

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 6th August, 2014

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

DELEGATION FROM SOMALIA AT THE SPEAKER'S ROW

(Several hon. Members walked into the Chamber)

Hon. Speaker: Hon. Members, those of you walking into the Chamber, take your seats.

I wish to give this communication relating to a visit by Members of Parliament from the Federal Government of Somalia.

(Applause)

I wish to introduce to you a delegation of Members of Parliament from the Federal Government of Somalia, which is seated on the Speaker's Row. The delegation comprises of the following hon. Members:-

Hon. Abdirashid Mohamed Hidig, MP – Leader of delegation
Hon. Abdibarre Yussuf Jibril, MP
Hon. Ahmed Ismail Mohamed, MP
Hon. Abdulahi Yussuf Hassan Alankey, MP
Hon. Ali Aden Hussein, MP
Hon. Fadumo Nur Mohamed, MP
Hon. Khalif Sheikh Abdillahi Dere, MP
Hon. Ahmed Mayow Abdulle, MP
Hon. Aden Ibrahim Dhayow, MP
Hon. Adil Shego Sagar, MP
Hon. Bibi Khalif Mohamed, MP
Hon. Osman Mohamed Abdullahi, MP
Hon. Hussein Mohamed Muse, MP
Hon. Bashir Mohamed Jama, MP
Hon. His Hassan Adan, MP
Hon. Ashakos Mohamud Oma, MP

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Hon. Mahad Mohamed Dualeh, MP
Hon. Abduhakim Ige Guled, MP
Hon. Mohamed Abdillahi Kamil, MP
Hon. Ali Yussuf Osman, MP
Hon. Osman Haji Ali, MP
Hon. Mohamed Amin Hassan, MP
Hon. Qali Ahmed Diriye, MP
Hon. Abdisatar Abdisalam Hassan, MP
Hon. Faduma Adowa Rage, MP

Hon. Members, the delegation is accompanied by the following members of staff: Mr. Aden Bashir Abdi and Mr. Bashir Ahmed Hussein. The delegation is in the country under the auspices of the IGAD Office of the Facilitator for Somali Peace and National Reconciliation. The Office is facilitating capacity building, training in communication, good governance and leadership for the parliamentarians. As part of the training, the Members are in the House to observe Assembly proceedings. On my own behalf and that of the House, I wish to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful engagements.

Thank you.

The other Communication will come before we get to the business listed as Order No.8.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Wednesday, 6th August, 2014:-

The Constituencies Development Fund (CDF) Board Report for the month of June 2014.

The Report of the Auditor-General on the financial statements of the Water Services regulatory Board for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the financial statements of the Office of the Registrar of Political Parties, Vote No.168, for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the financial statements of the Kenya Tourism Finance Corporation for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the financial statements of the Office of the Deputy Prime Minister and the Minister for Local Government for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the financial statements of the National Cereals and Produce Board for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the financial statements of the Rural Electrification Authority for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

Hon. Speaker: Hon. Members before we embark on Statements, I wish to take this opportunity to recognize, and welcome, Riantune Primary School from Tima West Ward in North Imenti Constituency, who are seated in the Speaker's Gallery.

(Applause)

Similarly, I wish to recognize the presence of Obel Primary Boys Boarding School, Rachuonyo Sub-County, Homa Bay County, who are in the Public Gallery. The first Statement is the one sought by hon. George Peter Kaluma. He had indicated that hon. Joseph Magwanga would seek it on his behalf.

REQUESTS FOR STATEMENTS

NON-ADHERENCE TO THE CONSTITUTION BY THE EXECUTIVE

Hon. Magwanga: Thank you, hon. Speaker. Allow me to seek a Statement on behalf of hon. George Opondo Kaluma, who is out of the country.

Pursuant to Standing Order No.44(2)(c), the hon. Member wishes to request a Statement from the Leader of the Majority Party regarding lack of fulfillment of the provisions of Articles 232(1), 241(4) and 246(4) of the Constitution by the Executive.

Hon. A.B. Duale: Thank you, hon. Speaker. The matter the hon. Member has raised will take me time to answer. He has cited Article 232(1)(h) on the representation of Kenya's diverse communities, which I am ready and able to reply to. He has also cited Article 241(4) that talks about the composition of the command of the Kenya Defence Forces and whether it reflects the regional and ethnic diversity of the people of Kenya.

Finally, the hon. Member has talked about Article 246(4) that again talks about the composition of the National Police Service, and whether its composition reflects the regional and ethnic diversity of the country. This requires me to consult widely in the Government and bring an answer to the House in three weeks.

Hon. Magwanga: Thank you, hon. Speaker. I tend to think that the three weeks are enough. By that time the hon. Member will be back in the country.

Thank you, hon. Speaker.

KILLINGS/DESTRUCTION OF PROPERTY IN NADONY/AKWICHATIS IN BARINGO COUNTY

Hon. (Ms.) Kiptui: Hon. Speaker, I wish to request a Statement as per the Order Paper from the Chairperson of the Departmental Committee on Administration and National Security regarding alleged killings and destruction of property in Nadony/Akwichatis region of Baringo County.

Hon. Lentoimaga: Hon. Speaker, I undertake to respond to this Statement request within the next two weeks.

Hon. (Ms.) Kiptui: Hon. Speaker, two weeks are sufficient. I insist that that Statement be thorough.

RETIREMENT OF TEACHERS

Hon. Mwangi: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the anticipated retirement of teachers. By September, 2014, over 5,000 are scheduled to---

Hon. Speaker: Yes, the Chairperson or Vice-Chair, hon. Melly.

Hon. Melly: Thank you, hon. Speaker. We should be able to respond to this matter in the next two weeks.

Hon. Mwangi: That is okay, hon. Speaker.

CLOSURE OF MERU UNIVERSITY

Hon. Karithi: Thank you, hon. Speaker. I would like to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the closure of Meru University following student unrest.

Hon. Melly: Thank you, hon. Speaker. I know the issue in Meru is very urgent and we will address it. The Committee will bring a report to the House in the next two weeks.

Thank you.

Hon. Karithi: Hon. Speaker, I have no problem with two weeks, but I remember that last year I requested another Statement from the same Committee and up to today they have not given a response.

Hon. Speaker: Were you given two weeks?

Hon. Karithi: Hon. Speaker, I will appreciate if they do that.

Hon. Speaker: Well, hon. Melly now promises that he will give you the Statement response in two weeks.

Hon. Melly: Hon. Speaker, we invited the hon. Member to come to the Committee. We will bring a report to this House in two weeks' time.

DETERIORATING SECURITY SITUATION IN EASTLEIGH

Hon. Abdi: Hon. Speaker, I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the deteriorating security situation in Eastleigh Shopping Centre in Kamukunji Constituency.

Hon. Speaker, several cases were reported of missing persons after being taken away for questioning by people claiming to be police officers. Among the cases were of four men, one of whose body was found dumped in Masinga Dam. The other three are still missing two months after their disappearance. This situation has caused a lot of fear and havoc among the residents of Eastleigh.

Hon. Speaker, in the Statement, the Chairperson should inquire into and report on the measures that the Government has put in place to guarantee safety and the security of

the people of the constituency in particular in Eastleigh. He should also tell us why it has taken very long for the police to conclude their investigations, and bring the responsible kidnapers to book despite the cases being report at Pangani Police Station.

Thank you, hon. Speaker.

Hon. Lentoimaga: Hon. Speaker, this is a very weighty matter which involves death. I promise the hon. Member that I will get the Statement from the Ministry within one week. It will be given on Thursday, next week.

Hon. Abdi: Thank you, hon. Speaker. I accept the one week period. However, I also requested a Statement on 25th June, the Departmental Committee said that it would respond in two weeks, but they have not done so, yet we are in August. I hope that they will keep their word on the one-week period.

Hon. Speaker: Was it the same Committee?

Hon. Abdi: Yes, hon. Speaker.

Hon. Speaker: Well, perhaps we need to check. You know there are some responses which have come, but which are lined up depending on the space available for responses. We need to cross check that.

Hon. Mary Mbugua, you are listed to make a request. Your Statement is on the Order Paper. Please, place your card. Why did you come?

(Laughter)

You know you come here when you have a card. However, since I have not seen you make many requests I will allow you to come and make that request from the Dispatch Box. Next time do not forget your card.

Hon. Members: Forgive her.

Hon. Speaker: Yes. She is forgiven.

ROAD ACCIDENTS ON NAKURU-SALGAA-ELDORET ROAD

Hon. (Ms.) Mbugua: Hon. Speaker, thank you very much for giving me this chance to speak in this Chamber. I am Mary Mbugua, as you said, from Nakuru County and I remember I asked a question about roads. In Nakuru County there is a road which we call “Salgaa” and so many people have been dying on it through accidents now and then.

I would like to ask the Chairperson of the Departmental Committee on Transport, Public Works and Housing to answer this question about all the accidents. Many people have died. We have got so many orphans and widows in our place due to accidents on this road. I ask this question, so that the Chairperson can answer it; I asked it earlier and I am repeating it.

Thank you.

(Applause)

Hon. Speaker: Sorry. Were you reading this one or some other story?

(Laughter)

Okay. Can we hear the best shot to this story from hon. Maina Kamanda or hon. Eng. Mahamud?

Hon. (Eng.) Mahamud: Hon. Speaker, it is true accidents have really claimed lives of Kenyans on this road. We will be able to respond to this question in the next two weeks.

Hon. Speaker: Yes, hon. Member.

Hon. (Ms.) Mbugua: Thank you, hon. Speaker. I have just come. That is the reason why you saw me just rushing here; I have heard the response and I am going to wait.

Hon. Speaker: Two weeks?

Hon. (Ms.) Mbugua: Hon. Speaker, I know that in two weeks my question will be answered.

Hon. Speaker: Do not be in a hurry on that day and forget your card.

(Laughter)

Yes, hon. Francis Mwangangi, the Member for Yatta.

STATUS OF KENYA INDUSTRIAL ESTATES PROGRAMME

Hon. Kilonzo: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Finance, Planning and Trade regarding the Kenya Industrial Estates (KIE) Programme. The KIE Programme provided an incubation process for upcoming businesses and entrepreneurs, but it appears to have fizzled out. Currently there are no existing programme centres around the country.

Hon. Speaker: Very well; hon. Langat.

Hon. Langat: Thank you, hon. Speaker. I request the hon. Member to give me two weeks.

Hon. Speaker: Hon. Kilonzo, two weeks?

Hon. Kilonzo: Yes, hon. Speaker though I had requested for a similar Statement and I was given two weeks. That was in the last Session.

Hon. Speaker: So, it died?

Hon. Kilonzo: Yes.

Hon. Speaker: Okay. Very well. I hopefully think this time will be two weeks. I hope it does not die. The hon. James Gakuya.

THE SHRINKING EXPORT MARKET FOR KENYAN TEA

Hon. Gakuya: Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives regarding the shrinking export of market for Kenyan tea.

Hon. Speaker, tea has been one of the largest foreign exchange earners for the country just like coffee used to be. However, the tea export market appears to be dwindling at the tea auction in Mombasa. This problem has been partly due to a prohibitive and punitive legislation which subjects small scale traders or indigenous farmers and other stakeholders to untold misery and loss of income as all tea cannot be exported directly but has to go through the auction. In addition, the main markets for our tea are politically and stable countries in Africa and Asia and also the United Kingdom (UK).

Hon. Speaker, in the Statement, the Chairman should inquire into and report the status including the strategies used for the marketing of Kenya tea in the world market at the Mombasa auction, the necessity of restriction on the processing, packaging and selling of the tea by indigenous tea farmers and cooperative societies directed to consumers outside Kenya and the benefits if any of the restrictive legislation on the exporting of tea to the farming community and if none whether a repeal of the same---

Hon. Speaker: Sorry. Hon. Gakuya, do not bother reading those stories. Hon. Nooru.

Hon. Nooru: Hon. Speaker, I am a resident of Embakasi and I have never seen tea been grown there but nevertheless---

(Laughter)

Hon. Speaker: Now, hon. Nooru the Member has a right to ask about farming even though there might be none happening in Embakasi.

Hon. Nooru: Hon. Speaker, the tea market is a worldwide issue but I will give him an answer in the next two weeks.

Hon. Speaker: Hon. Gakuya.

Hon. Gakuya: Hon. Speaker, two weeks are okay. Thank you.

Hon. Speaker: Hon. Tiya Galgalo.

RUNNING AND MANAGEMENT OF
ISIOLO COUNTY ASSEMBLY

Hon. (Ms.) Ali. T.G.: Thank you, 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 Administration and National Security regarding the running and management of different arms of county governments and specifically the County Government of Isiolo.

Hon. Speaker, the Constitution envisages a situation where the different arms of the county governments work in consultation and collaboration. However, there have been difficulties in the day-to-day running of Isiolo County Assembly for the past three months. This has impeded the normal running of the Assembly and by extension the County Government. It has also been noted that the Secretary and by extension the county executive have been involved in ensuring that debacle including the engagement on local security officers to block entry in the county assembly of the Speaker, the Clerk and the staff. This is likely to split the county residents and compromise the continued

peaceful co-existence in the county. In the Statement, he should inquire into and report on, the steps being taken by concerned National Government institution including the Ministry of Devolution and Planning, the Transitional Authority as well as Parliament to ensure that Isiolo residents continue enjoying the benefit of devolution as envisaged in the Constitution. Thank you, hon. Speaker.

Hon. Speaker: Leader of Majority Party. Your question hon. Tiya is directed to? Hon. Lentoimaga.

Hon. Lentoimaga: Hon. Speaker I think that question in my view should be directed to Transitional Authority or Senate.

Hon. Speaker: But we do not have a Committee dealing with Transition Authority here do we? Unless it is the hon. Lagat.

Hon. Lagat: Hon. Speaker I think if you look at the Constitution, I think that question is best addressed at Senate because if you look at Article 96, the role of representation of county Government and county assemblies is the work of the Senate. Unless it is dealing with the people of Isiolo as people. But I think the question is specific on county assembly of Isiolo. I think that question absorbing the powers of the Senator of that county which can be addressed at the Senate hon. Speaker.

Hon. Speaker: Hon. Lagat, in fairness, Article 95 of the Constitution says that the National Assembly deliberates and resolves issues of concern to the people. If whoever you maybe representing like in this case the people of Isiolo. You rightly said the people. If there is nobody representing the people in the Senate and this is a matter of concern to the people of Isiolo County, then the Member has a right to raise the matter in the National Assembly. Everybody is talking about their own interpretation of the Constitution but these are some of the things that hon. Midiwo has always been talking about, that there are many areas which are gray and which leave a lot of confusion because hon. T. G. Ali is elected by the people of Isiolo county to represent the people. Whoever the Senator represents, you know what they represent. So, who is going to raise issues of concern to the people of Isiolo County, when Isiolo County has problems and the people have problems which need to be resolved.

Hon. Lagat: Hon. Speaker, I am willing to answer this question but the question there has been difficulty in the day to day running of Isiolo county assembly in the past three months. This has affected the normal running of the assembly and by extension the county government. I think I am willing to answer question but I am only saying, I think we should address this question at the relevant organ of Parliament which is the Senate.

Hon. Speaker: Maybe let us hear the issue hon. T. G. Ali has. What is the problem, this matter came as a matter of urgency. She say services have ground to a halt, there is nobody else in the leadership of that county who willing to address this matter.

Hon. (Ms.) T. G. Ali: Yes hon. Speaker, this issue has been on for the last three months and we have Senate in that county. If they have slept on their job, I cannot leave my people to suffer, so it is my right to stand and talk on behalf of the county, operations have been paralyzed and the communities are waiting. One thing that I am also asking for, is to ask the relevant Government bodies. I know devolution is very difficult to implement but Isiolo people are waiting for the services. So, how do we ensure as the National Assembly and the Ministries concerned that people of Isiolo county are enjoying the benefit of devolution as envisaged in the Constitution. Thank you.

Hon. Speaker: Hon. T. G. Ali did you say there were court orders which were not being implemented?

Hon. (Ms.) T. G. Ali: Hon. Speaker, in the removal of the Speaker, there is a court order that has given the Speaker order of stay, hence we expect for example the county government to continue running and to give to the community the benefits that are required of what is supposed to be given to them by the county government. So, what I am just asking for, is that, if this continues, it is going to be an issue of conflict, it is going to bring a lot of security issues and we cannot sit and watch a county that has failed its mandate to continue fighting in the county. Thank you.

Hon. Speaker: Hon. Rasso, maybe you could offer from the position of being a neighbor. How do you resolve this?

Hon. Dido: Thank you hon. Speaker. I think under Article 95, one of the roles of the Members of the National Assembly is representation. If the issues are going wrong at the grassroots, when the people we represent are affected and nobody is raising concern, I think the honours is on this House, is for us to raise our voices that the proper arm of Government must take the necessary action. In this particular case, I think hon. Member has approached this House that devolution, Transitional Authority are not taking the necessary action for service delivery to the people of Isiolo. For that reason, I think the Chair should not let this matter rest at the Senate, if Senate has not raised its voice, then we the Members of the National Assembly have no reason to sit down and wait. How long are we going to wait if a county has shut down and people are not getting service delivery? Thank you, hon. Speaker.

Hon. Speaker: Hon. Midiwo.

Hon. Midiwo: Hon. Speaker, the issue before us is fundamental. The Member is under difficult to help her people, but the law is the law. Nothing stops the Member from petitioning the Senate if her Senator is not working. Even their Standing Orders, which are basically copied from ours, provide for petitions. So, she can do it as a person from Isiolo. It would be wrong to equate the provision of the Women Representative to that of a Senator even though the Women Representative is voted in by the whole county. These are some of the issues we may have to look into going forward. All I am saying is that I sympathise with the Member, but many of us who opposed the creation of the Senate said that the Senate was never given enough work. This is the only work given to the House called the Senate. That is why they are scampering trying to create job for themselves. This is the core and the duty of the role of the Senate. It would be wrong for us to delve into it.

Just further to that, for us to tell our good Chair of the Finance, Planning and Trade Committee, who is very capable, to try to deal with that, how does he get into issues of governance? It would be wrong to even try to expand the role of the Committee on Finance, Planning and Trade from what is stipulated in our Standing Orders.

Hon. A.B. Duale: Hon. Speaker, I agree with my colleague the Deputy Minority Leader that for over one year, we were trying to look at the Constitution and interpret Articles 95 and 96. The matter before the House today as far as the people of Isiolo County are concerned is the wrangle in the assembly of Isiolo and in the performance of the county government. I do not think, through the Speaker's guidance, that that function lies with this House. I am sure our brothers within the precincts of Parliament have now a

serious petition to deal with. I am sure that when we meet them at the bar in the evening and at the lounge, we will tell them that there is a serious matter in Isiolo County. This is a county that has two Senators. It has a Senator who has been elected by the people and a delegate who has been appointed by the parties through the gender rule. So, unlike my county, this is a county which has two Senators.

My good friend, the Member for Isiolo County, and I want to agree with here, because I am also aware of the problem the people of Isiolo County are going through that today, they cannot enter the compound of the county government. So, the only issue that the National Assembly can deal with is a matter of security and has to do with the Committee on Administration and National Security or even myself. I can even take that responsibility and talk to the national security to do their bit. But the matter on the Isiolo County Assembly and the county government lies within Article 96 of the Constitution. This House has a lot of work to do including the many Statements and Bills before us.

So, hon. Speaker, we will indulge you to help us maybe send a message. You can turn this Statement into a message and send it to your colleague in the Senate that because we represent the people, you got the cries of the people of Isiolo, but your hands are tied. He can ask his 47 elected Senators, now that they have finished with the County Allocation Bill and I am sure the other business that they have is just the normal business which has no time line, that we need to help the Member for Isiolo County and make sure that the people of Isiolo access the fruits of devolution.

Hon. Speaker: Hon. Tiyah, what is your take before I give directions?

Hon. (Ms.) T.G. Ali: Hon. Speaker, it will be very bad if, for example, we do not follow the law. The Constitution has given us powers to ensure that if there are any problems in the counties, we deal with them according to the law. I know that in Isiolo County, there was an attempt to remove the Speaker. According to the law, the group that was trying to remove the Speaker did not have the required number. However, the county government is now using the jungle rule to lock the county assembly, so that, the county assembly does not transact any business on behalf of the people of Isiolo.

We have sat and watched for the last three months. This is now a serious security problem. The communities are already charged. People even fought yesterday and I fear that if no action is taken with immediate effect, that county will go the way the Marsabit County went. So, I plead that as much as the Senate has slept on the job, at least, the Government institutions that are available should ensure that security is provided to the people of Isiolo and court orders are obeyed, so that as we look forward to ensuring that the issues are resolved, the both parties are protected and Government property is secure. The county government vehicles have been destroyed, offices vandalized and documents removed. These need to be safeguarded for the sake of this country.

Hon. Speaker: Finally, hon. Amina Abdalla. Is it on account of neighbourhood?

Hon. (Ms.) Abdalla: Hon. Speaker, I had to rise because my friend, hon. Langat, hardly ever gets requests for Statements on matters devolution. So, I was a bit surprised that he is reluctant to answer. However, so that I can help my sister, Tiyah, much as I appreciate we are very busy, the National Assembly needs to appreciate Article 95(2) that provides that we need to deliberate and resolve issues of concern to the people. The people of Isiolo are unable to even access the county assembly for purposes of petition.

Hon. Jakoyo has not been here for a while and he might not be aware that the Chair for the Committee on Finance, Planning and Trade also oversees the Ministry of Devolution and Planning, which also has the Transitional Authority. It is not fair for hon. Tiyah Galgalo, who is bringing this question that is of concern to her county, who happens to be a marginalized Member in that county, to be refused the chance to have this National Assembly deal with a matter of concern to the people who brought her here. So, I really want to urge my friend, hon. Langat, that now that he has destroyed the Chair that he sits on, he should be able to destroy and answer this question with no problem.

Hon. Speaker: Perhaps to the extent that it might give hon. Tiyah Galgalo and other Members of the Committee a chance to interact with the Transitional Authority, because indeed, some of these matters should be handled at that level. Indeed, I agree with the Leader of the Majority that matters to do with security, again, should be handled differently because we as the Assembly, cannot be the ones to enforce court orders. The national Government through its various security agencies should be the ones to deal with that matter, if people are being shut out from their place of work. However, for the time being, hon. Langat, you could engage with the Transitional Authority and try to gather as much information as possible regarding the problems affecting that county and more particularly, the people. This is because we would want to leave the rest to our brothers in the Senate to handle.

Hon. Lagat, you can take up that.

Hon. T.G. Ali, with regard to enforcement, why do you not approach the Leader of Majority Party to sort out that matter so that it can be resolved?

Hon. Langat: Thank you, hon. Speaker for your comments. Looking at the way the question is drafted, it says the Ministry of Devolution and Planning, the Transition Authority as well as Parliament. I do not know whether I would have to call the Speakers of National Assembly and Senate or the Clerks of Parliament and the Governor to be able to tell my committee what steps have been taken. But I am really concerned about Parliament. Will I call the Speaker of the National Assembly and the Speaker of the Senate to explain how this matter has been handled to ensure that people are peaceful and enjoying the fruits of devolution?

Hon. Speaker: What you require from the Chair is that you can find out rightly whatever it is that you may be required to do; but we are not required to enforce. We are not policemen or policewomen to enforce a court order. But if it gives you an opportunity to deliberate on the matter; I think it may help to resolve some of the problems.

COMMUNICATIONS FROM THE CHAIR

APPRECIATION OF SCHOOL PARTIES IN THE GALLERIES

Hon. Members, I had suggested and this is important to both leaderships on both sides of the House.

Hon. Members, in keeping with our commitment to open Parliament to the public, those hon. Members who have visitors, particularly schools and school parties visiting Parliament; two weeks ago, I did indicate that you could be approaching the office of the

Clerk; give the names of the schools and the constituency they come from so that they may be appreciated in the Assembly.

In that regard, I want to recognize the presence of Tabaka Girls Primary School from South Mugirango Constituency, Kisii County, who are in the Speaker's Gallery and Kariandusi Primary School, Gilgil Constituency.

(Applause)

There are also Kiserian Adventist School, Kajiado North Constituency, Kajiado County, Karuari Secondary School, Mbeere North Constituency and Kipsuter Boys Secondary School, Debating Club, from Chepalungu Constituency. They are welcome.

MESSAGE ON SENATE COUNTY ALLOCATION
OF REVENUE BILL, 2014

Standing Order No. 41 (4) relating to the message from the Senate provides as follows:-

“If a message is received from the Senate, at a time when the House is in session, the Speaker shall report the message to the House at the first convenient opportunity after its receipt and in any event, not later than the next sitting day.”

In this regard, hon. Members, I wish to report that this afternoon I have received a message from the Senate regarding the passage in the Senate of the County Allocation of Revenue Bill, 2014. The message states as follows:-

“The County Allocation of Revenue Bill (Senate Bill No.13, 2014) which was published in the *Kenya Gazette Supplement* No.52, 16th April, 2014, as a Bill originating in the Senate was passed by the Senate, on Tuesday, 5th August, 2014. The message continues that the Senate now seeks the concurrence of the National Assembly to the Bill.”

Hon. Members, the County Allocation of Revenue Bill is a Special Bill concerning county governments in terms of Articles 110 and 111 of the Constitution, which is crucial in the running of the operations and budgeting in the counties.

In this regard, I direct that the said Bill be prioritized for First Reading tomorrow, 7th August 2014, so that it may be committed to the Departmental Committee on Budget and Appropriations for necessary consideration.

Due to the urgency of the passage of the Bill, and notwithstanding provisions of Standing Order 234, the Committee is expected to submit a report to the House on or before 13th August, 2014, which is next week.

Thank you, hon. Members.

*(Hon. Aburi and S.S. Ahmed walked into the Chamber
while the Speaker was on his feet)*

Hon. Mpuru Aburi, you should know that this is Parliament. Hon. S.S. Ahmed and those with whom you are walking along with, as if you are in Kisumu City---

WITHDRAWAL OF PROPOSED AMENDMENTS TO STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Members, before we go to the next Order, I wish to draw your attention to the following:-

I wish to convey to the House that I am in receipt of two letters from the Leader of Majority Party, dated 22nd July, 2014 and 5th August, 2014. The letters indicate that he has withdrawn the proposed amendments to the Statute Law (Miscellaneous Amendments) Bill, 2014 relating to the following statutes:-

1. The Public Finance Management Act, 2012.
2. The Public Benefits Organizations Act, 2013.
3. The Office of the Director of Public Prosecutions Act, 2013.
4. The Kenya Defence Forces Act, 2012.
5. The National Intelligence Service Act, 2012
6. The Salaries and Remuneration Act, 2011.

Hon. Members, the practice of withdrawing certain parts of a published omnibus Bill of the nature of the Statute Law (Miscellaneous Amendments) Bill, is not unusual.

As a matter of fact, during the last session of the Ninth Parliament, the then Speaker consented to a request made by the then Attorney-General to withdraw parts of the Statute Law (Miscellaneous Amendments) Bill, 2007.

Similarly, on 3rd June, 2012, during the term of the 10th Parliament, my immediate predecessor allowed the Attorney-General to withdraw part of the published clauses of Statute Law (Miscellaneous Amendments) Bill, 2012 relating to the National Remuneration Act, and Finance Act, 2012.

Hon. Members, in light of the foregoing, I find the request made by the Leader of Majority Party to be within our practice and, therefore, allowable. In this regard, the proposed amendments relating to the said statutes; that is the Public Finance Management Act, 2012, the Public Benefits Organization Act, 2013, the Office of the Director of Public Prosecutions, 2013, the Kenya Defence Forces Act, 2012 and the Salaries and Remuneration Act, 2011, as contained in the Statute Law (Miscellaneous Amendments) Bill, 2014 are hereby ordered to be withdrawn and will henceforth be treated as if they are not part of the said Bill.

These parts of the Bill will, therefore, not be considered in the Second Reading and will also not be moved, should the Bill proceed to the Committee of the whole House.

Thank you, hon. Members.

Hon. A.B. Duale: Thank you very, hon. Speaker for your direction. I want to make it very clear that I am forced to withdraw the amendments on the Kenya Defence Forces and the National Intelligence Service, despite my office receiving several views from various stakeholders on the constitutionality of those said amendments.

But I gave that chance to the relevant Committee, the Departmental Committee of Defence and Foreign Relations to re-look at it and provide the House with a report; after meeting the said stakeholders and the owners of those amendments.

Hon. Speaker, in a period of two weeks, neither the Chair nor the Vice Chair of that Committee could provide the House with the report that the House needed. I want to

confirm to the House that both the Chairperson and Vice-Chairperson are attending the USA/Africa Summit which is taking place in Washington and that has forced me to seek your direction because I realize that the Vice-Chairperson, in my opinion, felt that the USA/Africa Conference going on in Washington is going to be bigger and more important than the matter before the House.

Secondly, with regard to the said amendments, after discussing with key stakeholders including CIC, it was felt that those are not minor amendments. Indeed, they are substantive amendments. This August House is there for both minor and major amendments to principal Acts. If the two institutions feel that they want those amendments then they have an opportunity to bring them as substantive amendments.

On the Salaries and Remuneration Commission of my good friend, Sarah Serem, I felt like Sarah Serem was given to deal with the rising wage bill of our country. I expected the Commission or somebody to bring an amendment to reduce constitutional commissions' membership from nine members to three members in order to reduce the wage bill. However, Sarah Serem's Commission is asking for a permanent position. That was the position I could not comprehend; that on one hand you want to reduce the wage bill and on the other hand you want to do the opposite. Based on Article 10 of the Constitution on national values - Sarah Serem should read that article - if you want to go for equity it is equity. If you want to go for justice, it is justice. You cannot have your cake and eat it, or you cannot scale the stairs and chew gum at the same time. That is the rationale. I want to urge hon. Members, through you, that Committees must take their work seriously. I want to thank the very able Committee chairpersons and members who have submitted their reports to the Departmental Committee on Justice and Legal Affairs as far as the Statute Law (Miscellaneous Amendments) Bill is concerned. I am sure that in due course, you will tell the House and country at large that the leadership of committees can no longer take the House for a ride; you either choose to attend conferences and summits and accompany Heads of State or you choose to offer leadership to your respective committees. You really cannot have both. I am sure that the Leader of the Minority Party and the Deputy Minority Whip are some of the very able members of the Departmental Committee on Defence and Foreign Relations. If they have the report, I want to tell them that the train has left and the Speaker has made his decision. I, therefore, expect them to bring a substantive amendment to the principal Acts that is, the Kenya Defence Forces Act and the National Intelligence Service Act. We will support Madam Sarah Serem. We will be with her in the journey to reducing the wage bill. We will work towards reducing the commissions and not creating others for permanency. She has led the way. She has shown us the road map and we want her to be on that road map for both herself and the country at large.

Thank you, hon. Speaker.

Hon. Midiwo: Thank you, hon. Speaker. As you may realize, Duale is beginning to learn his job. He is doing very well nowadays. He is beginning to know what is constitutional and what may be unconstitutional. This is great for our country. Hon. Speaker, first of all, let me clear members of my committee. A report was made, but we do not know what the Chairperson has done with that report. So, please, forgive members of our committee if they have offended you so much.

Hon. Speaker, a trend is developing which I think undermines your authority. Members of Parliament find other ways of going outside this country through the Executive. I think that as long as the Executive pays for Members to go on holidays then they are undermining the authority of this House. This is because they are being compromised. It has happened once too many times and I do not want to cast aspersions, but you must put your foot down so that if there is a trip let them write to the Clerk or you so that you send it to the relevant committees so that those committees agree on who should accompany the President or the Executive. I am well aware that only six Members of this House accompanied the President. The people basking in the sun in Washington – I am told the summer is so hot – are so many and I am also aware that they do not have your authority. Hon. Speaker, you have to put your foot down.

Hon. Speaker, I wanted to raise one other issue and that is the ruling you have made. I thank you for it because those were unnecessarily controversial things before us. We want to plead with the people who are fighting to work within the laws that are passed by this House. We are the people that make law. It cannot be the NIS or the military. Whatever they are trying to do is a wrong trend. This Constitution only allows the people before you this afternoon to make laws. That laws can originate as per the thinking of the Army Chief of Staff is wrong. So, I want to thank the Leader of Majority Party for seeing it so that it is not unnecessarily controversial. I, however, seek your guidance. Those issues have been spoken to in the HANSARD of last week and yet I have not heard of a direction whether to expunge those or do they remain part of the record of this House?

I thank you, hon. Speaker.

Hon. Speaker: Hon. Members, I do not think there is really a lot to be discussed on this unless you want to make comments about those who may be basking somewhere.

(Laughter)

Hon. Abongotum: Hon. Speaker, I will not comment on the honourable gentlemen and women who are basking in Idaho, USA. We have an arrangement in this House where if the Chairperson of a Committee is not there then the deputy should be in a position to take over and prosecute the business of the Committee. If the two of them are away, they should appoint one person to manage these things. The report was supposed to be submitted to the Departmental Committee on Justice and Legal Affairs which was to liaise with the Leader of Majority Party. The Departmental Committee on Defence and Foreign Relations should know this.

Secondly, I think you should also make a ruling that the Chairperson and the Vice-Chairperson cannot actually travel at the same time. It is not really fair because it grounds the Committee and it cannot do business. In future, you could give us direction on this.

Hon. Speaker: You see, some of these matters are really a matter of common sense. There is no way the Speaker will be out of the country and at the same time the Deputy Speaker is out of the country. Neither does the President leave the country alongside the Deputy President. I really do not know what this craze is about, wanting to bask somewhere in some sun.

Yes, hon. Leader of the Minority Party.

Hon. Nyenze: Hon. Speaker, thank you. I just want to say the Leader of the Majority Party did the right thing and you have made a ruling to withdraw this very unpopular Bill; those amendments. I also wanted to say that since the Kenya Defence Forces (KDF) has been deployed in Tana River without the House's approval, the withdrawal of this Bill is very necessary because Parliament has the overall authority and it has to approve. We were opposed and were to oppose this Bill because the power of the National Assembly was being eroded by some of these amendments. So that ruling is very timely and very good.

As for the Committees, the feelings of hon. Members is that since the President and Deputy President cannot go out of the country at the same time, let it be noted that the House feels betrayed and undermined by the Departmental Committee on Defence and Foreign Relations for the Chairman and the Vice-Chairman to go together. In future, let us make it very clear. For any travel outside the country, authority to travel has to be sought through the Speaker of the National Assembly. That is what hon. Members are saying; that is what Hon. Midiwo and Hon. Abongotum said. For any trips, the Executive has to consult the National Assembly, especially the Speaker so that we say which people are going. Let the Executive not choose but let Parliament determine who accompanies the President overseas. It should be made very clear so that the National Assembly does not feel undermined by the Executive. I just wanted to make those few remarks and say because the Statute Law (Miscellaneous Amendments) Bill, No.24 of 2014 have been withdrawn, I will not comment on that but it was a very unpopular Bill because the amendments sought to dilute the powers of the National Assembly; to authorize the deployment of the KDF. Some of those amendments were denying hon. Members their privacy. The National Intelligence Service (NIS) would just look through you because of those amendments.

Hon. Speaker: Leader of the Minority Party, once a matter has been withdrawn, it becomes null and that is why it may not be necessary for me to address myself to the issue raised by Hon. Midiwo because whatever may have been said will not form part of any record when the rest of the Bill is being considered especially when you go to Committee Stage because nothing on those two Bills will be of any use to the Committee. The respective Chairs at the Committee of the Whole House will take on board the fact that those six pieces of legislation are not part of the omnibus Bill so that now as we proceed, the guidance that is necessary is let us not feel that anything undermining the authority of the House. Suffice to say that hon. Members are at liberty to do what they think is in their best of interests but of course, remember you have not amended Article 103 of the Constitution relating to missing eight Sittings in one Session. So even as people wish to bask wherever they may wish to bask, if they travel without the permission of the Speaker, then the matter will be dealt with in accordance with that particular provision of the Constitution. should the number of times that they bask total to eight, it is immaterial who you could have been accompanying as long as you did so, you chose to have that company without first of all knowing that you are a Member of Parliament in the National Assembly, it is up to you. I think the best thing is we know for a fact that those that travel to represent the House always do so with the permission of the Speaker. A lot of times, we refer those matters to the individual Committees so that the

Committees themselves go and sit and agree on who is going to represent them at which meeting. Again, that decision is best done in the Committees so that the Committees will say the Chairperson has traveled too much; the Vice-Chair, some other hon. Members should travel to go and represent the House in particular engagements as needs arise from time to time. So we will move to the next Order.

BILL

Second Reading

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

Hon. Speaker: Who was on the Floor? Hon. Waiganjo, I am told you have a balance of five minutes.

Hon. Waiganjo: Hon. Speaker, when I made my last submissions before the House adjourned, I was saying that this omnibus had some passengers that were not proper for purposes of minor amendments of the Statute Law (Miscellaneous Amendments) Bill and I am happy to see that the Leader of the Majority Party has seen the light and has kicked out passengers that were in the first instance not supposed to passengers properly. However, I am a little disappointed because he should have gone further because he has left some passengers in this omnibus who are also still not quite passengers. They should come through their own private means. I have in mind the Criminal Procedure Code. It is a piece of legislation that requires a lot of tidying up. This Code has provisions for proceedings in seditious matters and public order matters. Those are statutes that have already repealed. I have personally proposed amendments to the Criminal Procedure Code and it has not found its way to this House. Unfortunately, what these amendments purport to do is to reverse the express provisions of Article 49 of the Constitution on the issuance of bail. We cannot mutilate, or even attempt to try and legislate what vitiates the express provisions of the Constitution. So, for me, I think what this particular amendment wishes to do or what should be done is to leave this to the Chief Justice so that he can formulate practice rules so that we may not legislate against the express discretion of judicial officers when they are dealing with matters bail and bond. For me, the Criminal Procedure Code should not be entertained in this Statute Law (Miscellaneous Amendments) Bill.

However, I am happy that the Vetting of Judges and Magistrates Act has been left intact which is a good Act. It contains very minor amendments which I support together with the Legal Education Bill and the Civil Aviation Bill. But then again, we have some passengers who should be kicked out. They appear to be hanging onto this omnibus ominously. The reason I say this is because I am talking about the Anti-Corruption and Economic Crimes Act and the Ethics and Anti-Corruption (EACC) Act. These two Acts should not appear in this omnibus because the proposed amendments that are being purported for these two Acts are unconstitutional. In fact, the EACC Act was enacted to establish the Ethics and Anti-Corruption Commission pursuant to Article 79 of the Constitution which now is a Commission, one of the Chapter 15 Commissions. It is an independent constitutional Commission but before its establishment, it was the Kenya

Anti-Corruption Commission (KACC). So, the KACC had vested its powers in a director. The EACC does not have a director.

Therefore, upon the repeal of the provision that established the Kenya Anti-Corruption Commission under the Anti-Corruption and Economic Crimes Act, the functions and powers exercised by the Director now rest in the Ethics and Anti-Corruption Commissioners. The amendments that we have been asked to pass under the Statute Law (Miscellaneous Amendments) Bill purport to harmonise the provisions of the KACC with the Ethics and Anti-Corruption Commission. By doing this, they are trying to vest the powers of the Commissioners on an employee of the Commission who is a secretary. How do you do this? You are creating an animal in the name of an employee of a commission and then you expect the commissioners who are appointed to be subservient to the secretary. This cannot happen.

What should happen ideally is that we should even harmonise the two Acts. We should have one law. We should have the Anti-Corruption and Economic Crimes Act, and the EACC Act in one legislation. We should consolidate the two because this will provide for both institutional and a substantive framework for law enforcement and prevention of corruption. It will also provide for international co-operation and for mutual legal assistance in line with international instruments.

Hon. Speaker, I request to also disallow these two from the Statute Law (Miscellaneous Amendments) Bill because they are not proper passengers. They are pretenders in this bus and they should be kicked out, the same way the Leader of Majority Party has kicked out the other pieces of legislation. Let him kick out the Criminal Procedure Code. Let him also kick out the EACC Act and the Anti-Corruption and Economic Crimes Act.

Hon. Speaker, I support with those amendments.

Thank you.

Hon. Maanzo: Thank you, hon. Speaker for giving me this opportunity to contribute to the Statute Law (Miscellaneous Amendments) Bill, 2014. I also want to thank the Leader of Majority Party for having taken the initiative to withdraw some of the contentious matters.

I would like to go straight to the matter relating to the amendment of the Criminal Procedure Code. Article 49(1)(h) of the Constitution is very clear. The intention of enacting the Constitution was also very clear. Though this matter has been contentious in terms of people being released on bond when they are facing death sentence or if they have been accused of terrorism activities, I do not think that it has been framed properly. This is not the way the setting should have been done.

I agree with hon. Waiganjo that it should be left upon the Chief Justice to make provisions within the courts and I believe that there have been consultations to that effect in the past. Out of that consultation, we were not expecting an amendment of this nature.

Hon. Speaker, if you look at the NHIF proposed amendments, you will find that they have not been made in good faith. They are not supposed to really comply with the Constitution as it has been alleged here. This is because since the new Constitution was enacted, the role of the Government was to make sure that all laws in the country have been aligned to the new Constitution. It is admitted that there are a few flaws here and there or the so-called gray areas. These need amendments either through a referendum or

wherever it is applicable through the House. I think it should have been given a second thought and the purpose of amending the NHIF Act was to serve Kenyans and align itself with the Constitution.

The fact that the idea of amending it is merely to remove the current directors simply because somebody does not like them, I think it is only proper to drop it and allow these people to serve their term and then bring it at the appropriate moment without necessarily disrupting the activities of the very important organization. I think the idea there was not correct.

On the EACC Act, 2011, if you look at the laws relating to the other commission, you will find that the secretary is usually an *ex-officio* member. It is good that we have uniformity on how the commissions operate so that one commission does not operate this way and another commission operates differently. The law has to be uniform. Where we have a substantive chairman, an executive chairman of the commission or a chairman just merely chairing the commission, and we have this in the National Cohesion and Integration Commission, it will also be prudent to reject that amendment.

Hon. Speaker, generally, if you look at this Statute Law (Miscellaneous Amendments) Bill, it does not seem that the Committee has been very keen on it. I think there is need to go back and relook at the Bill so that the law is amended to serve the people of Kenya and not for particular interests or to frustrate certain interests. That seems to be the motive and reason for bringing this Bill. There seems not to have been proper consultations with the Office of the Attorney-General.

Therefore, I oppose the Statute Law (Miscellaneous Amendments) Bill unless it is relooked again and brought back with good intentions to the people of the Republic of Kenya.

Thank you, hon. Speaker, for giving me this opportunity.

Hon. Wakhungu: Thank you, hon. Speaker. I rise to oppose the Statute Law (Miscellaneous Amendments) Bill, 2014. This is especially when it comes to the Political Parties Act.

When we talk about miscellaneous, it has to do with minor or insignificant changes but in this case, Kenya is a multiparty democracy and we have political parties. Article 92 of the Constitution is very clear. It says that Parliament shall enact laws that will help in the regulation of these political parties. If you look at the Political Parties Act, you will find that when it comes to the appointment of the Registrar who is actually like the Chief Executive Officer (CEO) who manages the political parties there should be a selection board. I read a lot of mischief in these amendments. If you say that whenever a vacancy arises in the Office of the Registrar of Political Parties or the Assist Registrar, the President shall, with the approval of the National Assembly, appoint a selection committee. The President belongs to a political party and if we give him powers to appoint this committee, of course, it goes without saying that he is likely to be biased.

In this case, the earlier version where the political parties are supposed to select or recommend people to be part of this selection board is supposed to be the way forward. You can see what is happening with the Independent Electoral and Boundaries Commission (IEBC). People are calling for its disbandment. For us to have a referee of political parties who will not be biased, we should give room to other political parties to select people who will be in that committee so that they can be interviewed and finalists

given to the President so that he can select names. Coming up with such an amendment which says that the President shall appoint will be skewed and is likely to be biased.

We recently read in the newspapers of NARC being deregistered because of the biased evaluation of the Registrar of Political Parties. I do not want my political party, FORD (K) to be deregistered because of some biased way of evaluation.

Hon. Speaker, I strongly oppose this. It is unfortunate that the Majority Leader has gone out. I call upon him to withdraw the amendment on the political parties so that it can come as an amendment in its own political party form. It should not come under the Statute Law (Miscellaneous Amendments) Bill.

I do not want to comment on the SRC because its amendment has already been withdrawn. However, I want to comment on the Kenya School of Government Act. I support this amendment because of national values. We have very many public officers who are appointed to offices but they are not even aware about the national values as outlined in Article 10 of the Constitution.

Hon. Speaker, it is a requirement that the President must report to Parliament on the progress of the national values. Up to now, the report that the President presented to this House has never been tabled. We have never discussed it. So, as far as Article 10 of the Constitution is concerned on national values, we are in darkness. Unfortunately, as we speak, the Leader of Majority Party is gone. I do not know who is going to communicate this but I strongly oppose this because to me these particular amendments are very substantive. We should not just let them go the way they have come.

Thank you and I oppose.

Hon. Speaker: Hon. Gichigi.

Hon. Gichigi: Thank you, hon. Speaker. I will support this particular Bill subject to an amendment. Indeed, it has some provisions that are good like the one that is prohibiting discrimination in employment by reason of marriage. However, there are other areas that are of serious concern to me, and my colleagues have spoken to some of them, for example, the Criminal Procedure Code where a police officer and the court are being given power to arrest and put somebody in custody without giving them bail and without actually qualifying that particular provision. Indeed, the proposed amendment does not require the police officer to move to court as soon as possible and place the person arrested before the court. So, that is a very bad provision. I think it is one that we should all reject.

Hon. Speaker, I also have an issue with the proposed amendment to the National Hospital Insurance Fund (NHIF) Act, that is Section 4. While I have no problem with the amendment that is proposing that the membership of the board of NHIF fetches representation from the Federation of Kenya Employers (FKE) and other federations of employees, I think it is high time we stopped now referring specifically to individual organizations. This is because there is the creation of several federations of employers and creation of federation of employees. So, we should not say FKE and the Central Organisation of Trade Unions (COTU). We should say the most representative federation of workers or organisation of workers or the most representative organisation or federation of employers. Let us not go to specifics because this is going to tie down the organisations or the NHIF in this case to a particular organisation that might not necessarily represent majority of the workers or employers.

Hon. Speaker, on the other law which is the Copyright Act, I am supporting it because it is providing a mechanism for dealing with compensation for copyright owners whose rights have been violated. It also gives Kenyans the right to enjoy works whose owners are unduly refusing to allow it to be availed in this country.

Hon. Speaker, I am also supporting the provision on the Anti-Counterfeit Act as it is actually clearing the issue of governors. I am having a problem with the proposed amendment to the National Youth Council. Let us not necessarily go to specific organisations. These days whenever we create a law and we are looking for representation we are going to specific organisations. We are now saying that the Kenya Private Sector Alliance (KEPSA) should provide a person in the National Youth Council. Again, I would want us to refer to a principal rather than a specific organisation. The same issue applies to the proposed amendment to the Legal Education Act where KEPSA again is supposed to be represented and the Chief Executive Officer (CEO) of the Commission for University Education (CUE). I think let us refer to organisations that represent that particular sector rather than a specific sector.

Hon. Speaker, I am also happy that most of the issues that I had with the National Intelligence Service (NIS) and the others have actually been withdrawn. So, I support but my colleagues, there are some issues that have been proposed here that might give us serious problems. I want to refer Members of this House to the proposed amendment to the Leadership and Integrity Act and look at the implication. It is actually on page 2620 of this Bill. The implication is that the Ethics and Anti-Corruption Commission (EACC) can actually come on its own and start delving into your history without any person prompting it and that actually might bar a Kenyan from getting employed somewhere. So, as much as we have some good provisions it is important that we look at each proposed amendment and when it comes to the Third Reading, there are some that we need either to amend or to completely remove.

I support subject to those amendments, hon. Speaker.

Hon. Speaker: Hon. Opiyo Wandayi.

Hon. Wandayi: Thank you, hon. Speaker for this opportunity. I want from the outset to declare that I will be opposing this amendment Bill on specific grounds. However, my main concern is the matter of the amendment proposed in the Criminal Procedure Code.

Hon. Speaker, in my view, after the right to life one other important right is the right to liberty. When one is denied bail what in effect it means is that one's freedom or liberty has been curtailed. Even in the very draconian old Constitution that we fought so hard to bring down, the only situation where one would be denied bail or bond was when one was charged with what were then called capital offences which included murder, robbery with violence and treason. Those were the only cases where one would be denied bail or bond and, therefore, it only goes a long way to emphasise the fact that the right to liberty and freedom is so important and cardinal that even the old Constitution recognized it to an extent.

Hon. Speaker, this new Constitution that we have and currently enjoy has very express provisions. Indeed, Article 49(1)(h) is so clear that any ordinary person reading it would understand that you do not just deny one bail or bond on grounds that cannot stand the test of time.

Hon. Speaker, if you look at Article 49, and I want to read it quickly, it says:

“An arrested person has the right-

(h) to be released on bond or bail, on reasonable conditions, pending a charge or trial, unless there are compelling reasons not to be released.”

We are trying very hard to reverse the clock of change. If we look at the proposed sub-section 2, it says that in making a decision under sub-section 1, the court or police officer shall have regard to all other relevant circumstances. In particular, if you go to part “b” it talks of character and decedents, and associations and community ties of the accused persons. How would the court or the police determine the character of a person? Even if they were to do so, this goes directly against the provisions of Article 27 of the Constitution, which guarantees freedoms; very pertinent freedoms. I just want to take you through so that you understand the gravity of this matter.

Article 27 of the Constitution, I have just been going through it a while ago on equality and freedom from discrimination, that every person is equal through the law and has the right to equal protection and equal benefit of the law. Article 27 (2) says equality includes the full and equal enjoyment of all rights and fundamental freedoms. Part (4) states that the State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience and so on and so forth. If this Bill passes the way it is, it will be directly against the Constitution as stated in Article 27 of the Constitution. It is important to understand where we are coming from. In fact, I am sure this particular sub-section has been included in this Bill so as to give the State the power to hold in custody people who have been charged with terrorism. This is targeting specifically people of Somali origin.

It is very clear that in the past the State has complained that they have no express provisions in the law to allow them to detain these persons whom they feel are so dangerous to society. You cannot right a wrong with a wrong. We know terrorism is a serious offence. It is a serious matter in this country as we speak. But to try to go behind the Constitution, to go around the Constitution and to curtail people’s rights which are expressly provided for in the Constitution, is really not acceptable. I want to repeat that this new Constitution that we currently have, is a serious departure from the old Constitution. If that old Constitution which we so much despised and which we fought so hard to bring down could acknowledge this fundamental right and liberty, and could only allow those rights to be curtailed under very serious circumstances of one being charged with offenses of treason, murder, and robbery with violence, then what will we be doing by allowing this kind of thing to happen under this new dispensation?

I speak because I have been a victim of the old Constitution. It is not something you want to take for life. The difference between being free and being in custody is not something one wants to play around with. Therefore, this Bill as currently proposed is a Bill that must be rejected and specifically this particular one concerning the amendment to the Criminal Procedure Code has to be expunged from this Bill, if it is to see the light of day. Indeed, this should not have come to the Floor of the House, in my view. It goes against the spirit and letter of the Constitution which we should all defend. If we allow this to pass, what will happen from tomorrow? You will see people being arrested on very flimsy grounds. They will be taken to court on trumped-up charges and denied bail

arbitrarily. They will be kept behind bars so as to stop them from enjoying their rights which are guaranteed under the Constitution.

This is a mischief that if allowed will see us return to the dark old days where people were punished for things such as political beliefs. We see where we are currently in this country, where intolerance is creeping back. If we allow this kind of thing, you will not be surprised to hear one or two Members of Parliament are already in custody on very flimsy grounds and being denied the right to bail and therefore losing their feet. This is a very dangerous piece of legislation which is being proposed and Members need to take the necessary steps and reject it *in toto*.

I do not want to dwell much on this Bill because of the fact that even looking at this particular section, it is enough to reject the entire Bill. In fact, I want to reiterate what has been said before. This kind of omnibus Bill is now being used to sneak in very dangerous legislation. In future, you need to make a firm ruling and give proper guidance so that this kind of mischief is not encouraged. This is a very serious piece of legislation that if allowed to go through in such a manner, this country will live to regret. Therefore I wish to oppose.

Hon. Speaker: Hon. Joseph Njoroge; hon. David Gikaria, I am following the list the way they have made their requests. Next is hon. Midiwo.

Hon. Midiwo: Thank you, hon. Speaker. That is interesting. I do not know if you are aware that Members who want to contribute to Order No. 8 press the button at Order No. 1. More often than not, you call people who are not interested in the Order. I think that needs to be known by Members as being unfair.

I rise to contribute to this Statute Law (Miscellaneous Amendments) Bill and I want to be very brief. The main issues which have been alluded to by the speakers before me are important. I think this is one Bill that we can use to clean up the messes in many Acts. The tendency by people outside this Parliament to sneak in things which are not good or uncomfortable and have been passed by this House is very dangerous. Some of us have been here for a long time and it has always been the same story, and you know that. I thank the Leader of Majority Party for being sensible to have withdrawn those other intended amendments to laws. The one that has been contributed on by hon. Maanzo and hon. Wandayi is fundamental because Article 27 of our Constitution contemplates freedom from forcible angle. I do agree and I understand the frustration of Government. I do agree that we have criminals that the system cannot do anything about, but the law says that you must free them within so many hours. I understand that challenge. That challenge can only be cured through a constitutional amendment. I keep saying that away from the noises of the opposing political parties, we will at one day sit down and talk about the wrong things in this Constitution. One of them is this particular one. As hon. Wandayi has said, two wrongs do not make a right. It means, the sooner we look at what is going on, the better.

The audit team that this House has allowed to commence work, I hope will do its work soon enough so that we can sit down and do a select Committee of this House to begin to look at these things. For the moment, I would plead so that we are not at variance all the time. Kenyans have a very short memory, before 2002 these freedoms were not there.

This system became liberal to accommodate the views of everybody enough for us to co-exist and exist after 2002. That time may recur if we allow such things. Who knows if somebody wants to victimize you? To be arrested and held indefinitely because somebody feels that they are not satisfied with investigation, that kind of a thing cannot stand the test of law, even though I am not a lawyer. That is a wrong thing. In the 21st Century, nobody, even here in Parliament, could sleep and let something like that pass.

On the Ethics and Anti-Corruption Commission, and the Leader of Majority Party took words out of my mouth, I was thinking last night that through this Bill, we are going to do as much as we can to reduce the number of commissioners. Some of these people are in office doing nothing and costing this country money. I hope you will allow me because these commissions have been mentioned here, through that window to make each commission have three to five commissioners. In the intended amendment to this Constitution, we must do away with the so-called Ethics and Anti-Corruption Commission. You do not need another parallel police force in this country. Let us reform the police force. Let the political class agree that we form and retrain our police officers.

Last night, I saw policemen arresting policemen. How ironical that the EACC is at a weighbridge arresting policemen. I thought that something is dysfunctional in our country. An armed person is arrested by an armed person because we have given them these powers. There is no telling what they do to people when the cameras are not there. Now, they want to have powers to look through your bank accounts without going to court. Then why do we have the courts? Why do you want to look into my personal affairs without going to court? What is it that you are hiding? We must look through this. This thing, probably needs to be withdrawn and we look at it soberly because the laws that we are passing are not CORD or Jubilee. These are things which can hurt anybody.

I was sitting in my house in Gem one day and then I saw the Member of Parliament for Lari, a jovial man. He did not come here because he was humiliated by police officers on television. They threw him in a Land Rover; a Member of Parliament. Where would a Member of Parliament go if some policeman just takes him with his trousers and throws him in a Land Rover? What could a Member of Parliament do to warrant that kind of treatment or any other Kenyan for that matter? The point is that if the police can do that to a Member of Parliament, what about an ordinary citizen? We need to change a lot of things. We need to do right laws. We have the time, we are paid to do it and we can do it.

Lastly, the Political Parties Act, like it or not, accept it or not, we have issues that are causing so much disharmony around our elections. Therefore, at the very least, the Registrar of Political Parties must be somebody that is agreed upon like we did in the primary Act. We agreed. There is an attempt to get rid of the panel which we chose, but the executive of the Coalition Government refused to gazette that panel. We gave names from the political parties, so that each political party is represented in this process. Now, there is an attempt to discard those names. Without gazetting them, now they want to change the law to ask the President to name this person and Parliament approves. I am in CORD and the President is the leader of Jubilee. Since when is it contemplated that the President can choose a member of the ODM to be the Registrar of Political Parties?

Some of the people in the Executive are giving the President unnecessary sleepless nights. I know the President personally and I know he did not call for this. I

know he cannot contemplate that kind of a thing. It is absurd that you tell the President to pick anybody and bring him to Parliament and he becomes the Registrar of Political Parties. That cannot happen. People sit and share. We are in coalitions. Let us just agree as Kenyans, so that whoever we choose, if they betray the President, who will be the final authority? They carry their own cross because everybody agreed on them.

With those few remarks, I beg to say that the Executive needs to withdraw this and let us agree.

Hon. Speaker: Well, hon. Members, out of ordinary, kindly allow me to recognise the presence in the Public Gallery of pupils from Kenyena Junior Academy from Bomachoge Borabu Constituency.

Hon. Tonui: Thank you, hon. Speaker for giving me this opportunity to also make my comments on this Bill. I want to comment on the National Hospital Insurance Fund (NHIF) specifically. There is an amendment to the NHIF Act, 1998, which wants to exclude some current members of the NHIF. I support the exclusion of some, but I do not support the removal of some. For example, this Bill wants to remove the representation of teachers in the NHIF. Those are the major contributors in the NHIF. Teachers in this country are more than 300,000 and they contribute well over Kshs1 billion to the NHIF.

These people, under this Bill, will not be represented. So, my idea is that the teachers should be represented by their unions. They should be incorporated in the NHIF. Right from the composition of the NHIF, from “A” to “E”, I can see that these are Government appointees. I wonder how much the Government contributes to the NHIF for it to be represented by these Government appointees. All the people who are going to be in this Board are going to be Government appointees. So, the contributors should be well represented. I would wish to see primary school teachers being represented ably by their union. The teachers in post primary schools and colleges should also be represented by their union; KUPPET. So, that must be captured in this Bill. These people are going to be contributing a lot of money and should be part of the people who will be managing it. If we only have people in the NHIF Board who will not be answerable to the contributors that is not going to be fair. So, that section should be amended at the right stage. There is also the issue of the Technical and Vocational Education Training Act, namely, TEVET Act. This wants to give some powers to the technical and vocational education institutions. There is going to be some conflict with the Teachers Service Commission because most of the personnel in TEVET institutions are going to be teachers who are employed by the TSC. Currently, technical institutions are staffed by the TSC. There should be more clarity on who can employ these people. Under whose employment will they be? Is it the TSC or the technical and vocational education institutions? There should be clear clarification on that. This Bill is trying to come up with the “word” trainer very well, but it should also clarify because teachers are also trainers and they are employed by the TSC. This amendment may bring more confusion than solution to the prevailing situation. Then there is the issue of Salaries and Remuneration Commission. This Bill intends to make Members of the Salaries and Remuneration Commission (SRC) to be on permanent terms.

Hon. Speaker: If you listened to my earlier communication, the six laws which have been withdrawn include the SRC Act, 2011.

Therefore, do not belabour the point.

Hon. Tonui: Okay. So, you have withdrawn it? It is okay; possibly I was not in when it was withdrawn.

Hon. Speaker: Therefore, you do not know what happened with the six laws. Even those hon. Members who had come late, like hon. Tonui, please, do not make reference to that, look at the others. They were six, the KDF, NIS, SRC, DPP, PFM and PBO Acts.

Hon. Tonui: I believe you have not withdrawn the Ethics and Anti-Corruption Commission (EACC) Act.

Hon. Speaker: That has not been withdrawn.

Hon. Tonui: Okay. Thank you so much. I want to say that I support this amendment because it will allow the Ethics and Anti-Corruption Commission to cooperate with foreign governments to arrest looters. There are fellows in this country who are looting day and night and stashing money in foreign banks.

I believe if we empower the Ethics and Anti-Corruption Commission to go after these characters, it will be a step in the right direction. Therefore, I support that amendment to allow EACC to go for the funds which may be stashed in foreign banks.

Hon. Speaker, there is the issue of public appointments which we intend to extend time of approval in this House; those who have been proposed for appointment. It is so important to extend it to 14 days so that we can vet them properly. If we do not vet them properly, we will end up appointing people who are not best suited for positions in Government. The key issue is integrity; to do that we require time.

There is also this amendment on the Kenya National Examinations Council to include the Principal Secretary Treasury into the Board. I support it fully. I want to commend the Jubilee Government for coming up with this idea of making examinations free.

The Kenya Certificate of Primary Education (KCPE) and the Kenya Certificate of Secondary Education (KCSE) examinations have been made free. I believe that the presence of the PS, Treasury, in the Commission will add value. They ensure that proper funding is provided to KNEC to perform its key functions. I believe as we make these examinations free, we will not exploit teachers.

Teachers must continue being recognized and their dues not reduced. I know poverty is increasing in this country and that is why it is important to make examinations free. Therefore, I fully support the amendments in this section.

With those few remarks, I support.

Hon. Nassir: Thank you, hon. Speaker. I wish to put in my words regarding this particular Bill, more so on the Political Parties Act. Accepting the amendments here is basically allowing the player, who is the President to single-handedly choose a person and he is meant to be neutral. If we allow that, it will be a recipe for chaos in this country. I think it is important that the President accepts the names that were sent to be gazetted.

Hon. Speaker, regarding the Criminal Procedure Code, we need to be very careful in what we are planning do. The amendments in the Bill allow the police officer who has placed a person under arrest a lot of leeway and that is going to send this country back to where we were.

Thank you very much, hon. Speaker.

Hon. Speaker: Were you contributing? Hon. Members, I thought he was contributing! If you have ten minutes, do not be in hurry.

In future, prepare to contribute for ten minutes.

Let us hear from hon. Zebedeo John Opore.

The Member for Bonchari Constituency (Hon. Opore): Thank you, hon. Speaker for giving me this opportunity.

As you may be aware, this is the first time I am speaking since I came back to this House. First, I would wish to start by appreciating the support of the people of Bonchari Constituency and even this House. The prayers I got assisted me to get the support. God provided the way and I got the support from the rest of the country.

With regard to this Bill that we are now discussing, I wish to say that I support the Bill that proposes to amend the Kenya Ports Authority (KPA) Act. Its operations should be extended to the inland of the country. This is mainly because the movement of goods from the Port to the mainland is slowed by factors outside the KPA. Therefore, KPA should be given the mandate to control the movement of goods and services to the country. This will also assist in lowering the cost of maintaining the highways. That will in turn assist the economy to grow faster.

I support this Bill. Thank you, hon. Speaker.

Hon. Speaker: You are also through? Let us hear from hon. Isaac Mwaura. Hon. Members, I think we may need to revise the Standing Orders so that hon. Members will be speaking for two minutes.

Hon. Mwaura: Thank you, hon. Speaker. I think the issue here is that this Bill is such an Omnibus Bill and hon. Members are finding it difficult to flesh out the issues to discuss.

But anyway, while it is the prerogative of the Executive to propose amendments for various legislations whose enactment may be in contention, I am obliged, for example, to observe that the proposed amendments in the National Youth Council Act, some of the proposed amendments there are actually ambiguous. Maybe, this is superfluous, but then there is no organisation called the Kenya National Council of Persons with Disabilities. I think it is the National Council of Persons with Disabilities.

When you leave it under the prerogative of the Cabinet Secretary to gazette the appointment of people who are nominated--- For example, if you look at paragraph 16(2)(iii); Non-Governmental Organizations (NGO) working with the youth sector, it is open. You would wonder what qualifies these NGOs. Is it just by the mere registration of NGO which may actually be dormant while purporting to represent or to work on the youth issues? I think it needs to have been something, even if it is true about the NGO Council, but just to leave it as NGO working with the youth sector is not enough. They mean that anybody can actually rise and say I work for such an organisation. I think that is in contention, in my opinion.

There is also the issue about public universities. Does it mean that you just select any existing university now that it is public university then you have one person representing the public universities? In any case, why should it be public universities? Of course, if you want to have representation in terms of the Advisory Board then you would rather have qualified professionals so that you have CVs from which you can nominate a person. For me, to just leave it as “public universities” again, is superfluous.

The other thing is about NACADA. I wonder whether you really require NACADA to be on this Board. Is it because it deals with young people and so there is an issue of drugs and substance abuse that will be apportioned to young people? This is presumptuous! In my opinion, it needs to be deleted so that we have another body that will represent effectively the advisory role that will be given to the National Youth Council. If you look at the current Act, you will realize that the National Youth Council has been given a lot of sweeping powers in terms of co-ordination of youth issues in this country, but the funding levels are actually not adequate. I would have expected a proposal to show that we are actually empowering this Council rather than trying to find ways of actually controlling it.

If you look at the proposal of the amendment of the Political Parties Act, we have seen in the newspapers where the job of the Registrar of Political Parties has been advertised and then cancelled. It was re-advertized and cancelled again. In fact, the last time I checked, the Director of Political Parties – there is a contention about terminology here – was operating under the Independent Electoral and Boundaries Commission (IEBC) offices at the Anniversary Towers and the other day I saw them operating from Lions Place in Westlands. If you look at this proposal here, the drafter is proposing that we should have--- If for example this office falls vacant either of the Registrar or the Deputy Registrar, the President is empowered to appoint a selection panel. In all matters of honesty, and I stand to be corrected, I feel that this is subject to political manipulation. There must be a body, even if it is the Public Service Commission that should be empowered to select those who would apply for this job and recommend for appointment. To vest such powers in the presidency, for me it is not right. I would rather they proposed that it be done by the Cabinet Secretary. Some of these amendments may appear benign but the truth of the matter is that they are not. Of course, we are also seeing some proposals here that will require that we make amendments. One of the things we are being told is to delete without the approval of the National Assembly. There is a reason as to why this House found it fit to pass legislation that requires that if we are making certain appointments, they be done in accordance with the approval and the deliberations of this House. So, therefore, we need to caution the State Law Office that this must not be seen as an attempt to take away powers from this House. Parliament remains supreme and it remains the House of the representatives of the people and special interests. Parliament must be seen to have the final say on key issues so that we can have a national character in the various Ministries, departments, agencies, independent offices and other public offices that actually reflect the face of Kenya.

I grudgingly support, but with amendments.

Hon. Wambugu: Hon. Temporary Deputy Speaker, I rise to support this Bill, but with amendments just like most of the Members have said. I will touch on a few areas one of them being the right to bail. As we are all aware, the situation in this country with regard to security is not good. There are criminals who have been taken to court, but when given bail to report to court on later dates they go into hiding and even get involved in other criminal activities. I propose that such persons should be denied bail so that we do not get criminals back to the society.

The Kenya Ports Authority Act---

Hon. Wandayi: On a point of order, hon. Temporary Deputy Speaker. If I got the hon. Member right, he implied that one who has been charged in a court of law is a criminal who should be kept behind bars in order not to come out and disturb society. Is he really in order to cast aspersions on Kenyans who are undergoing due process of law and condemn them as criminals before they are convicted? My point of order is that the hon. Member is out of order to imply that Kenyans who have been charged in court of law are criminals who should not be released on bail to disturb the society.

The Temporary Deputy Speaker (Hon. Kajwang’): So, your point of order is that he is misleading the House.

Hon. Wandayi: Rule him out of order because he is misleading the House.

The Temporary Deputy Speaker (Hon. Kajwang’): No, let us get the order.

Hon. Wandayi: My point of order is that he is out of order and therefore we should rule him out of order and make him apologize.

The Temporary Deputy Speaker (Hon. Kajwang’): Is he in order in the sense that he is misleading the House to the effect that he is changing the constitutional concept that a person who is accused is not necessarily guilty of the offence?

Hon. Wandayi: Hon. Temporary Deputy Speaker, it cannot be put any better. That is the correct position.

The Temporary Deputy Speaker (Hon. Kajwang’): No! I want to get you for the HANSARD. Member for Unguja, I am trying to understand the ground under which you made the order.

Hon. Wandayi: Hon. Temporary Deputy Speaker, what I am trying to say is that it is clear that one who has been charged in a court of law---

The Temporary Deputy Speaker (Hon. Kajwang’): Now, Member for Mathioya, are you misleading the House by changing the constitutional concept of innocent until proven guilty?

Hon. Wambugu: Hon. Temporary Deputy Speaker, unless there was a different interpretation, I was referring to the exemption to rights one, two and three; that the court or the police officer in a case of a person under arrest has reason to believe--- That is what I was trying to refer to, but because of time I just went through it and that is what I meant. In case there was any misinterpretation let me apologize for the language, but that is what I meant.

I would also request that it should not be right for a Member to ask the Speaker---

The Temporary Deputy Speaker (Hon. Kajwang’): No! You are now getting out of order. You have explained yourself. It is a right of Members to rise on points of order except that we need to learn to phrase our points order in such a way that they are points of order and avoid debates so that we can improve the speed at which we dispatch business here.

Hon. Wambugu: Hon. Temporary Deputy Speaker, with regard to the amendments proposed on the Kenya Ports Authority Act, that is, to include the inland waterways and also the idea that Kisumu Port be run by the KPA, I do support. This is so that Kisumu Port can also enjoy the same facilities and management that the other waterways in our country are enjoying. If you look at the Air Passenger Service Charge Act, this Act came in with the recommendations of ICAO that the users should be paying for the services. That is why the amount of US\$40 was imposed on air tickets. This is

what is supposed to be developing in the civil aviation industry in this country. If I give an example, recently we had an issue within the African region where Uganda was stated to have lost its own airline just because the body that is supposed to oversee that supervision could not meet the requirements by the International Civil Aviation Organization (ICAO).

Hon. Temporary Deputy Speaker, in our country the supervision authority is the one that is mandated with that work. They oversee all the other functions of the industry. But as it is now because I know most of the people might not be aware, that authority has been running on borrowed funds and we could be in a lot of danger if an authority like that one happens to be audited by ICAO. If they do that and find that some areas especially staff and equipment are lacking because of lack of funds, it would be very bad. That is why I strongly support the amendment that whatever is collected for the development of civil aviation in this country should be shared among all the bodies that provide those services.

Going to the Postal Corporation Act of 1998, we have the insertion of a new paragraph that says “postal financial service, incidental services---” but mainly what I want to look at is paying of money through mobile payments. We need to support the Kenya Postal Corporation to compete with other mobile operators so that at least they can get into this industry other than it being controlled by a few companies. While I speak on that, it is very sad because when we are trying to lower the rates in this country especially on mobile money transfers, radio telephony and all that, recently, there was a very serious incident when a few operators were licensed by the Communications Commission of Kenya (CCK); companies like Equity Bank. Tangaza Mobile were licensed to get the virtual mobile network operators but unfortunately one of the main players went to court to block it. That is denying Kenyans a facility which could have been used to reduce the cost of communication in this country.

I support the amendments to allow the Kenya Ports Authority (KPA) to be issued or given the authority to operate some of those services. We have the Civil Aviation Authority, the introduction and establishment of the Office of the Chief Accident Investigator--- That is towards the end of the amendments. That department has for a long time been under the Kenya Civil Aviation Authority but up to about three years ago, it went back to the Ministry of Transport. We need to do everything possible in this country to empower and strengthen that department. My request is that when accidents reports are completed, they should be made available to this House so that we can look at them. We need to understand where we stand as a country. This is so that we do not end up getting issues which have been recommended by that department but are not being dealt with.

With those few remarks, I beg to support.

Hon. M’uthari: Hon. Temporary Deputy Speaker, I rise to support these amendments but with some considerations. I support the amendment proposed to the Criminal Procedure Code. It is important to introduce these provisions and to make clear the circumstances under which the court may decline to grant bail to the accused persons. This is going to clarify and reduce the ambiguity or room for discretion by judges. Discretion is good but when we propose the circumstances it clarifies the whole thing.

The other thing is the KPA Act. Amending this to provide the opportunity or possibility for an inland port to have a proper mandate will hasten the development of transport. This will ensure that where we have inland ports like in Nairobi or Kisumu, capacity will be enhanced. When their capacity is enhanced, that will control and enable proper development of our ports. When we look at the Postal Corporation of Kenya Act, No.2 of 1988, this repeal is necessary so that at the end of the day, the Postal Corporation can have the mandate to compete with other agents. That may streamline and improve the competitiveness of this particular corporation.

On the repeal of the Kenya National Hospital Insurance Fund in terms of governance and appointment of the board, this is important. Although these are miscellaneous amendments, they are becoming too much. The whole Act needs to be reviewed properly because we know there are Motions in this House that have been passed with regard to the National Hospital Insurance Fund (NHIF). This is a very important fund where Kenyans make their contributions and it is supposed to cushion a majority of Kenyans who may not be able to pay for a higher premium health insurance. However, you will realize that in many cases, when members have need for the NHIF, they are not supported as they should. For example, when a patient has a case of surgery which is more expensive than normal medicine, they are not supported by this particular Act. We should bring amendments to this section so that this body can provide this insurance cover for a family that is in distress; where they need small financing. This is one of the areas that this insurance fund does not support. So, these are areas that may require further consideration.

Hon. Temporary Deputy Speaker, on the question of the Anti-Corruption and Economic Crimes Act, the amendment is very important. This is one area that needs to be strengthened. Once this is strengthened, it can make the question of corruption more expensive. Corruption is a cancer that has made Kenyans lose opportunity to serve. When we look at the other Acts which have been proposed for amendments, the Anti-Counterfeit Act, No.13 of 2008, it is necessary because it stops the coming in of counterfeit products which have denied, in many cases, the original manufacturers the opportunity to get value for their inventions or what they do. So, this is an important amendment.

When we look at the other amendments proposed to the Ethics and Anti-Corruption Commission (EACC) Act, No.22 of 2011, this is important because it empowers the EACC to cooperate with foreign agencies; international and regional bodies. This again provides an opportunity for the anti-corruption arm to follow the perpetrators of corruption even beyond our borders, for example, the Anglo Leasing case. That is very important.

On the Tourism Act of 2011, the amendment to the Bill will also be important in terms of streamlining the process of appointment of the various people based on the requirements. Tourism is a sector that requires to be looked into very seriously. This is one of the key sectors considered in Vision 2030. If you look at the economic pillar, you will find that it is the first item. This is because of the potential that the tourism sector has in the creation of employment opportunities. However, I do not think that the Government gives this sector the enough attention that it requires. This is in terms of support.

Hon. Temporary Deputy Speaker, I also support the amendment on the Leadership and Integrity Act of 2012. That is No.19. This proposes that State officers are prohibited from engaging in public collection which in many cases creates room for abuse of office. This will also lower the burden on hon. Members. Sometimes when people ask for these collections, it is based on the offices that people hold. In essence, this creates room for corruption.

There is also the proposed amendment as far as the National Security Council Act of 2012 is concerned. This avoids the possibility of ambiguity in terms of appointment of the Secretary to the Council. It makes it easier in case of transition to have smooth transfer of instrument of authority.

Hon. Temporary Deputy Speaker, we also have the Kenya National Examinations Council (KNEC) Act of 2013. This is No.5. The inclusion of the Principal Secretary for Finance is very important. Since we passed a legislation here and it has been accepted that fees for primary schools and secondary schools is waived, it is important that we have the Principal Secretary being part and parcel of the Council.

On the University Act of 2012, No.43, it is important to have this amendment---

The Temporary Deputy Speaker (Hon. Kajwang'): Hon. Members, you know that we have debated this Bill. Listening to the debate it seems to me that after the Leader of Majority Party withdrew those contentious pieces of legislation, there is a lot of consensus on what should be taken out and what should be improved. You should remember that this Bill will go through the Committee and amendments will be proposed by the Chairs of those Committees in this House. You will also have your amendments which you will propose. So, it will be good if we speed up our deliberations. The experience in the House is that every debater will take all the minutes that are available to him or her. It does not appear like anybody wants to shorten his or her contribution.

Yes, the Member for Ugenya.

Hon. Ochieng: Thank you, hon. Temporary Deputy Speaker. I would like to contribute to this very important Bill. I will start from the middle. This country has a new Constitution. One of the reasons this Constitution was done was to ensure that power is shared and not centralized. Therefore, anything that we do in this Assembly or anything that this country does should be done in the spirit of ensuring that power is never centralized in one place.

Hon. Temporary Deputy Speaker, I am referring to the amendments that have been proposed with regard to the National Security Intelligence Service. Those proposals--

The Temporary Deputy Speaker (Hon. Kajwang'): I am sorry. Have you seen the Speaker's Communication on this?

Hon. Ochieng: Hon. Temporary Deputy Speaker, I am guided accordingly.

The Temporary Deputy Speaker (Hon. Kajwang'): The six portions of legislations have been withdrawn. Therefore, they do not form the substance of debate in this House.

Hon. Ochieng: Hon. Temporary Deputy Speaker, then allow me to contribute with regard to the provisions relating to the Industrial Court assuming that this has not been withdrawn.

The resolutions of this Bill relating to labour and employment in this country have been a sham, if I may use that term. This is because the court we have has never had the status of a High Court. So, what the new Constitution did was to elevate that court to the level of a High Court and allowed this Parliament to come up with a court that will be with clear jurisdiction to deal with matters of employment and labour. Therefore, the amendments proposed in this Bill are very sound to the extent that they do what the Constitution requires us to do. That is to set up an Employment and Labour Relations Court. The amendment as proposed will just do that.

Secondly, this amendment will ensure that that court when established will be fully funded and will enjoy the jurisdiction and the powers of a High Court. We agreed at the Committee level that there have been attempts in this Bill to try and put that court at a level lower than that of a High Court and yet the Constitution is very clear that this is a court with the same powers of a High Court. So, my Committee and I will bring amendments to ensure that the powers and privileges that have been envisaged by the Constitution for this Court are basically entrenched in the law so that it can be able to carry out its functions as required.

Hon. Temporary Deputy Speaker, I wish to contribute with regard to the amendment relating to the Political Parties Act. The Political Parties Act is a very important instrument in entrenching democracy in this country and, as you would know, the current Registrar of Political Parties in this country was not recruited in a competitive manner. So, the proposal made under this Bill is to ensure that any future registrars of political parties are recruited competitively through a process that follows the law. However, I have a problem with the current postulation in the Bill.

Hon. Speaker, the Bill presupposes that the President will get names among the citizenry and bring them to this Assembly for approval. Now, what the Bill does not tell us is where the President will get the names from. I think this House needs to think critically on where the President should get those names. When the time comes, I will bring amendments to ensure that the names of the persons who shall participate in the selection committee that the President will bring to this House comes from the Political Parties Liaison Committee. This is to ensure that the names the President brings to this House are names that are considered not only by the President himself, but by all the political parties.

Hon. Temporary Deputy Speaker, there are very good amendments with regard to the Anti-Counterfeit law. This is the vice that has made this country not be able to industrialize. Every time someone starts a small business or every time someone wants to do something serious, counterfeits come in. What counterfeits do to a country can only be equated to what a terrorist can do to a country. That is because this Parliament last year and this year has approved so much money for industrial development. But we cannot develop if we are being choked by counterfeits. That is why I agree with any attempts or proposals aimed at strengthening the teeth and arms of the Anti-Counterfeit Agency to be able to act.

Hon. Temporary Deputy Speaker, there are a couple of barons, maybe, three or four only. There are sugar and drugs barons. Then there are the counterfeiters. That is a vice that must be fought with all our might and energy and we must support any attempts

at ensuring that the Anti-Counterfeit Agency has a proper way to undertake its duties. The protection of copyright is also very important and the Bill proposes to do that.

Hon. Temporary Deputy Speaker, we have very few land ports in this country. There is one in Kisumu. Probably, there should be one in Turkana. This Bill proposes to enable the Kenya Ports Authority (KPA) to develop and manage those ports and that is the way it should be. The lakes and inland water ports are shared resources. So, they are resources that you cannot let a county manage.

Hon. Temporary Deputy Speaker, as we do this, I want to request KPA to move with speed and not only reclaim what was theirs originally, but to invest resources and, most importantly, in the Kisumu inland port. That is because Kisumu is going to be the hub of the East African Community (EAC). It cannot be the hub of the EAC if the very basic instrument of promoting trade – the inland port – is dilapidated. So, once this Bill is passed, we hope that KPA will move with speed, put resources into this, develop it and ensure that by the time we are done with the railway line from Mombasa down to Kisumu, even then, they are up and running.

Hon. Temporary Deputy Speaker, the distance between Kisumu and Jinja is so short. If things are working and bearing in mind that Uganda is one of our major trade partners, this will spur growth. This will ensure that this country grows in terms of its economy.

Hon. Speaker, I want to talk about the Legal Education Act and the Kenya School of Law Act. Last year and last year but one, we have been trying to make reforms in this regard. We have been trying to ensure that the Kenya School of Law is able to run and run independently from the Council for Legal Education. The proposals made in this Bill are just meant to do that. They are also meant to streamline an issue that has been disturbing for a long time, where parents of students spent so much money out there to train them in law but, when they come here, they are not able to get admission to the School of Law so that they can become advocates.

So, when this Bill will be passed, it will streamline that process. It will also strengthen the new institution - which is the Council for Legal Education - to enable it. As you know, the standards for legal training in this country have been going down. So, we need to strengthen the Council for Legal Education to enable it have capacity to supervise, control and apply discipline in the running of the faculties of law in this country.

Hon. Temporary Deputy Speaker, finally, as I pen off, I just want to also underline two Bills that have been proposed for amendment. On the Law Reform Commission Bill, this is now an independent institution and this Bill proposes to make it more independent so that it is able to do what it is supposed to do.

Hon. Temporary Deputy Speaker, with those many remarks, I support. I will be preparing some amendments for the Third Reading. Thank you very much.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. I am most obliged.

Hon. Ichung’wah: Thank you, hon. Temporary Deputy Speaker and I stood guided when I rose on a point of order. I just want to correct what hon. David Ochieng had said referring to me as hon. *Gachungwa*. I want to tell him that *Gachungwa* in my

native language means something totally different from the real meaning of my name. My name is Ichung'wah and not *Gachungwa*.

The Temporary Deputy Speaker (Hon. Kajwang'); Yes, I think you are right and Members in Commonwealth parlance, it is more honourable to recognize your fellow Member as a Member of the constituency he represents rather than the name by which he belongs in the Assembly. That is because then you are respecting the people who have brought him here rather than himself. So, let us do that. Proceed.

Hon. Ichungw'ah: Thank you, hon. Temporary Deputy Speaker for that guidance and, indeed, hon. David Ochieng is well guided. Next time, he should refer to me as the Member for Kikuyu.

Hon. Temporary Deputy Speaker, I just want to touch on one or two amendments in this Act and I want to begin with the one on the Ethics and Anti-Corruption Commission (EACC). As it has been said, and I am at risk of repeating what has been said by my fellow Members, is that allowing that Commission to co-operate with foreign governments and other international regional organizations in the performance of the very important task of the fight against corruption in this country is something that will be very important to this Commission. As has been said by many Members, that Commission has had a difficult time trying to resolve some of the long running cases like Anglo Leasing and many others that need them to go outside this country.

Hon. Temporary Deputy Speaker, the other amendment is allowing that Commission to hire suitable experts and professionals who will help it to perform its functions better is very important. That is one Commission where many people who are young and are professionals in the field of accounting, forensic audits and even our very good lawyers who are being trained in this country can get experience working in this Commission not just as employees of the Commission, but also as independent consultants. Therefore, it will go a long way in addressing the issues of unemployment amongst our very well trained professionals who can serve that Commission either directly as employees or as consultants.

Hon. Temporary Deputy Speaker, the other important thing on this amendment relating to EACC is the appointment and removal of the Director or the Chief Executive Officer (CEO). It has also been recommended that, that title of Director should change to the Secretary to the Commission.

Hon. Temporary Deputy Speaker, it is common knowledge that under this new constitutional dispensation, even for Cabinet Secretaries (CSs), this House has a role in their appointment and also their removal. Therefore, if we are to guarantee the Secretary to the EACC independence in carrying out his duties, it is important to also assure him that the chairman of EACC or the board that is in charge of EACC cannot arbitrarily remove the Secretary or the CEO without recourse to this House. Therefore, it gives the CEO or the Secretary that safety net to know that he can perform his duties well knowing that Members of Parliament who are also partners in the fight against corruption in this country are with him and will safeguard his job.

Hon. Temporary Deputy Speaker, the other important aspect I want to speak about is the amendments to the Kenya Airports Authority (KAA) Act. It is important just as has been said, to increase the number of independent directors from two to five. Other than just the question of quorum in the board meetings, it also brings in new expertise

into that very important Authority. You have seen the expansion work that has been going both at Jomo Kenyatta International Airport (JKIA) and other airports in this country. This is one Authority that will, in a big way, transform the economy of this country and the economies of our regional neighbours. Therefore, it is important that the board has the capacity to have members from diverse professions and who will add value to the important work that, that Authority is carrying out. That, to me, is very important.

I would beg that, as much as we do this to the Kenya School of Law, even the amendments that we are bringing in under the Universities Act will allow our universities, both private and public, to also have that capacity to go out and borrow money where they can be able to finance either research work or even the expansion of the programs that they are offering. Therefore, I do hope that as we move to the Third Reading, there will be amendments touching on this.

That is also quite important in relation to the Kenya School of Law - and I appreciate the very many professionals from the legal profession who are in this House. It is important to know the myriad of universities and schools, both in this country and outside this country, which are offering legal training. If we allowed every Tom, Dick and Harry to regulate the legal profession, with all due respect to the many institutions that offer legal education, it may give us a problem in future. We will not be able to rationalize and have the kind of high caliber lawyers who are serving the Kenyan public. Therefore, I beg, even as we move to the Third Reading that, indeed, we entrench it that the Kenya school of Law will be the only mandated body to standardize and train professionals in this profession.

Hon. Temporary Deputy Speaker, because I know many Members have contributed and I do not want to be the last to speak on this, probably, I would beg that a few other Members contribute as we now come to close this debate. That is because very many people have contributed.

The Temporary Deputy Speaker (Hon. Kajwang'): Order! The Standing orders do not allow you, after you have spoken, to call either for quorum or closure. Somebody else will do that and not you. Member for Nakuru Town East, will you be gracious enough so that we can come to closure of this debate?

Hon. Gikaria: Thank you, hon. Temporary Deputy Speaker. First of all, is to thank your Chair leadership in having allowed earlier in the afternoon, the withdrawal of the six, which were very contentious, and that only leaves us with fewer issues that we wanted to talk about.

The Criminal Procedure Code - and this has been something that we know in the Constitution--- The Bill of Rights has given everybody an opportunity---

The Temporary Deputy Speaker (Hon. Kajwang'): I know you are very good at relevance and I do not doubt that you will be. But now just stay on some of those things that nobody has talked about so that we can save time.

Hon. Gikaria: Where do I start? I do not want to say that you are gagging me as one of the points that is very touchy in the Bills relates to criminals in this country. That is something that is very important. We need to be very cautious and, of course, as the hon. Member for Mvita had earlier said, we should also be very careful. Again, we should not just use that as a measure now to infringe on other peoples' rights. I believe that is something that is of importance. Most of these other ones of the air passage, I

think, are so obvious, I do not know how much I could say but as regards the National Hospital Insurance Fund Act, I think the Constitution has given us an opportunity for us to competitively source for the Chief Executive Officers. I think that is the norm and the spirit of the Constitution. You have seen in the past and, of course, as you have shared with my colleague here, the National Hospital Insurance Fund has been a conduit of where money has always been swindled. A lot of money has been lost through the National Hospital Insurance Fund. That is because most of this has been as a result of picking somebody in the Chief Executive Officer's position. I think when a Chief Executive Officer will pass through a competitive process, there will be a lot of improvement.

Secondly, on the National Hospital Insurance Fund, the inclusion of Central Organization of Trade Unions, Federation of Kenya Employers and the Permanent Secretary in the Ministry of Health is something that is welcome. That is because the Central Organization of Trade Unions, as we are saying now, is really fighting for the survival of those associations and commissions. But I think the inclusion of Central Organization of Trade Unions is good. That is because the Central Organization of Trade Unions represents workers and the National Hospital Insurance Fund is purely for workers, I think the contribution of Central Organization of Trade Unions will go a long way to help.

About the Public Officer Ethics Act and EACC, as we have seen, we have reported so many cases to the Ethics and Anti-Corruption Commission. But you find there is a lot of work for them to do. The proposal is that some of those laws can be passed over to the Public officers Ethics Act. I think that will go a long way in assisting to offload some of those weighty issues that have been given to the---

I was listening to the topic about the Kenya School of Law when I was coming back on Tuesday from Nakuru and hon. Kang'ata was speaking to that effect. Being a lawyer, hon. Kang'ata was very passionate about that Act and the qualification for admission. But for the universities that are offering the law degree, I think it is important for us to think about the admission.

Hon. Temporary Deputy Speaker, your profession - and I know you are a very sound lawyer that I have known for a very long time - is a profession that needs to be protected. In our courts these days, you find some criminals purporting to have gone through these other places, coming back and purporting to be lawyers. They end up making innocent people who have been charged to be jailed. We just need some competence, the right minds and the right qualifications for lawyers who can be able to represent the very innocent people who are, sometimes, caught up in these things. They have no criminal record but, at the end of the day, they land and languish in prison just because they were represented by a very incompetent lawyer who somehow went through a process of LLB and maynever have completed. So, I want to agree that the standards of the people who are going to the Kenya School of Law should be high. Of course, I had quite a lot and I do want, with your indulgence, so that we do not repeat ourselves so much---

But one last thing is the Leadership and Integrity Act. I think the self-declaration, is very important for us to be able to put that weight. It is not fair that Chapter 6 of the Constitution was reduced to a level that is not acceptable, where we allow other people

now again to go against self-declaration under the Leadership and Integrity Act. That is something that is very important so that we can have leaders who are accountable and answerable.

I am getting a lot of interference from the Member of Kikuyu but, with those few remarks, I accept that it is important for us to support this Statute Law.

The Temporary Deputy Speaker (Hon. Kajwang’): Did I hear you call the hon. Member for Kikuyu as Member for Kikuyus? All right. Let us step on to Member of Thika Town.

Hon. (Ms.) A.W. Ng’ang’a: Thank you, hon. Temporary Deputy Speaker. Mine will be very short because a lot has been said. I want to support and say that the Kenya Ports Authority needs to be given space once and for all. The Kenya Railways should let go. If at all the KPA has to expand and grow, it needs to be given space to do it without the interference from the Kenya Railways. We know that right now, a lot of changes are happening at KPA and the expansion is taking place there. But they have to keep on relying on and asking for information, permission and control from Kenya Railways. It is the high time that the Ministry of Lands gives the title deed to KPA, so that it can do its expansion without interference from another body.

Also in the banking sector, Post Bank needs to do like other banks, where e-banking has been embraced. It is very cumbersome to carry a lot of money. With e-banking, we can reduce theft. It becomes faster and efficient. Post Bank needs to be given that for it to operate. We need to give it life. Otherwise, if they will not have that facility, everybody will move from there to somewhere else where those facilities are provided.

Coming to the Director of Public Prosecutions, it is right to remove him from sitting in that tribunal. When a colleague is being prosecuted, it becomes very hard because of conflict of interest. The prosecutor will not be able to do his job because of the bond he has with his colleagues. So, it is right for him to be removed from the Tribunal.

Finally, I also see it right for the NHIF to be given an opportunity to have a CEO who is properly recruited. The NHIF has touched the lives of many Kenyan citizens. So, it is good for us to, at least, have a person with a passion and drive, a person who is competent, capable and able to run that institution. Once a person undergoes a vigorous recruitment process, he will give the Kenyans the services they require. He will be able to manage that institution unlike what we have been seeing. When we give a job to a person who has no drive or is not capable and able to run the institution---

With that, I support this Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): The last on my request list is the Member for Limuru. Member for Limuru, I know it is a disadvantage to speak after many speakers have gone before you, but you know our Standing Order No.107 provides that repetition is an act of gross disorder. So, try to not only be relevant, but do not repeat.

Hon. J.K. Chege: Hon. Temporary Deputy Speaker, thank you very much for giving me the opportunity. As an engineer, I would hate to repeat myself. I rise to support the proposed amendment. I would like to go straight to the Kenya Airport Authority. It is about time that we developed capacity for the organization so that it can be able to deal with the very big load of expanding our airports. That Authority will make Kenya to have the biggest hub in this region.

As you know, KAA has even a green field project to the tune of, maybe, Kshs55 billion and yet, it has only three directors. It is just fair that they can have enough people to advise them, so that they can execute their responsibilities properly. On the Kenya Civil Aviation Authority, we need to create capacity. We need to empower them financially, particularly to enable them to develop capacity for integrity inspections to ensure that our civil aviation is as competitive as any other in the world.

On NHIF, it is about time that we thought about an ordinary Kenyan; a Kenyan who cannot even afford some of the costs that our medical facilities are charging. Particularly, I would like to mention the case of dialysis in this country. It is about time that we catered for certain services, so that the NHIF can also bear some costs for those kinds of services. A rate of about Kshs5,000 for a session for ordinary Kenyans and, sometimes, those sessions are done twice a week, is too much money. We should allow a policy where, when a patient lies in a bed in a hospital or centre either for two or three hours, they qualify for a day in hospital. They should qualify to get that assistance from NHIF.

I want to appeal that it is about time we controlled where our universities are. We should make sure that we do not put our universities next to brothels and bars. That is what is happening in the cities. It is unfortunate that some of the universities that were created to provide a certain environment for the students have lost it. They have taken the university colleges to the streets. It is about time that we have some soberness in this area. In issues of who should be honoured, it is about time that we not only look at the politicians and people in big positions, but also look at the ordinary Kenyans who contribute a lot to this nation.

I do not want to repeat myself. Thank you very much for the opportunity. I support.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you very much. I now order that the Mover be called upon to reply. The Leader of the Majority! If you can just stop where you are and get one of those consoles, you will be able to reply. Leader of the Majority Party, unless you want to come to your hot seat from where you can address the National Assembly sitting at Nairobi today.

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. I was rushing from my Office and I was praying that hon. Engineer Chege will continue contributing and give me time to reach here.

Having said that, I want to thank Members for ably contributing to this piece of legislation - the so-called omnibus Bill. It is a tradition of the House that every year, the Government brings an omnibus law for minor amendments. The amendments that cannot fit in a substantive amendment to the principle Act can be introduced through this Statute Miscellaneous (Amendment) Bill. Of course, either due to the position of the respective Committees, a number of amendments which we felt through public participation as the leadership of the House that they were not minor and were substantive, unconstitutional and unlawful, Parliament, through my office, decided that we withdraw them and ask the respective institutions or Departments of the Government who use those pieces of legislation to go back and bring substantive amendments to the mother Act. Among those is the Kenya Defence Forces Act in which, even as a Member of Parliament for Garissa Township, when I look at those amendments, I felt that they were not in the interest of

the country. We do not want to create a situation where individuals usurp the powers of the Constitution.

The other thing that we withdrew, and the Speaker concurred with my Office, were the amendments to the National Intelligence Service and the amendments to the Salaries and Remuneration Commission, which, as I earlier said, were not *in tandem* with what the Commission is preaching. The Commission is talking about reducing the wage bill. Again, the Commission that wants to transform itself from a part time Commission to a full time Commission. Madam Sarah Serem cannot purport to deal with the menace of the huge wage bill in our country and, at the same time, gives herself and her Commission further more permanent powers. We have also withdrawn the Public Benefits Act or the so-called NGO Act. We felt that the amendments in this mother Act were substantive; they were not minor and therefore, we have withdrawn them.

Finally, we have also withdrawn the amendments to the Director of Public Prosecutions Act, where we felt that the Attorney-General was trying to take powers of criminal proceedings to himself when the Constitution, 2010, has denied him those powers.

Hon. Temporary Deputy Speaker, we have an amendment that we have withdrawn because we felt it was in the wrong Bill and that was the Public Finance Management Act, 2012. We felt it should have been in the previous Bill which concerns the two Houses and we have also withdrawn that.

I am sure hon. Members are comfortable and ready to face this Bill at the Third Reading with various amendments and deletions, as given to them under Article 95 of the Constitution. The function of the Parliamentarians *vis-a-vis* legislation, representation and oversight; they will use their powers of legislation.

With those many remarks, I beg to move that the Statute Law (Miscellaneous Amendments) Bill be read a Second Time.

The Temporary Deputy Speaker (Hon. Kajwang’): Just before you sit, Leader of Majority Party, this so-called omnibus legislation covers several areas of legislation. I imagine that several other committees are dealing with separate aspects of it.

Have you given direction which departmental committee has the primary responsibility and the deadline by which all other committees need to have submitted their proposals so that we have order? Is that the case?

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, the mother Committee which has the highest number of amendments on the Statute Law (Miscellaneous Amendments) Bill, is the Departmental Committee on Justice and Legal Affairs. That is the mother of all committees. But I am sure, according to the Director of Committees, most of the other committees have submitted their amendments. They have gone through the amendments and they are ready.

We expect the Chair of the Departmental Committee on Justice and Legal Affairs or his representative; be it hon. Ochieng’ to be ready and that they will table them either tomorrow or on Tuesday, and after that we will again announce to the House when the Third Reading will be made so that hon. Members can prepare amendments.

But the Committee has---

The Temporary Deputy Speaker (Hon. Kajwang’): That is very essential if we had one report that captures all those amendments from various committees.

Hon. A.B. Duale: Yes. Hon. Temporary Deputy Speaker, there is no rule that forces all committees to bring it to the Departmental Committee on Justice and Legal Affairs. But we have advised informally that they bring their reports so that the Departmental Committee on Justice and Legal Affairs brings a joint report of all those Committees; except for the Departmental Committee on Defence and Foreign Relations, which in my opinion is in the USA attending the famous USA/Africa Summit.

With the Communication from the Speaker, the train has left. Therefore, they will wait for the next omnibus law which might come next year.

I beg to move that the Statute Law (Miscellaneous Amendments) Bill, be read a Second Time.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you so much. Hon. Members, I also thank you.

I, therefore, order that the Statute Law (Miscellaneous Amendment) Bill, National Assembly Bill No.24 of 2014, appears on the order of business in the afternoon of Thursday, 7th August, 2014 for the purposes of taking an oath.

Hon. Members, I have communication from the Chair of Finance, Planning and Trade Committee to the effect that he is not in a position to proceed with Order No.9. I have also had similar views from the Leader of Majority Party that he may need a little more time to be able to prosecute Order No.10. I, therefore, order that Order Nos.9 and 10 be withdrawn from the Order Paper.

*(Finance Bill and Motion on Annual Report
on the State of National Security withdrawn)*

Next Order.

MOTION

ADOPTION OF REPORT ON NATIONAL CONSTRUCTION AUTHORITY REGULATIONS

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

THAT, this House adopts the Report of the Committee on Delegated Legislation on the National Construction Authority Regulations 2014, laid on the Table of the House on Thursday, 24th July, 2014 and resolves to annul regulation 24(2) of the National Construction Authority Regulations, 2014.

Hon. Temporary Deputy Speaker, I wish to say that the Committee on Delegated Legislation is a committee established under our Standing Order 210. We have a membership of 29 hon. Members.

In the interest of time, I wish not to read the names, but the list is spelt out in page one. What is even more important is the mandate of this Committee.

The mandate of the Committee is well spelt out under Standing Order 210. Because I will be referring to the specific areas that are relevant to this particular Motion; the mandate is to consider in respect of any statutory instruments whether that statutory instrument is in accordance with the provisions of the Constitution. When we are dealing

with an instrument before the Committee, we should ask the question whether it is in accordance with the provisions of the Constitution and the Act, pursuant to which it is made and other relevant written laws.

Therefore, that is a very fundamental requirement. I will mention about three or four instruments. The Committee shall consider in respect of any statutory instrument whether it:-

- (a) infringes on the fundamental rights and freedoms of the public;
- (b) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- (c) contains imposition of taxation;
- (d) is defective in its drafting or for any other reason the form or purport of the statutory instrument calls for any elucidation.

Hon. Temporary Deputy Speaker, more importantly it should not impose a fine, imprisonment or other penalty without express authority having been provided for in the enabling provision. If it will be the finding of the Committee that any statutory instrument does not comply with those requirements and others under that Standing Order No. 210 and also the provision of the Constitution and the Statutory Instruments Act, then Standing Order 210(4)(b), shall apply. It provides that the Committee shall then resolve that the statutory instruments be acceded to. That is, if it is in compliance with what I have said.

If it is not or if it does not accede to the statutory instruments, the Committee may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled.

The statutory instrument before the House is the regulations that were published by the National Construction Authority (NCA). The Committee had the privilege of conducting several sittings with the Authority. In the interest of time and because the Report is so clear, the Committee found that apart from Regulation 24(2), the Regulations established comply with the requirements of Section 13 of the Statutory Instruments Act and other enabling provisions of that particular Act. It also complies with the provisions of the Constitution and those of Standing Order No.210 of this House.

The challenge with Regulation 24(2) is that it provides for a penalty that exceeds what is provided for by the Statutory Instruments Act. The National Construction Authority Act does not provide for a penalty and, therefore, we fall back to the provisions of the Statutory Instruments Act. This is, therefore, the only regulation that is not in accordance with the relevant statutes.

In this case, Regulation 24(2) seeks to impose a higher penalty of Kshs50,000 which is more than the maximum penalty of Kshs20,000 as provided for under Section 24(5) of the Statutory Instruments Act. So, the law is very clear and that is the position. We have the powers under Standing Order No.210(4)(b) to recommend to this House to annul that particular regulation.

In view of the foregoing and pursuant to the provisions of Section 13 and other provisions of the Statutory Instruments Act and Standing Order No.210(4)(b), the Committee recommends to the House that Regulation 24(2) be annulled.

It is important for Members to know that it is not the business of this House to help regulation making institutions to make regulations. Ours is a House. Ours as a

Committee is to ensure that those regulations as published by those bodies comply with the requirements as set out per the law. What we have done as a House is to delegate power to either the Ministers or Commissions to come up with regulations which will help them facilitate the implementation of those Acts of Parliament. Therefore, ours is to apply our minds to ensure that the regulations are done within the framework of the law.

I wish to thank the Office of the Speaker and that of the Clerk of the National Assembly for the necessary support extended to the Committee in the execution of this mandate. The Chairperson, on behalf of the Committee, takes this chance to thank all the Members of the Committee for their very useful contributions in enriching the National Construction Authority Act, 2014.

Hon. Temporary Deputy Speaker, the Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

Finally, it is now my pleasure and duty on behalf of the Committee to recommend this Report to the House pursuant to the provisions of our Standing Orders for adoption and passage. I thank you and request my colleague, hon. Munyao, who is also a very able Member of Committee, to second this Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): I thank you for your clarity of thought both in presentation and eloquence. Hon. Member for Mbooni.

Hon. Kisoi: Thank you, hon. Temporary Deputy Speaker. I rise to second the Chairperson of the Committee on Delegated Legislation. First and foremost, I want to appreciate the essence or importance of these regulations to our construction industry which, for quite a number of years, has been in shambles. This is a very important piece of legislation because it seeks to bring sanity, order and sobriety to this industry which has seen immense losses. Sometimes, there have been calamities which have even resulted to loss of human life.

I would like to appreciate Members who participated in this affair. We had prior engagements with the National Construction Authority. Basically, this was a well thought out piece of legislation that came from the National Construction Authority. Ours was to scrutinize the regulations that National Construction Authority had on behalf of this House. This led to this Committee to come to the conclusion that the National Construction Authority Regulations, 2014, which had been published, are in line with the constitutional requirements. We were able to establish that the Statutory Instruments Act which gives powers to the National Construction Authority to make these regulations--- I think the regulations were in order.

Pursuant to Standing Order No.210, we were able to establish that Section 24(2) contravened Section 24(5) of the Statutory Instruments Act. This was very important for this Committee because one of our mandates was to be satisfied that, that piece of legislation moves in line with the Statutory Instruments Act. Clause 24(b) sought to impose a fine of Kshs50,000 as opposed to what is already laid down in the Statutory Instruments Act which provides for a penalty of Kshs20,000.

Because of these Regulations, this country will now move forward in the right manner and bring sanity and professionalism in this business so that we can hold each and every person accountable for their deeds and actions in this important sector, which is growing day by day.

Without much talking, I would like to commend my able Chairman who has ably presented and tabled this Report. I second.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, just to break down this, you now have a Motion which seeks you to adopt the Report that has been laid before you and has been seconded. The only issue here is to annul Regulations 24(2). So, this debate should be very focused. It should focus on 24(2). We should not wander on the entire Report or other regulations that are not earmarked for annulment. So, I will expect that hon. Members contributing on this will be relevant so that we save time. You can see that we still have other regulations either to annul or accede to. I will start with an hon. Member who is not in the Committee of the Delegated Legislation on the National Construction Authority (NCA) Regulations 2014. Member for Lugari, let us have your contribution on this.

Hon. Angatia: Thank you, hon. Temporary Deputy Speaker. I stand to support the Motion to annul Regulation 24(2) of the NCA Regulations 2014 for the following two reasons. One, the penalty of 50 per cent looks punitive at this time when we are encouraging the youth to register companies, especially construction companies, to deal with projects of classroom construction at the constituency level using the Constituencies Development Fund (CDF) funds. The NCA should actually move ahead and register more construction companies involving the youth and encourage them do business at the constituency level using the CDF cash, and even waive the penalty of Kshs20,000. The poverty level in the village is too high. A youth in the village cannot afford normal living standards like clothing and food. Where will he afford to get the penalty of Kshs20,000 to Kshs50,000? They should move further and remove the penalty completely for the lower cadre of registration under the NCA that involves the youth, so as to encourage them start businesses and improve the economy of this country.

Hon. Temporary Deputy Speaker, you realize that in this country, there are double taxations on various issues. Look at the VAT. It is charged at 16 per cent. A youth who has no seed capital is investing for the first time. He has taken a loan from the bank and he defaults on these provisions of NCA and he is supposed to pay Kshs50,000. The bank charges an interest on what he has taken. At the end, what will he earn? So, I support the Report and it should go further and eliminate all these costs at the level of the youth. Progressive businessmen can be charged higher than even Kshs20,000, but for the youth, I would suggest that we erase this thing.

I support the Motion.

The Temporary Deputy Speaker(Hon. Kajwang’):Thank you. Another Member, who claims and I believe is not a Member of this Committee, is Member for Ugenya.

Hon. Ochieng: Thank you, hon. Temporary Deputy Speaker. I also beg to support the NCA Regulations 2014 Report. But as I do so, I think it is important to put some few things into perspective. The reason we came up with the NCA was that we wanted to regulate the way we run the construction industry in this country. I have been asking myself why a body like NCA would not want to obey the law. Why would they want to increase the penalty from Kshs.20,000 to Kshs50,000? I have not got any explanation whythat body thinks that they can raise money through that method. That body thinks that it has not been given a blank cheque to go round harassing contractors. I do not have another reason.

Hon. Temporary Deputy Speaker, if you know the reason as to why that body was set up, it is very wrong. I request the Committee to set standards and send a warning, apparently, to that body. As we speak – and you may not know this - there are people masquerading as officials of National Construction Authority (NCA) who are harassing contractors all over the place. They are collecting bribes and claiming: “You are here constructing and yet you do not have a license.” So, they are using those avenues as conduits for enriching themselves. No wonder we end up with buildings collapsing. The purpose of this law was to ensure that people live in houses that are well constructed. It was not about the NCA collecting money from Kenyans.

I always like putting things into perspective. The East African Community (EAC), Kenya among them, has just adopted an industrial policy that is anchored on the construction industry. Countries like Tanzania and Kenya are seeking to build the capacity of the local industry. The regulations, as made, are very sound to the extent that they seek to build the capacity of the local firms. You cannot be seeking to build the capacity of the local firms and, at the same time, you want to overcharge, overtax them or make it difficult for them to operate, especially in the villages.

Hon. Temporary Deputy Speaker, as we speak, the Government of Kenya is trying to come up with technical colleges in every constituency or sub-county to ensure that we have masons, plumbers and handcraft men who are able to turn their experience into papers. I do not think those are the people we are targeting to pay Kshs50,000 in terms of fines. That is why I agree with the Committee. I want to repeat that in everything else that the Committee does, there is so much details in the regulations that are made pursuant to the many Acts of this Parliament that go unnoticed. I must commend this Committee for this and hope that in future, bodies like those, when they appear before the Committee, should be asked to explain why they are ignoring the law and whether they have legal officers in their establishments. If they do not have, they should be required to employ so that regulations that come to this House meet the basic requirements of the Statutory Instruments Act.

Hon. Temporary Deputy Speaker, I beg to support.

Hon. Gikaria: Thank you, hon. Temporary Deputy Speaker. First of all, I want to thank the Chair and the Committee for having gone through this. We do not want, as Parliament, to be the people who are encouraging people who break the law right, left and centre and go scot-free.

As the Member for Ugenya has said, the question we need to ask ourselves is: Are these regulations supposed to pass through Parliament for us to be able to scrutinize them? What has been put across is that a regulation is superseding an Act of Parliament through the Statutory Instrument Act which, I totally believe and think, that the Committee has done some justice.

However, the birth of NAC was welcome. You understand that houses have collapsed and lives have been lost. A lot of development money that an innocent investor wants to invest is lost because he gets a rogue contractor who does not follow any building code. Those people mess up the investor and the economy. At the same time, they bring death to our very innocent masons and casual workers.

I want to believe that NAC was something that was brought with a good intention. It is only that question that we are asking the National Construction Authority (NCA). It

has now become a place of collecting money and I do not know for whom. In my constituency, I am trying to register so many companies for the youth, women and the disabled people and every time there is a seminar here and there, you have to pay an attendance fee of up to Kshs15,000. This is just for sending one person from a company to attend a seminar in Nairobi. They are just, again, centralizing everything in Nairobi. They do not have any business to do. They do not realize that there is devolution and they can do that in Nakuru, Kisumu and other places.

So, the purpose of NCA now seems to be wanting in the sense that it is becoming a place where they are making money. More so, if you look at the requirements for the tenders which are given, they indicate the classes of NCA. You must be Class 7, Class 8 or Class 6 and above. For you to acquire that class as a youth group, women group or a disabled group, you have to pay Kshs50,000. That is the current amount that is being charged irrespective of these other penalties that are being stated here. So, we are pleading with the Committee to also look into that. I do not know where they got those kinds of fees and charges. Again, we are going to look at the regulations to see whether they have been passed through the right way. That is because if you ask a youth group to be registered, then what we are just saying is that through the regulations that we have passed here recently under the Procurement Act, where 30 per cent should go to those vulnerable groups, then again, we are not going to actualize what Parliament has actually passed to try and assist those young men, women and the disabled.

So, I concur and support the annulment because it is against the law. We also want the Committee on Delegated Legislation to go further and ask about the Kshs50,000 that the NCA are asking for a group to qualify to be classified in those classes. However, of course, when an investor walks in and wants to follow the due process of building, construction or something like that, then I think it is important that we accept that NCA is the right direction to go. But we need to apply some brakes on some of the issues they are doing.

With those few remarks, I support the annulment.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. Temporary Card No.1! You cannot be forever Temporary Card No.1. You know what to do to be able to regain the name of the beautiful people of Awendo. So, the next time you are in the Chamber, please, be a Member for Awendo and not Temporary Card No.1.

Hon. Opiyo: Thank you, hon. Temporary Deputy Speaker for your indulgence. I think your technical team is the one who are delaying the process. Otherwise, I had done my part.

Hon. Temporary Deputy Speaker, I want to really thank the Committee on Delegated Legislation for the job that they have done. My own understanding of the NCA is that it is a body that is supposed to regulate the industry. They should try as much as possible to get us many members as possible and to net all the contractors in this country, so that the industry is streamlined. However, again, we must understand that there are new players that are just coming into the field. Many of them are the youth. You will understand that the Government has a provision for young entrepreneurs to start businesses and they are even awarded Government tenders. There is a particular percentage - 30 per cent - for women, youth and people with disability. Sometimes, it is not out of their liking that some of them do not register with NCA.

So, when we put this fine, I think it discourages young investors from coming into the market. I would suggest that the Committee on Delegated Legislation would go ahead and actually give a provision that all those companies that belong to the youth and which are duly registered as companies belonging to the youth are actually registered for free as Members of National Construction Authority. I know there is a levy that is imposed for registration with National Construction Authority and so, it is my humble suggestion that, that particular amount be removed for companies that belong to the youth, so that we can encourage many of our youth to engage in enterprise. For those companies duly registered as youth companies that may fall in this trap, I suggest the Committee on Delegated Legislation goes further to amend and indicate that they be exempted from that fine.

With that contribution, I beg to support this Report.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. Member for Kwanza.

Hon. F. K. Wanyonyi: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. I want to thank the Chairman for having explained. I think ignorance is no defense. But now I know there is an authority dealing with construction. I think the fine is quite great and we want to nullify it. I support the Report because I know for sure that out there, there are youths who actually have no qualifications at all. As I speak, last weekend I was at home and two youths came to me and they were requesting me to help them register their companies so that they can do some work. I asked them if they had qualifications. I was surprised because I knew one of them. He is Standard VII drop-out. He has not gone anywhere at all and, therefore, the competence of actually constructing even a toilet will be far-fetched. Therefore, I believe we should nullify this. At the same time, you and I and everybody else in this House has witnessed people dying even in this City. We have had buildings collapsing elsewhere too. One collapsed in Busia when I was there. There is one that collapsed here in Nairobi in River Road, just because the wrong people were given certificates. The investors come and what do they do? They give out the money and invest so much only for whatever they are constructing to collapse. I remember the contractor in Westlands where the investor lost so much money. Basically, it was the wrong ratio in mixing the cement. If you do not mix the right cement, concrete and sand, of course, you are bound to have the buildings collapsing. So, I think we should have that penalty.

But, at the same time, the Authority should have more teeth to go out there. I was requesting the Committee to go further and look at the parent Act and see what it says. It provides for Kshs20,000, but that should be increased. This should be brought to this House, so that we can increase it to millions to deter the wrong-doers who go out there and all they want to do is to get into business. I had a case last weekend where two young people came to me and asked me to help them - by the virtue of my position - to have them registered as a constructing company. I quite agree and I support the nullification of this fine. If there is anything, the Authority should apply through the right channels to have a stiffer and deterrent fine than the Kshs20,000 for somebody who is going to kill people. At the end of the day, we are dealing with a construction where human beings are going to stay in and not animals.

Therefore, I support the Motion and hope that the Authority will ask for a better and stiffer fine than the Kshs20,000. There is no difference between Kshs50,000 and Kshs20,000 much as we are supporting the nullification of whatever had come up. They should come up with a fine of millions of shillings, so that the people can do the right thing at the right place.

With those remarks, I support the Report.

Hon. Wangamati: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity. I rise to support the Committee on this Report. The Committee got it right that this regulation is not helping our boys and women who are coming up in the construction business.

I remember very well that during our days, we used to have the National Construction Corporation which was so much mismanaged. They were not even helping. We came up with an idea that it becomes an Authority, so that it could have the capacity to help the upcoming artisans to grow to become big constructions companies in this country. So far, you, I and everybody know that we have very few artisans in this country. The Government should encourage the construction of more polytechnics, so that we can have more artisans in this country to compete for the work.

The Temporary Deputy Speaker (Hon. Kajwang’): The point of the debate, hon. Member, is whether we should annul Regulation 24(2) and I want to invite you to be very focused on that issue.

Hon. Wangamati: Hon. Temporary Deputy Speaker, I support the nullification because it does not help our artisans to come up. Those are young people who we want to help financially for them to grow. These fines will not help them. I agree with the Committee. However, I want the Committee to look further and ensure that the National Construction Authority builds capacity to help the artisans and those who are coming into this business to grow.

With those few remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. Kajwang’): Alright, hon. Members. There being no hon. Member requesting to contribute; and acting on my own discretion in terms of Standing Order 1, I take the view and make a ruling that this is an important regulation that needs to be discussed and be debated a little more than what we have had this afternoon. I, therefore, order that the Motion appearing as Order No. 11 appears on the Order Paper of Thursday, 7th August, 2014, for further debate.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, there being no debate and the time being 6.25 p.m., this House stands adjourned until Thursday 7th August, 2014, at 2.30.

House rose at 6.25 p.m.