the sequence of proceedings. Standing Order No.40(2) states; “Business shall be disposed of in the sequence in which it appears in the Order Paper or in such other sequence as the Speaker may, for the convenience of the House, direct.”

Hon. Deputy Speaker, as we speak right now, we are on Order No.11. We have disposed of all the other Orders. Now we are on Order No.11

Secondly, under Standing Order No.47(3)(b) which is being quoted., it is very clear. It says that: “If the Speaker is of the opinion that any proposed Motion is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament...”

The key words here are “If the Speaker is of the opinion.” This Motion has gone through the Office of the Speaker and if the Speaker was not of that particular opinion, no other person now can claim that it is out of order.

Hon. (Eng.) Gumbo: On a point of order, hon. Deputy Speaker. I think we are going about this matter in a roundabout manner but we are actually demeaning the dignity of the House. This is because we are talking of the premises of the Constitution and the proposed Bill. If you look at the proposed Bill under Section 3(d), it says in Sub-section 1(k) “by adding the words “on disciplinary matters relating to transfers, promotions and appointments” immediately after the words “of service”.

Hon. Deputy Speaker, when I go to the Constitution which is the supreme law of the land, Article 246(3) says: “The Commission shall –

- (a) recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service.”

What we are asking for is simple: Is this amendment an attempt to amend the Constitution? This is the ruling we are seeking. Why the hullabaloo? Why are we trying to set precedents which are going to bind this House and put this House in bad light? This is a straightforward matter. It is either we are attempting to amend the Constitution through the back door or we are not. I plead that you rule that this proposed amendment is an attempt to amend the Constitution through the back door.

Hon. (Ms.) Shebesh: On a point of order, hon. Deputy Speaker. I rise under Standing Order No.85, which is on anticipating debate. I want to congratulate the Rapid Response Team which I was part of when I was in the Orange Democratic Movement. I know that they have been sent to do good work and they do it well. However, they are anticipating debate. This is a House of rules. It does not follow that it is only one side of the House that follows rules. There is another side of the House that not only follows rules, but knows them all. They are anticipating debate on the Motion that has been proposed. With all due respect, many times, clothed in semantics, hon. Mbadi has continuously misled this House.

Semantics using a lot of words cannot be seen to be the truth all the time. I beg you, as you rule, not to always take the side of those who talk with force against those who talk with reason. This is anticipating debate. We only need to look at the Standing Order No.85 to see exactly what the Rapid Response Team of Coalition for Reforms and Democracy (CORD) is up to.

Hon. Lessonet: Hon. Deputy Speaker, it is true that our colleagues from the other side are attempting to---

(Loud consultations)

Of course, when I talk about the other side, I definitely mean those who want to slow down what this House wants to correct. It is those who want to slow down what this House wants to do. We are only in the First Reading. Hon. Mbadi and his team will have a chance during the Committee of the whole House to amend the Bill and make it in line with the Constitution. Even if this House has processed this Bill to the end and passed it because we are going to pass it, they can still go to the High Court or the Supreme Court for interpretation.

Hon. Mbadi and I should not even attempt to interpret the Constitution or the law because we are accountants. There are judges in the Supreme Court who have been employed to do that job. They will tell us, once we are through, whether it is unconstitutional. So, what hon. Mbadi is doing is not late. He still has a lot of time at the Committee stage to bring his amendments to correct the Bill for it to be in accordance with the Constitution, as he believes. If we beat him on that, he can go to the Supreme Court.

Hon. Baiya: Hon. Deputy Speaker, I want to believe that I am rising to speak to Order No.11, but the position being taken by my colleagues on the constitutionality of this Bill is a matter that has occupied the minds of several organs of the Government when those amendments are being proposed. It is incumbent upon the Speaker, before a Bill is presented on the Floor of the House, to cross-check its constitutionality and where satisfied that it does, under Standing Order No.47(3), to allow it to be presented before the House.

The fact that this Bill has been allowed to go through this Motion speaks about the Speaker's opinion about the constitutionality of this Bill. If somebody has a different opinion, that is your opinion and not the Speaker's opinion. The worst you can do is to stop the House from proceeding with the business. That is already a spent agenda. So, I am pleading with you to prevail and ensure that there is order in this House for us to prosecute Order No.11. If you allow the point of order, at the end of the day, we are not going to undo what the House has already decided.

Hon. Ababu: On a point of order, hon. Deputy Speaker. First of all, let be just belabour the obvious, being that this is a debating chamber and we are paid to talk on this Floor. Anything or anyone that seeks to gag debate in this House will be violating the very essence of our presence here.

Therefore, with all due respect to the Chair, I do not believe that if you have 20 Members seeking to express their views on any matter, unless you are constrained by factors that are so fundamental, they can be restricted. We come here to debate. We may disagree. We may even become passionate, but at the end of the day, our primary reason for being here is to debate.

I want to raise two issues. The first has to do with Order No.11. When I look at Order No.11, it is seeking to amend the Fifth Schedule to the Constitution.

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

Hon. Ababu: Hon. Deputy Speaker, I am on a point of order.

Hon. Deputy Speaker: We need to dispense of the other two matters before we go to that Order.

Hon. Ababu: Hon. Deputy Speaker, it has been said countless times that we are on Order No.11. In that case, I will drop that one. I will go to my second issue. The issue has to do with the manner in which we are handling the business of this honourable House. It has already been said and I need to stress that point, that anything that comes from the Chair sets a precedent. This House is guided by the Standing Orders, but it is also guided by customs, usages and practices. That is something that you can pick up from any House within the Commonwealth, of which you are a part. So, for the Members to continuously insist that the rules of this House are restricted to the letter of the Standing Orders alone is erroneous. We are also a House of practices, customs and

usages. Among those usages, practices, customs and traditions are the rulings from the Chair.

Therefore, whenever any matter is brought to the attention of the Chair that touches on procedures, rules and the conduct of business of this House, I want to plead that such matter be given due consideration, seriously so. Two matters have been raised which I want to plead that in the tradition of the Commonwealth parliamentary practices, customs and the usages of this House, where any ruling; any pronouncement from the Chair is a precedent, it sets a precedent for future reference.

I want to invite you to determine - and I want to plead with due respect that you make a considered ruling on this one - at what stage this House is considered to be seized of a Bill. When do we say that the National Assembly is now properly seized of a matter?

(Loud consultations)

I am not going to take the Members' shouts! I am seeking a considered ruling of the Chair. Two, a lot has been said on the Standing Order No.85 on anticipating debate. You know, it is always useful that when you read any section of any law or rules, you read it holistically and not partially.

Hon. Deputy Speaker, I want you to look at the role of Standing Order No.85, and specifically paragraph (3), which says: -

“85(3) In determining whether a debate is out of order on the grounds of anticipation, regard shall be to the probability of the matter anticipated being brought before the House within a reasonable time.”

Hon. Deputy Speaker, I want a considered ruling in terms of when a matter is deemed to have met the standards contemplated by Standing Order No.85(3) to be anticipation of debate.

Hon. A.B. Duale: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: Order! Order!

Hon. Ababu, please, proceed and summarise, so that we move on.

Hon. Ababu: Hon. Deputy Speaker, I want to plead that, yes, the Member for Nairobi County, hon. Rachael Shebesh, who is my good friend, has correctly said that this is a House of rules and that the moment we deviate from the rules, we will turn it into a House of anarchy. Let me conclude by seeking your guidance, as part of that ruling, as to whether a chairperson of a departmental committee has the mandate, authority and power to come to this House and, on consultation with a leader of whatever stature and whatever characterization, to purport to vary a resolution of that committee. That is a fundamental issue, and I particularly address myself to those who are strict on rules. If you want us to follow rules, let us follow rules not partially but in their fullest.

When a departmental committee has passed the resolution that we are going to seek the full 14 days for publication of a Bill, 14 days that are intended to bring to life Article 118 of the Constitution that gives a chance to the public to participate in the legislation process of this House, and then such chairperson tells us that, on consultation with the Leader of Majority Party, he is varying the resolution of the Committee to seek the 14 days, you must rule whether that is procedural and whether it is in line with the rules we are being asked to respect and obey. I want to request, with due respect---

Hon. A. B. Duale: On a point of order, hon. Deputy Speaker.

Hon. Ababu: Leader of Majority Party, *mbona unapepea pepea?* Just relax.

Hon. Deputy Speaker: Hon. Ababu, you are out of order! You are supposed to address the Chair.

Hon. A.B. Duale: *(off-record)*

Hon. Ababu: Calm down chief. Calm down. You are just an hon. Member representing a constituency. You are like Ababu Namwamba who is representing Budalang'i. So, relax.

Hon. Deputy Speaker, I want to request a considered ruling on those matters. They are matters that touch on the integrity of this House. They touch on the procedures and the very character of the 11th Parliament. So, let us not trivialize this critical matter.

Thank you.

Hon. Deputy Speaker: Thank you, hon. Ababu.

Finally, we shall have the Leader of Majority Party.

Hon. A.B. Duale: Hon. Deputy Speaker, in my opinion, you have no ruling or communication to make.

(Loud consultations)

Hon. Deputy Speaker, protect me. I want my colleagues to listen to me for a minute. The Kenya National Assembly has three fundamental functions under the Constitution. One of them is to represent the people who elected us to this House. The second one is to oversee the Executive. More fundamentally, it is the mandate of Members of Parliament to legislate.

Hon. Ng'ongo: *(off-record)*

Hon. A.B. Duale: Hon. Deputy Speaker, we are not in a market place. I want you to protect me from hon. Mbadi.

On the function of legislation, Chapter 13 of the Constitution talks about amendments to the Constitution. Hon. Ababu was an able Chairperson of the Departmental Committee on Justice and Legal Affairs in the last Parliament. The Bill we are discussing today, under the presidential system of government, is a product of the National Assembly. It was after receiving the signature of the Speaker that it went for printing. More fundamentally, Bills that come to this House do not originate from the gullies of River Road. They neither originate from offices of the Executive nor from political parties. The Constitution is very clear on the procedure and process through which Bills are printed and brought to the House.

Hon. Deputy Speaker, the question is when you apply procedures for which no provisions have been made in either the Standing Orders or the Constitution. When the Constitution and the Standing Orders are very clear, you cannot invoke Standing Order No.47(3). The National Assembly is seized of this Bill. I want to give an opinion free-of-charge to those who do not know, and particularly to hon. Ababu. Parliament is seized of a Bill when it is read the First Time and committed to the relevant departmental committee. My colleagues will have opportunity to bring amendments to the Bill during the Committee stage.

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

Hon. A.B. Duale: Hon. Deputy Speaker, I cannot give tutorial to this House. It is not my business. I do not give tutorials. I do not give training. I do not give tutorials, but when it becomes apparent that some people want to circumvent the Constitution, we are

free to give tutorials to hon. Members where we have our tea and at the bar, and not on the Floor of this House.

Thank you, hon. Deputy Speaker.

(Several hon. Members stood up in their places)

Hon. Deputy Speaker: Order! Order, hon. Members! I believe that you have ventilated quite a lot on this matter. You have raised substantive issues, which need further deliberation. So, as I had earlier said, we will continue. The First Reading of the two Bills has already been done. First Reading is not injurious to anybody. Therefore, I would like to indicate that before the Second Reading commences on those Bills, the Speaker will give a comprehensive communication on all the matters that have been raised today. Going by what hon. Ababu said, that is the tradition that we have had in this House. Weighty matters may be raised, needing further deliberations. Therefore, we will deliberate further on this and give a Communication before we proceed to the Second Reading stage of the Bills.

Hon. Members, allow us to move on to the next item on the Order Paper, which is Order No.11.

MOTION

EXTENSION OF PRESCRIBED PERIOD FOR ENACTMENT OF BILLS

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

THAT, pursuant to Article 261(2) of the Constitution, this House resolves to extend the period prescribed for the enactment of legislation necessary to give effect to Article 34 of the Constitution (Freedom of the Media) by a period of four months from 27th August, 2013.

This Motion is brought on behalf of the Constitutional Implementation Oversight Committee (CIOC), which is a Parliamentary Select Committee set up under Article 4, Sixth Schedule of the Constitution. It is the Select Committee responsible for overseeing the implementation of the Constitution, including the preparation of the legislation required by the Constitution and any challenges in that regard.

The Fifth Schedule legislation that we are supposed to enact within three years is set up there and that date falls on 27th August. Among the legislation is freedom of media pursuant to Article 34 of the Constitution. The other legislation with a deadline of 27th August is that of support for county governments under Article 190, public participation and county assembly powers, privileges and immunities pursuant to Article 196 of the Constitution and the county assembly gender balance and diversity under Article 197.

Legislation passed by the 10th Parliament implementing those other legislations include the County Governments Act, 2012, the Elections Act, Public Finance Management Act, Inter-Governmental Relations Act, 2012, and Transition to Devolved Government Act, 2012. The legislation relating to freedom of the media under Article 34 is the only one that has not been passed. There are two Bills that are in the process of

preparation pursuant to Article 34, namely the Media Council Bill, 2013 and the Kenya Information and Communications (Amendment)---

Hon. Ababu: On a point of order, hon. Deputy Speaker. I am seeking the guidance of the Chair. I attempted to raise this earlier but you guided me otherwise. This Motion has the effect of amending the Fifth Schedule to the Constitution. When I look at the Fifth Schedule, I see that Freedom of the Media Bill, the Bill which we are about to get into is supposed to have been enacted three years from the date of enactment of the Constitution. When you look at Article 261 of the Constitution, there is procedure on how to enact consequential legislation.

The guidance I wish to seek is whether this House can properly amend a provision of the Constitution through a Motion such as this. This is a fundamental matter that touches on both the procedures of the House and also the process of legislation. What we are just about to do is to amend a very specific timeline of three years that is specifically set in the Fifth Schedule. We are seeking to extend this period by four months which will take it beyond this period of three years.

This procedure, in my humble view, has to be in line with the Constitution. I just want guidance. Are we properly proceeding to amend the Constitution through this Motion as currently set out on the Order Paper? I just need your kind guidance.

Hon. Baiya: Hon. Deputy Speaker, I am in a position to answer my colleague, Hon. Ababu. With regard to the extension of time being an attempt to amend the Constitution, there is clearly a misunderstanding on the part of my learned colleague because there is no attempt to amend the Constitution. What the Motion is seeking to do is to extend time for compliance or enactment of a specific legislation which has a deadline. We are not breaking new grounds. Parliament has had occasion to deal with this kind of Motion. My learned colleague was actually a Member of the 10th Parliament and he participated in passing a similar Motion in relation to Land Bills. So, there is precedent set for this kind of a Motion. I am sure Hon. Ababu is suffering from selective memory lapses because he was in this House and he knows very well--- I am saying that it is somehow deliberate because I am sure he knows very well about that.

(Laughter)

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

Hon. Deputy Speaker: I am sure he was saying it with a light touch!

Hon. Baiya: Hon. Deputy Speaker, what I am trying to tell the House is that the reason why we are seeking this extension is because it is important for the National Assembly to understand that those two Bills were forwarded to the CIC from the Office of the Attorney-General on 21st June, 2013. That is when they were handed by the Attorney-General to the CIC. They were forwarded back to the Attorney-General by the CIC on 16th July. It was only last Friday, 19th July that those two Bills were forwarded to this House. It was only yesterday that they were forwarded to the Government Printer for publication.

This means that if you go through the stages of publication of Bills, First Reading, Second Reading, Third Reading and public participation it will be obvious that we will not meet the constitutional deadline of 27th August. This is more so because this House has a calendar and is intending to go on recess by 2nd August, 2013. Therefore, it is quite

clear that this delay does not fall on Parliament. We are not even blaming any institution for this. Indeed, the necessity for extending this period arises from circumstances related to the past general election under the new Constitution and the transitional challenges that were of nobody's making.

(Loud consultations)

We also know that some of the challenges we have gone through relating to transition include the elections on 4th March, 2013. The election petition that followed and---

(Several hon. Members stood up in their places)

Hon. Deputy Speaker: Order, hon. Members!

Hon. Baiya: It was then followed by the formation of Parliament and after that before commencement of its business, Parliament had to deal with the formation of parliamentary committees and this took time because under the new system we needed to consult. This was done and thereafter, there was the vetting process of Cabinet Secretaries and Principal Secretaries that preoccupied Parliament. Lastly, Parliament had to give priority to budget matters and this budget cycle was late because of the same elections.

Hon. Deputy Speaker, in other words the challenge in implementation has been occasioned by circumstances beyond the control of the National Assembly. That is the reason why we are seeking an extension of time. I believe that a substantial number of hon. Members will be needed to be able to pass this resolution. We would like to ask hon. Members to support this Motion to enable this august House have ample time to involve all the stakeholders who are needed to legislate. The practice in the 10th Parliament---

(Several hon. Members withdrew from the Chamber)

Hon. Deputy Speaker: Order, hon. Members! Order! Order, hon. Baiya! There is an exodus from the House. What is happening?

Hon. Baiya: So, the situation we were in during the 10th Parliament when we were forced, as Parliament, to pass legislation in a rushed manner should not be repeated, so that we can consider those two Bills by involving all stakeholders. We can then have the period extended by four months, which will be quite adequate to enable us pass the Bill.

With those remarks, I wish to ask the Vice-Chair to second the Motion.

Hon. Deputy Speaker: Hon. Baiya, who is seconding? Yes hon. Emanikor

Hon. (Ms.) Emanikor: Thank you, hon. Deputy Speaker. I rise to second this Motion. Before I continue, I would like to make two clarifications.

The extension of the deadline by this august House, in its wisdom, is acceptable and has no legal implications. We consulted with the Attorney-General, the Kenya Law Reform Commission and CIC and it was confirmed that the extension will have no implications.

Secondly, I would like to clarify that the extension we are seeking is not for publication purposes, but for the whole process until enactment.

I would like to underscore the importance of this august House to undertake the standard mechanism of consulting all the stakeholders before the Bill is passed. The legislative procedure has to be followed and there is need to fine tune the Bill to reflect the national agenda and meet the constitutional requirement.

Hon. Deputy Speaker, we have just been told that those Bills were forwarded to Parliament last Friday and the House will be going on recess. Therefore, it means there will be no adequate time for us to ventilate and apply the standard mechanism.

The CIOC is also alive to the fact that there were only three Bills that were supposed to be passed within those first three years. One of them is on the county assembly gender balance and diversity as required under Article 197. The other one is on the public participation and county assembly privileges and immunities as required under Article 196. Those two requirements have already been met through the Elections Act. It is only this Bill on freedom of the media that has not been enacted out of the three Bills that required to be enacted within the first three years.

Hon. Deputy Speaker, I would like to speak about the Chairman of CIC who has often referred to this Parliament as having slept on its job. On several occasions CIOC has summoned the CIC and impressed upon them on the urgency of the three Bills, and it is very unfortunate. We do not take it kindly when Mr. Charles Nyachae implies that this House has been sleeping on the job.

With those few remarks, I would like to second this Motion.

Thank you.

(Question proposed)

Hon. Nuh: Thank you very much, hon. Deputy Speaker. I stand to oppose the Motion. This is a great day because the Jubilee Coalition has realized that we have the numbers on our side. This is a constitutional amendment and so they will need a two-thirds majority but we denied them and I am very happy. That is why I remained behind when my colleagues went out, just to register in the HANASRD that this House must develop a bi-partisan approach to issues, if we are to go far and with serious legislation.

This practice of the Leader of Majority Party subjecting everything to the tyranny of numbers must stop in this House. This is a House for legislation and we are all legislators. We are not part of the Executive. There are hon. Members of this House who come here with the mindset that they are part of the Executive. They come here to defend the Executive agenda, and they behave as though they are Cabinet Secretaries. That notion should be put to a stop. Already the Constitution has put it to a stop. The Constitution has separated the Legislature, Judiciary and the Executive. This issue of some of the hon. Members feeling that they are part of the Executive is worrying this House and that is why many of our agenda items are not going through. That is why the Leader of Majority Party could not reach out to the other side of the House to make sure that we reduce the period of publication of this Bill.

Secondly, this cannot always be the idea, shortening of the Bills' publication period from 14 to 7 days should not become a precedent. I think the one we did today

was the fourth one since I came to this Parliament and this always delays bringing of Bills to this House.

Hon. Deputy Speaker, the Constitution was promulgated in 2010, and it gave three years for this Bill to be brought to this House but somebody slept on his job and he is bringing it now when the deadline is on 27th August, 2013. He is bringing this Bill today, 23rd July, 2013. What was he doing since that time for them to bring this Bill at this time, and to request hon. Members to extend the period by another four months? That is unacceptable.

I think it is failure on the part of the CIOC, CIC and the AG's office. They should have brought this Bill a long time ago for hon. Members to discuss. The media is a very important entity to the Government; it is the Fourth Estate. The media plays a major role in this country and it is very sad that they have been ejected from the Media Centre of this Parliament.

Hon. Deputy Speaker, I seek your indulgence that the media be allowed back to the Media Centre that is situated within Parliament Buildings. This House cannot operate without the media. We know that the media is very important to this House. How do we disseminate information? Are we going to talk to ourselves? Kenyans need to know what we are discussing in this House. Unless we want to discuss hidden agenda in this House, the media must be taken more seriously than the way this House is trying to do; it is gagging them. The House has taken up the role of gagging the media since we came here. It is high time we dropped that role and gave media the attention they require. That is why the Bill was not brought to this House. Stakeholders have not discussed this Bill.

I am a member of the Committee on Energy, Communication and Information and I know that we have not received this Bill. The Media Council of Kenya has been asking when the Bill will be coming. They have not been able to interrogate the Bill. This is unacceptable. This is not what Kenyans brought us here to do. We cannot allow people to discuss unconstitutional Bills like those giving one person authority to detain people as it used to happen before. The other Bills that were brought here are already Acts of Parliament and are operational.

Why do you want to remove power from a constitutional commission and give it to an individual, if you really do not have bad intentions? When you want to remove powers from a commission and vest them in an individual, that means you have bad intentions for this country. That is unconstitutional.

With those few remarks, I beg to oppose this Motion vehemently. It is a wrong Motion for this House at this time. It should be withdrawn by the Mover.

Hon. Langat: Hon. Deputy Speaker, unfortunately, a very important Motion has been trivialized by people who seek attention. Those are people who report to certain quarters in this House that they have done a good job by trivializing a matter. I want to tell them that, first and foremost, they have not won.

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

Hon. Deputy Speaker: Order, hon. Junet Nuh. You have had your time to speak.

Hon. Nuh: I am raising a point of order!

Hon. Langat: You said that you were bitter and I never interrupted you, my friend.

Hon. Deputy Speaker, there are people who feel that they have achieved. However, I can tell them that here we have the numbers to reduce our recess period. It

only requires a simple majority. We are going to reduce the recess period. We have the numbers even if they walk out. We have the numbers to pass the Bill when it comes. Therefore, there is nobody who has won in this thing. In fact, they are the greatest losers and they have disappointed this country. In fact, if you continue running the business of this House---

QUORUM

Hon. (Ms.) Nyasuna: On a point of order, hon. Deputy Speaker. I would like to bring to your attention the fact that the House has no quorum.

Hon. Langat: Hon. Deputy Speaker, somebody cannot walk out and then walk in to come and interrupt the business of the House. I think it is in bad faith for somebody to do that. Anyway, the discretion is yours.

Hon. Deputy Speaker: Unfortunately, we are a House of rules, and if somebody points out lack of quorum, we have to act.

I order that the Quorum Bell be rung.

(The Quorum Bell was rung)

ADJOURNMENT

Hon. Deputy Speaker: Order, hon. Members. It appears that we do not have quorum. So, this House will stand adjourned until tomorrow, Wednesday, 24th July, 2013 at 9.00 a.m.

The House rose at 5.15 p.m.