

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 2nd April, 2015

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

Hon. Katoo: Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 2nd April, 2015:-

The Report of the Auditor-General on the Financial Statements of Agri and Cooperative Training and Consultancy Services Limited for the year ended 30th June, 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of University of Nairobi Press for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Office of the Director of Public Prosecutions for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of National Construction Authority for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Truth, Justice and Reconciliation Commission for the two months period ended 21st August, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the National Drought Management Authority for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Non-Governmental Organizations Co-ordination Board for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Export Promotion Council for the year ended 30th June, 2014 and the certificate of the Auditor-General therein.

Hon. Speaker: The Chairperson of the Committee on Implementation, Hon. David Gikaria, are you the acting Chairperson?

Hon. Gikaria: Yes. The Chairlady is not around.

Hon. Speaker, I beg to lay the following Paper on the Table of the House today Thursday, 2nd April, 2015.

The Report of the Select Committee on Implementation on the Status of the Implementation of House Resolutions from May, 2013 to February, 2015.

Hon. Speaker: Next Order.

PERSONAL STATEMENT

IMPEACHMENT OF CABINET SECRETARY FOR PLANNING AND DEVOLUTION

Hon. Speaker: Hon. Linturi.

Hon. Linturi: Thank you, hon. Speaker. I rise to make a personal statement. You will recall that sometime last year in the month of May, I proposed a Motion to this House to impeach the Cabinet Secretary (CS) for Planning and Devolution. After complying with all the requirements of the law and the Standing Orders, my Motion was approved for debate in this House.

I, therefore, take this earliest opportunity, before getting into the events that led to the abortion of the Motion, to regret and apologize to the hon. Members who supported this Motion.

Hon. Speaker, as a leader serving a second term, I know I have a duty to the people of Igembe South, the Members of this august House and the nation at large to behave, act and conduct myself in a manner that conforms to the requirements of the office of a Member of Parliament.

Hon. Speaker, allow me today to take the extraordinary step of telling this House, and the nation, the unfortunate events that led to the withdrawal of the highly publicized Motion to impeach the Cabinet Secretary (CS) for Planning and Devolution, Ms. Ann Waiguru. People have been speculating and there has been a lot of propaganda and insinuation of what happened.

Today let me answer to my conscience and let the country know the truth because this matter has been haunting me in the last eight months.

I even remember that when I tried to get an opportunity to explain to hon. Members what happened in Naivasha in presence of all the leadership, Members of Parliament booed me and I was not able to talk. I want, from the first instance, to dispel the idea that the Office of the Deputy President was behind this Motion, as has been highlighted and continues to be highlighted in the media.

The Motion was mooted, and this I repeat, the Motion to impeach the Cabinet Secretary was mooted by senior leaders and Members of this Parliament in the Majority Whip's Office. On this particular day, I remember we were called to give support to the President through a Press conference for the payment of the Anglo Leasing money by the Leader of the Majority Party in this National Assembly and in the Senate. I very well recall that this meeting was attended by, among many others, Prof. Kindiki, hon. A.B. Duale, hon. Katoo, and hon. (Ms.) Leshoomo. It was in this meeting that I was tasked with the responsibility of drawing up the charges and subsequently drafting a Motion which was later to acquire its own life and become very popular with the Members.

I want to thank the media for the good work they did in creating awareness about this Motion, as after a few days we had the required numbers. I want to state that the Cabinet Secretary, Ms. Ann Waiguru, talked to me twice on phone and I clearly told her that I was not ready, nor was I able, to control the events of the unfolding events. Realizing the matter was more serious than she thought, she used hon. (Ms.) Mbarire and hon. Mbiuki, who are my very close friends and I found myself in a meeting with her on Lenana Road, House No. 14.

(Laughter)

We discussed this matter and both agreed that it was not possible to save her. Three days later, we had a meeting where hon. (Ms.) Mbarire, hon. Mbiuki and the Chief Executive of this country sat, discussed this matter and I tried also to explain how difficult it was to withdraw the Motion. Having had a relationship with him, I pleaded to be given more time to give it a second thought. From there, we attended the wedding of hon. Gatobu, the Member of Parliament for Buuri, and to anybody who cared to follow the proceedings; I was under a lot of pressure to abandon this Motion.

The Leaders of the Majority Party of the National Assembly and the Senate conducted a vote from the public on whether they supported my withdrawal of this Motion and the vote was in the affirmative. In response, I asked them for time to consult with the owners of the Motion who were Members of Parliament. I invited the Members to a breakfast meeting in Panafric Hotel, where we deliberated on the matter and some of the Members were not ready to listen. The resolution of the breakfast meeting was to proceed with the Motion and I addressed the media, giving my firm commitment that the Motion was on.

From the Panafric Hotel, I drove to Jacaranda Hotel poolside where I shared with hon. (Ms.) A .W. Ng'ang'a, hon. Mwiti Irea and hon. Ichung'wah. It was at that meeting where one Njee Muturi and Jomo Gecaga joined us. After some deliberations, Mr. Njee Muturi gave me a letter to sign, which I did. You will remember that on the eve of the fateful day, the letter to withdraw this Motion was brought past 8.00 p.m. to Parliament by Mr. Njee and Mr. Jomo.

In the list of the alleged corrupt officers presented to this House by His Excellency the President, an officer in the office of the Deputy President is alleged to have used Kshs100 million to mobilize Members of Parliament against this Motion. This creates the impression, or the insinuation, that being the Mover of the Motion, I was the first person to benefit from the alleged amount of Kshs100 million, which is untrue. My zeal and vigour to fight corruption speaks for itself. It was during my time, as the Chairman of the Public Investments Committee (PIC), in the Tenth Parliament that the 16th Report named very senior Government officials, including Ministers for alleged participation in malpractices in the disposal of the Rift Valley Railways (RVR) Company.

It is also evident that through a Question that I raised on the Floor of this House, I questioned the manner in which the then City Council of Nairobi had purchased cemetery land. I am the one who brought up this matter. From the investigations that ensued, many officers, including a Permanent Secretary and Chief Officers, lost their jobs and they are now answering to charges of corruption in the courts of this country.

As I finish, let me state that I am ready to appear before the EACC, if called upon, to shed more light on this matter in the event that I am required to do so at any time. I have conscientiously decided to make this Statement to let people get informed by what I have said and pass judgment on the matter rather than keep quiet and give people an opportunity to continue

maligning my name and continuously create an impression that I was paid to abandon this Motion.

, Thank you.

Hon. Speaker: Hon. Members, let me understand the Members who have placed interventions.

Yes, hon. Cheboi.

Hon. King'ola: Thank you, hon. Speaker. I just want to appreciate the Personal Statement from hon. Linturi.

Hon. Speaker: No. sorry. You are out of order. Hon. Members, please try to familiarize yourselves with the Standing Orders.

Hon. King'ola: Thank you hon. Speaker. When I was---

Hon. Speaker: How come? That card reads hon. Cheboi but this is hon. Makau! You might have exchanged your cards.

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

Hon. Speaker: Hon, Murungi, intervention?

Hon. Murungi: On a point of order, hon. Speaker. I do not want to contribute to---

Hon. Speaker: What are you saying? You want to contribute?

Hon. Murungi: No. I do not want to alter or to say anything about it but to ask our colleagues, Members of Parliament, those who have any negative issue with hon. Linturi to forgive him, so that he can discharge his duties in this House.

Hon. Speaker: Order, hon. Murungi. Hon. Members, the Eleventh Parliament was sworn in on the 28th March, 2013. So, it is now over two years old. I expect that you all have read and re-read the Standing Orders and, therefore, know the position of Personal Statements. In the event that you have not, I urge you to go and now begin revisiting them. A Personal Statement, hon. Murungi, is not--- There is nothing to contribute to. No clarification, no Question put or proposed; it is just a Personal Statement.

(Several hon. Members walked into the Chamber)

I ask the hon. Members making their way in to take seats.

COMMUNICATION FROM THE CHAIR

REQUEST TO BE EXCUSED FROM ALL PARLIAMENTARY ACTIVITIES

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(Several hon. Members stood up in their places)

Hon. Speaker: Order hon. Members. Take your seats. I have this Communication from the Chair to make, and it is on the alleged request by hon. Ababu to be excused from all parliamentary activities.

Hon. Members, I wish to bring to your attention that on Tuesday, 31st March, 2015 at around 3.00 p.m. a lady officer who claimed to be a Personal Assistant to Budalang'i Member of Parliament, hon. Ababu, brought a letter to my office, whose subject matter was "request to be excused from all parliamentary activities;" it was dated 31st March, 2015 and addressed to the Speaker. The letter was officially received and stamped by an officer in my office. However, within ten minutes of receipt of the letter, the said Personal Assistant went back to my office and asked to withdraw the letter, which was subsequently given to her. Later in the afternoon of that same day, a letter was circulated on social media in which, among other things, hon. Ababu sought leave from attending all House sessions, activities of the House Committee on Administration and National Security, any activity of the suspended Public Accounts Committee (PAC) and any other business of the House and its committees. In this regard, my office has been inundated with inquiries from various people seeking to know the import of the letter and the action I will take on the request by hon. Ababu.

Hon. Members, for avoidance of doubt, I wish to clarify that although the letter was brought to my office, it was subsequently withdrawn, and to date I have no letter from hon. Ababu requesting to be excused from any of the activities of this House. In view of this, I ask hon. Ababu to go on record and confirm the circumstances surrounding the withdrawal of the letter as my office will be unable to make any pronouncement and/or issue any direction on a letter that is non-existent, having been withdrawn by the said Personal Assistant.

If hon. Ababu is in the House, I would want to offer him the opportunity now to place on record what it is he intended the Speaker to do or the House to know about this letter. If he is not in, he will be given the earliest opportunity whenever he will come to the Chamber either today or on any other day the House sits to explain himself.

Thank you, hon. Members.

Hon. Speaker: Is hon. Ababu in the House?

An hon. Member: He is not in.

(Loud consultations)

Hon. Speaker: Well, the clerks will take note of this instruction so that when hon. Ababu will be in the House, he will take the opportunity to explain himself, and also let the House understand what kind of game this was, of forwarding a letter to my office and then withdrawing it.

Next order!

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. Speaker: Majority Whip, hon. ole Katoo.

Hon. ole Katoo: Thank you, hon. Speaker.

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

THAT, pursuant to provisions of Standing Order 30(3)(b), this House resolves to extend its sitting time today until the conclusion of business appearing in the Order Paper.

Hon. Speaker, considering the enormity of business before us today, and without anticipating debate on the adjournment of the House, this House is scheduled to proceed on short recess of about 10 days today. It is for this reason that I seek the extension of the Sitting time to allow for the consideration of the key business outlined on the Order Paper today.

We have about five business items to transact and they are not heavy. If hon. Members agree with me we can still finish and go to the adjournment Motion on the normal sitting time of up to 6.30 p.m., or at 6.00 p.m. because it will be 30 minutes before 6.30 p.m. But should there be need for us to extend time we will finish what is line up on the Order Paper, so that we go for the 10 day recess, and when we come back we start somewhere.

This was agreed in the House Business Committee, I kindly request my colleagues that in order of us to go for the Easter Holiday recess, let us finish what is on the Order Paper and then adjourn.

With those few remarks, I request hon. Chepkong'a to second.

Hon. Chepkong'a: Thank you, hon. Speaker. I second.

(Question proposed)

(Question put and agreed to)

BILLS

*First Readings*THE NATIONAL YOUTH EMPLOYMENT AUTHORITY BILL
THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL

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

Hon. Speaker: Order, hon. Members! For the convenience of the House I will invoke Standing Order No.1 to superintend the business appearing as Order Nos.11 and 12; as you can see it is a fairly straight forward business which, I think, hon. Members can resolve immediately in plenary. I, therefore, move to business appearing as Order No. 12.

MOTION

APPROVAL OF APPOINTMENT TO COMMITTEES

Hon. Speaker: Hon. Katoo.

Hon. Katoo: Hon. Speaker. I beg to move the following Motion:- THAT, further to the resolution of the House on 8th October, 2013 on appointment of hon. Members to respective committees, this House approves the appointment of hon. Memusi, MP to the Departmental Committee on Defence and Foreign Relations and the Joint Committee on National Cohesion and Equal opportunity.

Hon. Speaker, this is a very straight forward Motion because hon. Elijah Memusi is joining the committees that were formerly allocated to his predecessor, hon. Nkaissery, who is now a Cabinet Secretary. This is also in accordance with Standing Order No. 175(3), which states that a Member shall not be a Member of a Committee of the House unless the nomination of such Member to the committee is approved by the House. It is for this reason that this Motion is before us today. I request hon. Linturi, who is a Member of the Selection Committee, to second.

Hon. Linturi: Hon. Speaker, let me, from the first instance, congratulate *mhe* Memusi for his election as the Member for Kajiado Central. Since the people of Kajiado Central found him fit to occupy that high office, I think it is only obvious that when it comes to duties, this House also gives him the honour of sitting on the committees that hon. Nkaissery sat on. I second.

Hon. Speaker: Hon. Members who are standing, take your seats. Member for Wajir, take your seat, please. This is the National Assembly plenary Chamber. There are enough seats. There are 350 seats in here.

(Laughter)

Hon. Speaker: Indeed, I took the extraordinary step because I was buying time to wait for hon. Kajwang'. He is the one who is about to take over the next Order. Members may not have known why we had to juggle the Order Paper. Now that the hon. Kajwang' is in the House, we need to dispose of this one.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Hon. Members, we will go now to the next business.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Mr. Kajwang) took the Chair]*

THE PUBLIC AUDIT BILL

The Temporary Deputy Chairman(Hon. Kajwang'): Order Members. This is the Committee of the whole House convened to consider the Public Audit Bill, National Assembly Bill No.38 of 2014. We are commencing on Clause 30.

(Loud consultations)

Order Members! Those who are leaving the Chamber, please, do it very fast. Let us minimize consultations. We intend to go through the entire Bill in this sitting.

Clause 30

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 30 of the Bill be amended by inserting the words “or information” immediately after the word “documents”.

We want to enhance the function of the Auditor-General by including the words “or information” to documents that he may be given.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman and the Member for Rarieda, the variance between your amendments is very slight. Are you able to reconcile this, so that we can move very fast? Can you give hon. Member for Rarieda the microphone, please?

(Loud consultations)

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Deputy Chairman. The consultations here are too loud.

The Temporary Deputy Chairman (Hon. Kajwang’): Order Members!

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I want to plead with the Chairman of the Departmental Committee that instead of the words “or information” we put the words “and information.” Let the words be inclusive. If we put the words “or information”, it will be either documents or information, but if you put the words “and information”, then both will be needed. I would plead with him that he moves that amendment, so that we put the words “and information” instead of “or information.”

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman, do you feel persuaded enough that the words that the man from the lake is adding give value to your amendments?

Hon. Langat: I do not see any difference, but since from morning he has been proving to us that he has better English, I will go by his proposal, although I see no difference.

The Temporary Deputy Chairman (Hon. Kajwang’): Express yourself on the HANSARD that you are either dropping or withdrawing your amendment. That way we will know what to do with what we have.

Hon. Langat: Hon. Temporary Deputy Chairman, in order to save time I will move a further amendment to my initial amendment.

Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 30 be further amended by deleting the word “or” and inserting in place thereof the word “and”.

(Question of further amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the word to be inserted place
thereof be inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, can drop your amendment in view of the further amendment that we have had?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I thought it was the Committee Chairman who ought to have dropped his amendment. Now that he has said that we put the words “ and information” instead of “or information”, I drop my amendment.

*(Proposed amendment to Clause 30
by hon. (Eng.) Gumbo withdrawn)*

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

(Clause 30 as amended agreed to)

Clause 31

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 31 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (6)—

“(6A) Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before the Committee of the whole House”

The effect of this amendment is to ensure that after the annual audit by the Auditor-General, this House is given an opportunity to listen to the reports of the Auditor-General, just as we listen to the Cabinet Secretary when we are receiving Estimates. We should get that report as a House for our information.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman, I have a few words for you before Members take time to debate this. The phrase “Committee of the whole House” is not sitting very well with me. Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before the Committee of the whole House. The Committee of the whole House is the plenary of the National Assembly. The Auditor-General cannot appear before it. This is a committee of the House. This does not sit well with me. I would suggest, without forcing you to accept it, that he should present the report to the National Assembly.

Hon. Langat: Hon. Temporary Deputy Chairman, I agree with you. If that will make the Chair comfortable, I agree with it.

The Temporary Deputy Chairman (Hon. Kajwang’): It does not make me any less comfortable. It just brings in what might have been missed. This might have been an oversight. Can we clean it up properly? Can you, therefore, go on record and propose a further amendment to delete the words “Committee of the whole House”? Are you able to go on record proposing a further amendment to delete the words “Committee of the whole House” and substitute therefor the words “National Assembly”?

An hon. Member: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Please, listen to something before you raise a point of order. You will get a chance. This Chair will always give you a chance.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 31 of the Bill be further amended by deleting the words “committee of the whole House” and replacing them with the words “National Assembly of Kenya”.

An hon. Member: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Hold on. Before you raise a point of order, a matter should be proposed before the Assembly. Then we can discuss it. I hear you perfectly, but allow me to also get my processes working.

(Question of the further amendment proposed)

This will then read that “Where an audit report has been tabled, the Speaker of the National Assembly shall invite the Auditor-General to present the report before the National Assembly. That is what we have. Can I now hear you, starting with the Member for Tongaren?”

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, the Chair was trying to make it the way the Cabinet Secretary for the National Treasury presents his Estimates. The Cabinet Secretary, not being a member of the National Assembly, cannot therefore, come here and present anything. He usually comes to the House when we are in the Committee of the whole House. That is what the Chair was trying to recreate, so that we do not have a situation where we tell him to present before the National Assembly, yet he cannot come in to the National Assembly because he is not an elected Member of the National Assembly. That is how the Cabinet Secretary for the National Treasury has presented his Estimates to us. That is what the Chair was trying to do.

The Temporary Deputy Chairman (Hon. Kajwang’): That may be so. I hear you, but listen to two issues. First, this phrase, “Committee of the whole House” is not a legal phrase, so to speak. There is no legislation that has defined it. It is in the Standing Order No.1.

Secondly, when something has been committed to the National Assembly, the Standing Orders themselves will show you that it will stand committed to the relevant Committee. So, it is the privilege of the Speaker to decide to which Committee that report will go, whether it is a joint Committee or the Committee of the whole House. It, therefore, becomes a Communication from the Chair as to where that report stands committed.

Hon. (Eng.) Gumbo: Thank you, hon. Temporary Chairman. I also had an amendment which is similar to the Chairman's. I would request my amendment to be carried because---

The Temporary Deputy Chairman (Hon. Kajwang'): Order! We are still speaking to his amendment.

Hon. (Eng.) Gumbo: I am just coming to that. I would request him to drop his and we carry mine. When this audit report is presented to us as a House, it is in a session where we do not debate it nor do we put questions to the Auditor-General.

The Temporary Deputy Chairman (Hon. Kajwang'): I will still go back to where we are. We have to keep order and go back to where we are. I understand you, but you are still ahead of us. We will come to your amendment. Let me go back to the requests. I do not want to open this to debate at all. We want to push on.

Member for Nakuru Town East.

Hon. Gikaria: Thank you, hon. Temporary Deputy Chairman. I want to agree with you. The Standing Order stipulates clearly that the Speaker can commit the report to the particular committee instead of leaving it to the Committee of the whole House. We can leave it to the National Assembly and then we can leave the Speaker to say which committee it is.

The Temporary Deputy Chairman (Hon. Kajwang'): "Committee of the whole House is just at the Committee Stage of the passing of any piece of legislation. All of you who are seasoned Members of this House know that the Committee of the whole House is just one Committee that is held before the Third Reading of the passing of every legislation. That is it. It is only for Members and not for outsiders. So, there is no way you will bring anybody to a Committee of the whole House; you can bring him to another committee, if you want. If that Committee has been defined by law, you can. The Standing Order itself says that where a report is committed to the National Assembly, that report stands committed to the relevant Departmental Committee. Therefore, the Speaker gives a Communication from the Chair and it goes, without question, to a committee.

Can I put the question?

Member for Seme, I did not see you here earlier. Let me recognize you.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I have just come in. The point here is to present the report. That is different from being tabled in the House and then the Speaker can commit it to any relevant committee.

The Temporary Deputy Chairman (Hon. Kajwang’): There is no way anybody presents anything here other than going through the Speaker. There is no such thing that somebody can present anything to the National Assembly without going through the Speaker of the National Assembly.

Hon. Langat: Hon. Temporary Deputy Chairman, I have remembered what we normally do with the Budget Estimates. We normally call the Cabinet Secretary (CS) to come and present to the House sitting as a Budget and Appropriations Committee, but with all the Members in attendance. So, if you allow me, I will move a further amendment to say that the report be presented to a joint committee of the Public Accounts Committee (PAC) and the Public Investments Committee (PIC) and all the Members will be invited to attend.

The Temporary Deputy Chairman (Hon. Kajwang’): No; unfortunately, I have to debate with you on this one because it concerns the leadership of the House and procedure. We cannot go that direction, because it is only PAC and PIC that are defined by legislation. All these other committees are only defined by Standing Orders. The only thing that the law knows is the National Assembly. From there, the departmental machinery will take effect. Even in the Budget and Appropriations Committee where the CSs appear, they do so before that Committee only that Members are invited and allowed to come to that Committee, because we are all members of the Committee, if you wish. As to which committee it goes to is the discretion of the Speaker.

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

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed)*

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Rarieda, your amendment is entirely similar to this.

(Hon. (Eng.) Gumbo spoke off the record)

No. Member for Rarieda, if that amendment has been acceded to and carried how does your amendment sit? Are you doing a further amendment, or in which way will it sit? Already it is in law right now because we have passed it. So, how does it sit?

Hon. (Eng.) Gumbo: The only difference between his amendment and mine is that mine is very specific that at the time when the Auditor-General will present the report there will be no debate and no Question will be put.

The Temporary Deputy Chairman (Hon. Kajwang’): No. You just amend the relevant Standing Orders in respect to that Committee. That is what you need to do and not in legislation. You amend the Standing Orders to comply. Therefore, you understand that your amendment has been taken care of by the Chairman.

Hon. (Eng.) Gumbo: Largely yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya. You are not in the Chamber, and so I will not address you.

(Clause 31 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Before we go to the next clause, may I recognize the presence of our young people in the Gallery. These students from Machakos Girls’ High School in Machakos County. There are also two teachers from Alliance High School in Kiambu County. Please, join me in applauding these people.

(Applause)

(Clauses 32, 33 and 34 agreed to)

Clause 35

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Tongaren.

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 35 of the Bill be amended by deleting the word “may” appearing immediately after the word “Auditor-General” and substituting therefor the word “shall”.

Matters of audit are where we are able to stop leakage and loss of funds. In this case, by saying that the Auditor-General may conduct a performance audit we lose the game. The Auditor-General shall conduct

performance audit. That is the right way to go, if we are to ensure that we get value for our money.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you very much.

(Question of the amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the word to be inserted in place
thereof be inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman, the next amendment.

(Loud consultations)

(Hon. Ng’ongo spoke off the record)

You would do well if you do not address the Chair from where you are.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 35 of the Bill be amended by—

- (a) renumbering the existing provision as sub-clause (1);
- (b) inserting a new sub-clause immediately after the renumbered sub-clause (1)—

“(2) The Auditor-General may undertake a comprehensive performance audit within six months after the completion of any national or county project to evaluate whether the citizen has got value for money in the project and submit that report to Parliament or county assembly for tabling and debate.”

This is basically to give the Auditor-General the power that at any given time after completion of any national project the Auditor-General may decide to do a performance audit. The amendment that has just passed may have been because we never spoke about it. If we say “shall” then we give

the Auditor-General a different mandate. That means we need to double his capacity because the Auditor-General has his own mandate given by the Constitution. When we say he must do performance audit in everything, that is another set of mandate which is very expansive.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kiminini.

Hon. Wakhungu: Thank you, hon. Temporary Deputy Chairman. There are specific functions that are given to the Auditor-General. Indeed, the word “shall”, much as it is going to add value, will strain the capacity of the Auditor-General. So, we must look into that. The word “shall” is for compulsory---

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kiminini, we have moved to the sub-clause (2) as proposed by the Chairman. It has nothing to do with “shall” and “may”. If you look at your Order Paper, we are on page 261.

Member for Kitui Central.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. What we are saying is that using the word “shall” might cause problems. There are different types of audits. Depending on the nature of the audit you are conducting, you might find that there is no need for performance audit. So, if you say “shall” it means in addition to any other audit you will conduct you will still need to carry out a performance audit. We need to be a bit careful.

The Temporary Deputy Chairman (Hon. Kajwang’): Order Members. Will we speak to what is current now? What we have passed can only be recommitted. You have that opportunity. There is no problem at all. What is water under the bridge remains under the bridge. I am listening to you. So, let us speak to what we now have before us.

Member for Kitui West, did you forget that other than being the Leader of the Minority Party, you are also the Member for Kitui West?

Hon. Nyenze: Thank you, hon. Temporary Deputy Chairman. I am the Leader of the majority governments because the Coalition for Reforms and Democracy (CORD) has 24 counties while Jubilee has 23. However, I had pressed my button strategically for another point I am waiting to make. So, thank you for recognizing me.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Shall I now put the Question? Member for Mandera North.

Hon. Nooru: Hon. Temporary Deputy Chairman, it is a matter of procedure. We have just passed the word “shall” under the amendment of hon. Simiyu. How do we go about it? Should we amend it by this amendment?

The Temporary Deputy Chairman (Hon. Kajwang’): It is very simple. You will move for re-committal. You know how to move for re-committal under the Standing Orders if you feel strongly about it. That is all. We are now discussing whether we should have Sub-clause (2).

Member for Homa Bay, can you get the microphone?

Hon. (Ms.) Nyasuna: Thank you Chair. I stand for re-committal.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, when we are through with the procedures that we have and when you move for reporting, you will move it subject to re-committal. Shall I put the Question?

*(Question, that the words to be inserted
be inserted, put and agreed to)*

(Clause 35 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the Chair. Hon. Member for Nakuru, I am trying to persuade you to listen first; get the point then raise the point of order after that.

Clause 36

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move :- THAT, Clause 36 of the Bill be amended by inserting the words “by Parliament” immediately after the words “upon request.”

When we sat in the Committee, it was felt that when you say “upon request” and you do not specify who is to request, you can have the Auditor-General (AG) receiving a lot of requests from every other person. So, we want to limit that request to Parliament to request the AG to do an audit at any given time. This is because the AG reports to Parliament under its mandate.

(Question of the amendment proposed)

*(Question that the words to be inserted
be inserted, put and agreed to)*

(Clause 36 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Hon. Member for Tongaren, I understand that you have an amendment to the same clause.

Hon. (Dr.) Simiyu : It is similar to what the Chair has just moved.

The Temporary Deputy Chairman (Hon. Kajwang’): So, do you withdraw or drop it?

Hon. (Dr.) Simiyu : I withdraw my amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you

*(Proposed amendment to Clause 36
by hon. Simiyu withdrawn)*

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Chair, can we hear you. Very briefly the way you were doing it this morning.

Clause 37

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:- THAT, Clause 37 of the Bill be deleted.

The reason why I want to delete it is that that mandate for environmental audit is already with another body called that National Environmental Management Authority (NEMA). Therefore, I propose a deletion because that is a separate mandate from that of the AG.

(Question of the amendment proposed)

The Temporary Deputy Speaker (Hon. Kajwang’): Let us have the hon. Member for Baringo. He is not in the Chamber. Let us have the hon. Member for Samburu West.

Hon. Lati: I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Emuhaya.

Hon. (Dr.) Ottichilo: Thank you. I support, because this work is done by NEMA.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the hon. Member for Kaiti.

Hon. Makenga: Thank you. I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for West Pokot.

Hon. (Ms.) Changorok: Thank you. I support.

The Temporary Deputy Chairman (Hon. Kajwang’): If all of you are supporting. I will put the Question. Let us have the hon. Member for Rarieda.

Hon. (Eng.) Gumbo: I think this clause needs to be understood. The clause says:

“The Auditor General shall conduct an environmental audit to ascertain as to whether public money has been expended with due regard to the environmental impact of that expenditure.”

We are talking about auditing the expenditure. Does NEMA audit the expenditure with regard to environmental audit? No. NEMA will do the environmental audit but does it do it with regard to public expenditure? What is the harm here? If we delete this clause, who will audit the expenditure with regard to the environment? It is not NEMA.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Suba. Please have the microphone.

Hon. Ng’ongo: Thank you. I support this amendment. I wanted to respond to hon. (Eng.) Gumbo that the auditor will naturally audit the expenditure. The work of an environmental impact analysis (EIA) is left for another body; so, there is really--- You will have to put environmental scientists in the AGs office. It will be too much work.

The Temporary Deputy Chairman (Hon. Kajwang’): Nominated Member, I recognize you because you are the Chair of matters related to the environment, hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you. I want to support this amendment and inform my good friend, the Member for Rarieda, better known as “a man of means” .

(Laughter)

He is better known as “a man of means” outside Kenya and also “a son of a peasant in town”. The recently passed Environmental Management and Coordination Act (EMCA), puts that function of audit under environmental audit. So, I support the amendment by the Committee. This particular function is one of the functions that the A-G requested to put in his functions as the environmentalist. Even the Commission on the

Implementation of the Constitution (CIC) did oppose. We felt that he was going beyond his mandate.

The Temporary Deputy Chairman(Hon. Kajwang’): All right.

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

(Clause 37 deleted)

The Temporary Deputy Chairman (Hon. Kajwang’): All right. The natural consequence of events is, therefore, that the amendments by Members for Rarieda and Tongaren are superfluous now.

*(Proposed amendments to Clause 37
by hon. Gumbo and hon. Simiyu dropped)*

Clause 38

Hon. Langat: Ho. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 38 of the Bill be amended by deleting the word “may” appearing immediately after the words “The Auditor-General” and substituting therefor the word “shall”.

Clause 38 reads:

“The AG may examine the Public Procurement and Asset Disposal process of a state organ or a public entity with a view to confirming as to whether procurement was done lawfully and in an effective way.”

We are saying that he must do it. Any time he is there he must check the procurement process to ensure that, that process was properly done, So, we are replacing the word “may” with “shall”

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Nyamira.

Hon. (Ms.) Chae: I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, I would love to have people who have a different opinion. Member for Mandera North.

Hon. Nooru: I do not see the reason why we should put the word “shall.” It is not different from the original one that we are trying to oppose. Why should we make it mandatory? When the need arises the audit can be done. It should remain “may”. Why do you make it the same as the original one that you are trying to argue about? There is no difference between it and the amendment that we have just opposed.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the hon. Member for Keiyo South.

Hon. Kiptanui: I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the hon. Member for Samburu North.

Hon. Lentoimaga: I support.

The Temporary Deputy Chairman (Hon. Kajwang’): If all of you are supporting then why do we not put it to vote.

Member for Tharaka Nithi.

Hon. (Ms.) B. N. Nyaga: I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kitui Central.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I oppose this amendment basically because we are over-legislating. If the Auditor-General looks at the books and thinks that there is no need of looking at the whole procurement process--- Let us leave that at the discretion of the Auditor-General. We are saying that wherever he goes, he must do it. It might not be necessary for some institutions.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Homa Bay.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I also oppose the amendment in the spirit of what we said earlier. The Public Procurement Oversight Authority (PPOA) does a lot of the procurement oversight. When they flag issues, the Auditor-General may look into the procurement processes.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Chairman of the relevant Committee.

Hon. Langat: Hon. Temporary Deputy Chairman, this is just to enhance the capacity of the Auditor-General. Most of the corruption cases happen in the procurement process. We are simply saying that anytime the Auditor-General does the audit, they must check the procurement process of any entity to ensure that it has done the right job. We are enhancing the

capacity of the Auditor-General in order for them to be able to report to us all cases of malpractice.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Suba, what is itching?

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, auditing of any entity is guided by auditing and accounting standards. There is the bare minimum standard. As hon. Makali said, we are over-legislating. You cannot put in every detail of what an auditor is supposed to do when he goes to an entity. Telling the auditor that he must examine the public procurement and asset disposal of a State organ or a public entity is not necessary. There is a body responsible for the oversight of the procurement and asset disposal processes of State organs or public entities. The work of the auditor is to express an opinion.

(Question, that the word to be left out be left out, put and negated)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move;-

THAT, Clause 38 of the Bill be amended by—

(a) renumbering the existing provision as Sub-clause (1);

(b) inserting a new sub-clause immediately after the renumbered Sub-clause (1)—

“(2) The Auditor-General may seek professional assistance in examining a public procurement and asset disposal process under subsection (1).”

Hon. Temporary Deputy Chairman, I recognise the fact that the Office of the Auditor-General may not necessarily – and does not even need – to have procurement professionals even though they might find it necessary to examine the procurement processes of an entity from time to time. The import of my amendment is to allow the office of the Auditor-General to procure the services of procurement professionals in the event that they find it necessary. It seeks to give him discretion to do so. That is why I am saying that the Auditor-General may seek professional assistance in examining a public procurement and asset disposal process.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Githunguri.

Hon. Baiya: Hon. Temporary Deputy Chairman, the same reasons that were advanced in rejecting the earlier amendment also apply to this particular amendment. As it is, the law does not stop him from doing so. The Auditor-General is allowed to recruit all kinds of professionals, and not just procurement professionals. They can even procure the services of engineers, if need be.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much, Member for Githunguri.

Let us hear the Member for Marakwet East.

Hon. Bowen: Hon. Temporary Deputy Chairman, I stand to oppose the amendment. This is an audit office. If the area of audit specifically is procurement, you need to have your own specialists – people who will not be compromised when they go out auditing. Why outsource such services when you need to have your own independent officers?

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chairman, can I hear you quickly on this one?

Hon. Langat: Hon. Temporary Deputy Chairman, I was trying to locate Clause 24.

The Temporary Deputy Chairman (Hon. Kajwang’): It is on page 269 of the Order Paper.

Hon. Langat: Hon. Temporary Deputy Chairman, we have already given the Auditor-General the power to outsource all sorts of tasks, including procurement professionals. Therefore, this amendment has no value to the law we are making because that power has already been given to the Auditor-General.

I oppose the amendment.

*(Question that the words to be inserted
be inserted, put and negated)*

(Clause 38 agreed to)

Clause 39

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to Move;- THAT, Clause 39 of the Bill be deleted.

Hon. Temporary Deputy Chairman, I am only deleting Clause 39 but I will subsequently be moving New Clause 31A, so that it fits in the right place in the Bill. This is just a matter of deleting this Clause and taking it to the right place through the introduction of New Clause 31A.

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chairman, you will only speak to Clause 39 because that is where we are. The new clauses are on the Order Paper. We will come back to them. Do not speak about them until we come to them.

Hon. Langat: Hon. Temporary Deputy Chairman, I am speaking to Clause 31A because the two clauses are related. The Committee’s proposal is that we delete Clause 39 and fit it in New Clause 31A, which is more relevant.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Homa Bay.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, while moving this provision to the right place makes sense, the amendment referred to does not cover the timelines. Clause 39, as it is currently, states within what period reports should be submitted. This is an important aspect when it comes to submitting reports. If we leave it open-ended and people will submit reports at whatever time they will want, there will be a problem. Clause 39 is very clear that within a given period, you should present such a report; within 14 days, you should present such a report. Timelines are a very important aspect of any law.

Therefore, I oppose.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Kiminini.

Hon. Wakhungu: Hon. Temporary Deputy Chairman, when the Departmental Committee Chairman was explaining---

Hon. Ochieng :---(*Off-record*)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, in other circumstances, I would have thrown you out of the Chamber. First, you were away from the Chamber when you were supposed to be here to prosecute your amendments. You then walk in and the first thing you do is make a voice call to the Chair!

Proceed, Member for Kiminini.

Hon. Wakhungu: Hon. Temporary Deputy Chairman, when the Departmental Committee Chairman tried to convince us, he left out the issue of timeliness. Maybe we should give him another chance to see if he can convince us otherwise. I agree that in terms of audit, time is very critical. In the amendment he has referred to, I cannot see the aspect of timeliness.

Therefore, I oppose.

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

The Temporary Deputy Chairman (Hon. Kajwang’): If it has been negated, then Clause 39 remains the same. Let us hear the hon. Member for Ugenya. Let him try and get his fair share. Let me see if he can persuade Members better than the Chairman did.

Hon. Ochieng’: Hon. Temporary Deputy Chairman, actually I was not going to persuade Members anymore. This is because in the morning, I sat here the whole time. Just missing for a minute should not make you---I do not think you are fair to me. I was here since 9.30 a.m. until 1.00 p.m. I just missed for a minute because I needed to bite something, and now you want to reprimand me.

However, when I was out----

Hon. Members: Apologize! Apologize!

The Temporary Deputy Chairman (Hon. Kajwang’): The Chair does not apologize; the Members do.

Hon. Ochieng: Hon. Temporary Deputy Chairman, while I was away, there was an amendment that I had proposed to Clause 31. If it had been carried, I would not have had to do this. However, based on what the Member for Mumias said, which I support, we will now have to retain it. That is why I am dropping that amendment of mine.

The Temporary Deputy Chairman (Hon. Kajwang’): So are you dropping your amendment, hon. Member for Ugenya?

Hon. Ochieng: I am dropping it.

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

(The proposed amendment to Clause 39 by hon. Ochieng dropped)

(Clause 39 agreed to)

Clause 40

Hon. Ochieng: Thank you so much hon. Temporary Deputy Chairman. I am happy that this time round you have decided to start with me. The practice has been that you have been starting with senior Members then you go to the junior ones. I do not know whether there is such a thing in the House.

Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 40 be deleted and replaced with the following new clause—

40. (1) In auditing national security organs, the Auditor-General and his or her representatives shall hold an inception meeting at the highest level to agree on the areas which may touch on national security and consequently determine the scope of the audit coverage.

(2) The audit reports on national security organs may be redacted to shield the identities of persons as well as assets and liabilities as the case may be.

(3) All staff of the Office of the Auditor-General carrying out audit under this section shall undergo a vetting process carried out by the appropriate security agency.

I am proposing that we delete what appears as Clause 40 in the Bill and replace the text I propose, so that when the Auditor-General is auditing national security organs, there is a way in which it is orderly and it does not undermine the security organs and their work. As you would imagine, what is in the current Clause 40 almost blocks the Auditor-General from auditing these organs. All I am proposing is to ensure that as we audit these security organs, there are checks and balances that still allow room, or give enough room, for the office of the Auditor-General to be able to fully, effectively and in a manner that is professional to audit the security organs. It is why I am proposing that in auditing these organs the Auditor-General and his representatives should hold inseparable meetings at the highest level to agree on the areas which may touch on national security and consequently determine the scope of the audit coverage.

The Temporary Deputy Chairman (Hon. Kajwang’): We can read the rest.

Hon. Ochieng: This is because there is somewhat a blanket provision here that gives security organs a power to say, “This is unreachable; you cannot audit this and that.” It cannot be determined by the security organs

themselves. This has to be done jointly between the organs concerned and the office of the Auditor-General.

(Question of amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Unguja!

Hon. Wandayi: Hon. Temporary Deputy Chairman, I wish to support the proposed amendment in totality. This is because we cannot leave it to State apparatus, or State operatives or people who ordinarily would have interest in protecting critical information from coming to the public, to determine which areas should be touched by the Auditor-General and which ones should not be touched. So, I support this in totality and I wish it passes.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kitui Central.

Hon. Mulu: Thank you, hon. Temporary Deputy Chairman. I want to support this amendment. The law is very clear that the Auditor-General is an independent office. Even as we take care of the national security interest, it is also important that we ensure that the independence of the Auditor-General is not compromised. If you look at the current Clause 40, it says that the Auditor-General needs to seek authority from another body before he looks at all the issues of national security. I think this amendment is quite important and is in line with the Constitution.

Hon. (Prof.) Nyikal: If we want the Auditor-General to do audit work we must allow them to have information. If you look at all the areas that are listed here, basically the Auditor-General will not be giving any information. For that reason, I support the amendment.

Hon. Gikaria: Thank you, hon. Temporary Deputy Chairman. I oppose the amendment. We are talking about security issues and some of the information, if it is disclosed---It is not that we are stopping the Auditor-General from auditing. If the information has to come to the public knowledge then it must also be limited. Remember we have neighbours and we are talking about them being in a position to weigh the strength of our security organs.

Hon. Langat: Hon Temporary Deputy Chairman, I want to oppose that amendment, but not in a bad faith. I agree with what my colleagues are saying. However, if you look at it very keenly, hon. Ochieng is saying they will do an exceptional meeting at the highest level. Which level will it be? Is it at the level of the President or the head of military? So, that amendment alone is not very clear. I am opposing it because as a Committee, we have a

better amendment which ensures that, one; all the confidential expenditure is audited. The matter in dispute is how to report the findings.

This is something we have discussed with the Committee Members comprising both sides of the House. Do you allow me to move the Committee amendments? It is because we have already got all shades of opinion from Members from both sides of the House. We have also talked to the Treasury and the heads of those organs. In fact, we have spoken to the Auditor-General. So that we remove subjectivity from this matter of national security, I want the Member to withdraw his amendment in favour of mine.

The Temporary Deputy Chairman (Hon. Kajwang’): The reason why I am deliberately slow on this is because I want you to move together on this Clause. You need to understand what each other is saying. For example, if he is saying you may need to reflect on these amendments, please do so. This will enable you see the gaps that are there. I want to have a closure on this issue now.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I want to support the amendment by hon. Ochieng fully. This idea of telling us that it is the report that is supposed to be controlled--- Really, even that reporting is going to deny us the opportunity to know who have embezzled funds. This is the gist of the matter.

The gist of the matter is that you can only legislate to cure a mischief. What is the mischief here? The Auditor-General has been auditing these confidential expenditures, but just because--

The Temporary Deputy Chairman (Hon. Kajwang’): Order! We have to move on. Why do you not express your opinions by voting?

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

*(Question, that the words be inserted in place thereof
be inserted, put and agreed to)*

(Several hon. Members stood up in their places)

All right, I will ask the Clerk-at-the Table to establish if you have the numbers. You may resume your seats. Order! You may resume your seats now. Hon. Members on my right are 20 of you; you do not meet the threshold for a Division.

With that amendment, all the other amendments to the same clause fall by the wayside.

(All the other proposed amendments to Clause 40 dropped)

(Clause 40 as amended agreed to)

(Loud consultations)

Hon. Bunyasi: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Can I take your point of order after hearing the Member for Rarieda on the amendment? I will come to you.

Member for Rarieda, proceed.

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Chairman. Consultations are too loud.

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order, Members!

Clause 41

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 41 of the Bill be amended in Sub-clause (1) (c) by deleting the words “and approved by Parliament”.

Clause 41 is about sources of funds for the Office of the Auditor-General. I propose to amend Clause 41(c) by deleting the phrase “and approved by Parliament”. This provision is superfluous and makes Parliament to administer the Office of the Auditor-General.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Gilgil! Order! Member for Gilgil. Do I have the Member for Gilgil in the Chamber? Member for Thika Town.

Hon. (Ms.) A. W. Ng’ang’a: Hon. Temporary Deputy Chairman, I wanted to contribute to the previous amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Member for Laikipia East, what is out of order? Make sure it is a point of order.

Hon. Kimaru: On a point of order, hon. Temporary Deputy Chairman. If you look at the numbers on the opposite side, and I do not want to go back to what the Chair said, they are not more than on this side.

The Temporary Deputy Chairman (Hon. Kajwang’): So, what is the issue?

Hon. Kimaru: The judgement by the Chair that the “Noes” had it was probably erroneous. They are fewer.

Hon. Ochieng’: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Do not be excited. Order! Member for Ugunja, there is nothing to be excited about. You cannot have a point of order when another Member is on a point of order. Will you resume your seat? You see, this is a voice call and it depends on what the Chair perceives by his auditory capacity. So, it has nothing to do with what you see. It depends on the auditory system.

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, you can, therefore, see that your amendment should be dropped.

Hon. Ochieng’: I wish to drop it.

(Proposed amendment to Clause 41 by hon. Ochieng’ dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you.

(Clause 41 as amended agreed to)

Clause 42

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 42 of the Bill be amended by inserting a new sub-clause immediately after Sub-clause (1)—
“(1A) Procedures prescribing the appointment of external auditors under this section shall be as provided for in the regulations”.

Clause 42 is about auditing the accounts of the Office of the Auditor-General. So, we do not bog down legislation, I am just trying to provide for the procedures prescribing the appointment of external auditors to audit the Office of the Auditor-General. This clause talks about this House appointing external auditors to audit the Office of the Auditor-General. I am trying to provide that the procedures outlining the appointment of external auditors under this section shall be as provided in the subsidiary legislation.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, I can see that you are on your feet, but just before you contribute, let us have the Member for Mbooni. Let us encourage some of these Members to be here for the Committee of the whole House by allowing them to speak.

Hon. Kiso: Thank you, hon. Temporary Deputy Chairman. I support the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mandera North.

Hon. Nooru: Hon. Temporary Deputy Chairman, I oppose the amendment because there is no need of leaving it to regulations when we have a Constitution. We should not leave it open. We must give a specific entity the power to appoint the people who will audit.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Narok West.

An hon. Member: He has not read the Bill!

The Temporary Deputy Chairman (Hon. Kajwang’): I consider an insinuation that a Member has not read the Bill to be out of order and un-parliamentary. I expect all of you to have read the Bill.

Hon. ole Ntutu: Thank you, hon. Temporary Deputy Chairman. I have something different. I do not know how you are doing it today, but we are not giving the Chair time to explain the amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): We have said that before. I have recognized you, not on a point of order, but to contribute. So, will you, please, make your contribution?

Hon. ole Ntutu: Hon. Temporary Deputy Chairman, I have been in the House for the last two years, but you are doing it differently today. I do not know why. Why can you not give the Chair, at least, time to explain the position of the Committee and then we hear the other side.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Hon. Chairman, you are the last on this.

Hon. Langat: Hon. Temporary Deputy Chairman, let me also request not because of this Bill alone; it has been a tradition. The amendment comes because the Committee has done extensive work like calling the stakeholders.

The Temporary Deputy Chairman (Hon. Kajwang’): Departmental Committee Chairman, you should be the last one to complain about this. I have told you this before. Get me very clearly.

Hon. Langat: Hon. Temporary Deputy Chairman, let me explain.

The Temporary Deputy Chairman (Hon. Kajwang’): No! You have to also listen to me. Just listen to me, so that Members understand exactly what is happening.

It is not by the Standing Orders that the Chair will be heard on every aspect we are legislating. That is number one. Number two, my duty is to see that there is consensus in the House in the sense that you are able to vote. I accept your diversity. I put matters to vote because you are divided. Number three, once in a while, and in most crucial areas where I think that the Members have not been well inducted, I will allow the Chair to explain. That is how we will go. We do not go to the practice when we have clear Standing Orders on an issue. You all know that. So, do not take me to tradition when we have clear prescription in the Standing Orders.

Chair, you may proceed.

Hon. Langat: Hon. Temporary Deputy Chairman, I oppose that amendment because it falls under procurement of services to audit the Auditor-General by Parliament, which is covered under procurement laws. Why would you put it in the regulations? It is something for procurement.

*(Question, that the words to be inserted
be inserted, put negatived)*

(Clause 42 agreed to)

(Clauses 43, 44, 45, 46 and 47 agreed to)

Clause 48

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, please address us on Sub-clause 2. Make it very brief. I am sure that the Members have read the Order Paper.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 48 of the Bill be amended:

(a) in sub-clause (2) by deleting the word “it” appearing immediately after the words “county assembly”;

Hon. Temporary Deputy Chairman, it is just grammar. It talks of “within seven days of receipt, Parliament or the relevant county assembly---“

(Question of the amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mandera North, is something out of order?

Hon. Nooru: Hon. Temporary Deputy Chairman, on the Order Paper, there is an amendment by the Chair. The practice is that the Chair moves his amendment before the Member---

The Temporary Deputy Chairman (Hon. Kajwang’): This is now argumentative. Looking at Standing Order 107, I am constrained to take action. When you argue all the time with me, as the Chair, on an issue I have expressed myself, then I might as well look at Standing Order 107.

Member for Kajiado North, what is out of order?

Hon. Manje: On a point of order, hon. Temporary Deputy Chairman. The Bill before us is very critical for this country. If we make a mistake, we will mess up our country. The audit function includes auditing equipment and also systems.

The Temporary Deputy Chairman (Hon. Kajwang’): I am looking at what is out of order, please.

Hon. Manje: What is out of order is that if we continue this way, we will end up making a law that will put our country in jeopardy. For example, Clause 40, which we have just passed---

The Temporary Deputy Chairman (Hon. Kajwang’): Order! Order! Sit down.

Departmental Committee Chairman, can you proceed?

Hon. Langat: Hon. Temporary Deputy Chairman, we will continue going back to the same story. The Committee is an organ of this House.

Hon. Temporary Deputy Chairman, having said so, I beg to move:-

THAT, Clause 48 be amended in sub-clause (4) by deleting the phrase “thirty (30)” and substituting therefor the word “sixty”.

Hon. Temporary Deputy Chairman, the effect of that amendment is to increase the time from 30 days to 60 days within which Parliament can consider the reports under that section. We realize that the calendar of Parliament may be full. We are giving it enough time to consider a report.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Homa Bay, what is out of order? Let it be a point of order.

Hon. (Ms.) Nyasuna: On a point of order, hon. Temporary Deputy Chairman. First, let me support the---

The Temporary Deputy Chairman (Hon. Kajwang’): No! No! No! You are on a point of order.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, the point of order I wanted to raise is with regard to the Member for Mandera North. Was the Member in order to challenge the Chair yet the amendment that had been raised by hon. Gumbo was to sub-clause (2) and the amendment that was being raised by the Chair was to sub-clause (4) and, therefore, they had to precede each other in that manner?

The Temporary Deputy Chairman (Hon. Kajwang’): I ruled him out of order on that issue. So, the issue is no longer alive.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, since that particular issue is dead, let me support the issue that is alive, which is---

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Subukia, we have proposed the Question on sub-clause (4). I remind you that, that is where we are.

Hon. Gaichuhie: Yes, I am on Clause 48 (4). I want to say that the 60 days were informed by the period. Considering the way Parliament

works, we found 30 days to be inadequate to look at a report. We thought if we give Members at least an additional 30 days, they will be able to scrutinize the report. That is why we are justifying deleting 30 and replacing it with 60.

The Temporary Deputy Chairman (Hon. Kajwang’): This is a straight forward matter. Can I put it to vote now?

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the word to be inserted in
place thereof be inserted, put agreed to)*

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, address us on sub-clause (5).

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 48 of the Bill be amended:
(b) by deleting sub-clause (5).

The effect of that amendment is to delete that sub-clause. This is a follow-up to what we have passed under Clause 40. If we allow Sub-clause (5) to stay, it will prevent the Auditor-General from carrying out his constitutional work. Honestly, there is no justification for not publishing a redacted report and handling of classified information already covered under Clause 40.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Departmental Committee Chairman. To be fair to you, there are two of you that I need to hear. I need to hear you and the Member of Ugenya.

Hon. Langat: Hon. Temporary Deputy Chairman, I oppose the amendment on a ground of national security. If you look at Clause 40, you will see a provision for a closed-door meeting between the relevant committee of Parliament and the Auditor-General, during which the Auditor-General will take Parliament through all issues raised regarding security-related items. It is not really preventing the Auditor-General from doing his work. It is about what is reported. The suggestion under Clause 40

is that it will be done in a closed-door meeting between the Auditor-General and the relevant Committee of Parliament. That fear of yours is unfounded.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, the only reason I recognize you is that if the amendment by the Member for Rarieda is carried, yours will be dropped. You need to say something.

Hon. Ochieng’: Hon. Temporary Deputy Chairman, I do not think it will be dropped.

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry! I beg your pardon.

Hon. Ochieng’: The hon. Member for Rarieda Constituency concurs with me. I also concur with him and drop my amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. The hon. Member for Ugenya Constituency, therefore, drops his amendment.

(The proposed amendment to Clause 48 by hon. Ochieng’ dropped)

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

(Clause 48 as amended agreed to)

(Clause 49 agreed to)

Clauses 50

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 50 of the Bill be amended by deleting the word “publicisation” and substituting therefor “publication”.

Hon. Temporary Deputy Chairman, it is grammar. “Publicisation” for me is not good English. We should talk of “publication”.

(Question of amendment proposed)

*(Question, that the word to be left out
be left out, put and agreed to)*

*(Question, that the word to be inserted
in place thereof be inserted, put and agreed to)*

(Clause 50 as amended agreed to)

(Clauses 51, 52 and 53 agreed to)

Clause 54

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 54 of the bill be deleted and replaced with the following new clause—
Observing code of **54.** The Auditor-General in discharging his or her functions *conduct* and responsibilities shall determine the code of conduct and ethics for all the Public Officers of the Office of the Auditor General which shall be in line with those prescribed by the Constitution, this Act, the Public Officer Ethics Act, 2003 and the relevant professional bodies.

If you look at the heading of that section, it is about the code of conduct and ethics of staff of the Auditor-General (AG). It is actually to put out that the AG shall ensure that the staff in the Office of the A-G will strictly adhere to the code of conduct which must be in compliance with the Public Officer Ethics Act, 2003 and other relevant professional bodies.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Rarieda Constituency, if this amendment is carried, yours will be affected because it is similar to this one. I will allow you to say something.

Hon. (Eng.) Gumbo: Yes, hon. Temporary Deputy Chairman. I definitely concur with the hon. Chairman on that amendment. Mine is the same as his. If this amendment is carried, then mine will definitely be dropped.

I support.

(The proposed amendment to Clause 54 by hon. (Eng.) Gumbo dropped)

(Question of the amendment proposed)

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

*(Question, that the word to be inserted in
place thereof be inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Ugenya Constituency, I did not intend to bypass you in any way. The amendment by the hon. Chairman results into yours being dropped. Do you agree?

Hon. Ochieng: Yes, hon. Temporary Deputy Chairman. I agree with hon. Gumbo’s amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): All right.

(The proposed amendment to Clause 55 by hon. Ochieng’ dropped)

(Laughter)

(Clause 54 as amended agreed to)

(Clause 55 agreed to)

Clause 56

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 56 of the Bill be amended by inserting the words “any way in” immediately after the words “or corrupted in”.

Hon. Temporary Deputy Chairman, again, it is just grammar. I am trying to make this clause grammatically correct.

(Question of amendment proposed)

*(Question, that the words to be inserted be
inserted, put and agreed to)*

(Clause 56 as amended agreed to)

Clause 57

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:- THAT, Clause 57(2) of the Bill be amended by inserting the word “as” immediately after the words “for official purposes”.

This is just to further clarify.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Rarieda. All right. Hon. Member for Endebess? You concur. Hon. Member for Igembe North? Hon. Member for Baringo? Hon. Member for Limuru? Hon. Member for Ugunja? Hon. Member for Kitui Central? You can see what hon. Members are doing.

(Hon. Members not responding to the call)

Hon. Member for Kitui Central, order. Order hon. Member.
Hon. Mulu: I concur.

*(Question, that the word to be inserted
be inserted, put and agreed to)*

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Rarieda, do you have an amendment on Clause 57?

Hon. (Eng.) Gumbo: Yes, hon. Temporary Deputy Chairman. It is a grammatical one in sub-clause 2, by inserting the word “as” in between “purposes” and “provided” just to make it grammatically correct.

(Question of the further amendment proposed)

*(Question, that the word to be inserted
be inserted, put and agreed to)*

(Clause 57 as amended agreed to)

Clause 58

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 58 (1) of the Bill be amended in Sub-clause (1), by deleting the words “for consideration in” and substituting thereof “under consideration by”

Again, hon. Temporary Deputy Chairman, it is just for purposes of grammar.

(Question of the amendment proposed)

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

(Clause 58 as amended agreed to)

(Clause 59 agreed to)

Clause 60

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Ugenya?

Hon. Ochieng’: Hon. Temporary Deputy Chairman, this is one of the amendments where I have been gracious to the hon. Chairman of the Committee to allow him to prosecute it.

I wish to drop both my amendments on Clause 60.

The Temporary Deputy Chairman (hon. Kajwang’): You are dropping all your amendments on Clause 60?

Hon. Ochieng: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (hon. Kajwang’): Okay. That is fair enough. It is hereby ordered.

((The proposed amendments to Clause 60 by hon. Ochieng dropped))

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Rarieda, can you speak on Clause 60 (e)?

Hon. (Eng.) Gumbo: Yes, hon. Temporary Deputy Chairman. Clause 60 is about offences by officers of the Office of the A-G. To say that it is an offence to divulge information relative to national security organs is rather too punitive to me. I am proposing deletion of that clause.

Therefore, I beg to move:-

THAT, Clause 60 of the Bill be amended—

(a) in Sub-clause (1)—

(i) by deleting paragraph (e);

(ii) in paragraph (f) by inserting the words “knowingly” immediately before the word “Discloses”;

(iii) in paragraph (g) by deleting the words “or decision”;

(b) in Sub-clause (2) by deleting the words “liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both” and substituting therefor “disciplined in line with the established code of ethics and liable upon conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or both”

The Temporary Deputy Chairman (Hon. Kajwang’): I beg your pardon! I was looking at the wrong page of the Order Paper.

(Question of the amendment proposed)

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

(Question, that the words to be added be added, put and agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): hon. Chairman, please, address Paragraph (f).

Hon. Langat: Do I move all my amendments?

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, you can. Look at page 201. You can refer to your notes. Sorry, I am on the old Order Paper. You are looking at the Supplementary Order Paper. Is it not?

Hon. Langat: They are on page 263. I beg to move:-

THAT, Clause 60 of the Bill be amended—

(a) in sub-clause (1) by—

(i) deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) knowingly and willfully discloses, publishes or publicizes the Auditor-General’s report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or county assembly and copied to the audited entity and other authorized offices; or”;

(ii) deleting paragraph (g);

Those amendments make it a crime to disclose the information which is under the purview of the provision of the Secrets Act. Under (f), we are simply enhancing that Clause to read instead of just “disclosing”, we say “knowingly and willfully discloses, publishes or publicizes the Auditor-General’s report or its contents to third parties - including the media - before the report is finalized and formally submitted to Parliament or county assembly and copied to the audited entity and other authorized offices...” We seek to enhance it so that if you do it knowingly and you know it has not been finalized, it is an offence. We said we delete (g) because the Committee felt that most of the Auditor-General’s members of staff are not accounting officers *per se*. So, we will not foresee a situation where he can direct or approve a decision which can lead to loss of public funds.

(Question of the further amendment proposed)

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

(Question that the words to be inserted in place thereof be inserted, put and agreed to)

Hon. Langat: We also have Sub-clause 2. I beg to move:-

THAT, Clause 60 of the Bill be amended—

(b) in Sub-clause (2) by—

(i) deleting the words “ten million shillings” and substituting therefor the words “five million shillings”;

(ii) deleting the words “five years” and substituting therefor the words “three years”

That Sub-clause (2) deals with punishment in the event that you commit those offences. It provides that any officer of the Office of the Auditor-General who commits an offence under Sub-section (1) shall be liable and on conviction, pay a fine of not less than Kshs10 million. We thought that Kshs10 million is too high. So, the Committee proposed to reduce it to Kshs5 million which is also consistent with the next one, where

the other officers in the entity being audited commit offences, those people will be punished Kshs5 million. We just want to make it consistent.

(Question of the further amendment proposed)

Hon. (Dr.) Pukose: Hon. Temporary Deputy Chairman, I want to oppose that amendment by the Chairman because Kshs10 million is not deterrent enough. The measures have to stiffen enough for us to deter that. By reducing it means we are being lenient. So, I oppose that amendment.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, the Bill I have reads Kshs2 million. I do not know whether I have the wrong Bill. Clause 61(2) says that a person who contravenes Sub-section (1) commits an offence and is liable upon conviction---

An hon. Member: We are at Clause 60.

Hon. (Ms.) Nyasuna: Oh! We are at Clause 60? My apologies!

The Temporary Deputy Chairman (Hon. Kajwang’): That is always normal.

Hon. (Ms.) Chae: My concern is: I do not see the reason why the Committee and the Chairman want to reduce from Kshs10 million to Kshs5 million. This is the only way that it is going to deter guys who are ready to mess and know that the fine is only Kshs5 million. This is the only preventive gear for them. It has to remain at Kshs10 million.

Hon. Anyango: That information is marketable and it will be part of corruption to lower the fine so that somebody can sell the information, get the money and use it as a bargain. We should raise the bar high enough to discourage trading with information obtained by the Auditor-General.

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

(Question, that the words to be inserted in place thereof be inserted, put and negatived)

Hon. (Eng.) Gumbo: I beg to move:-

THAT, Clause 60 of the Bill be amended—

(b) in Sub-clause (2) by deleting the words “liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both” and substituting therefor “disciplined in line with the established code of ethics and liable on conviction to a fine not

exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both”

My amendment was in that line but considering that auditors are professionals, in addition to the fine, we should also include that they should be disciplined in line with the code of ethics of the profession. As an engineer, if I messed today, it is not enough to be fined. I would also be disciplined in line with the code of ethics. I would request the Chairman of the Committee that we make the insertion: “In addition to being disciplined in line with the established code of ethics.”

Hon. Langat: Hon. Temporary Deputy Chairman, my friend here, what we are passing is already---

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman, you can speak.

Hon. Langat: Hon. Temporary Deputy Chairman, I want to oppose that amendment. Where we are, it is already a criminal offence. You have been fined in a court of law Kshs5 million and imprisoned. Any serious professional body at that stage automatically should have disciplined you according to its ethics. Once you have been taken to court, fined and jailed, which other professional body, serious enough, can still entertain you in its profession? So, that amendment does not add any value.

The Temporary Deputy Chairman (Hon. Kajwang’): Did you look at this thing again, hon. Member for Rarieda? If you consider it all, it reads something like this: “disciplined in line with the established code of ethics and liable on conviction to a fine.” This must now be the third penalty. There was one which has already been passed. Two, he has been disciplined and then there is another conviction which is to a fine not exceeding Kshs5 million again and an imprisonment for a term not exceeding three years or both. So, this guy goes to prison for about 15 years. Did you look it through? Express yourself.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I do not know what the Chair of the Committee is uncomfortable with. But it is possible and we have seen it in many cases and he knows that sometimes---

Hon. Temporary Deputy Chairman (Hon. Kajwang’): No! My question is this: Leave alone what the hon. Chair is saying. We have already passed amendments which were ably prosecuted by hon. Anyango and we had raised the bar to Kshs10 million and five years. If we pass your

amendment, that guy is again disciplined, but after he has been disciplined. There is another conviction that he can get into trouble with and for which he serves either by paying a Kshs.5 million fine or goes in for another three years or to both. So, what we will have created is a term getting to 15 years for that poor guy.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, to start with, he is not poor. I think in the context of the amendment proposals by hon. Anyango; I wish to withdraw my amendments.

(The proposed amendment to Clause 60 by hon. (Eng.) Gumbo withdrawn)

Hon. Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you.

(Clause 60 as amended agreed to)

Clause 61

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chair, let me start with you.

Hon. Langat: I beg to move:-

THAT, Clause 61 of the Bill be amended-

(a) in Sub-clause (1) by inserting a new paragraph immediately after Paragraph (b)—

“(b) without justification, fail to provide information within reasonable time that is required under this Act”;

(b) in Sub Clause (2) by-

(i) deleting the words “two million shillings” and substituting therefor the words “five million shillings”;

(ii) deleting the words “one year” and substituting therefor the words “three years”.

Hon. Temporary Deputy Chairman, what the Committee looked at was to ensure that if you fail to provide information it, will be an offence. Again, if you fail to provide within a reasonable time, it will be another offence. This is to ensure that the information is provided by the auditees to the Auditor-General in good time.

Secondly, under Sub-clause (2), the Committee felt that a fine of Kshs.2 million was less compared to the one provided for the audit staff. We

agreed that we make it Kshs.5 million so that it is deterrent enough - I want to use the words which have been used in this House. So, we increased from Kshs.2 million to Kshs.5 million and increased the period which you can be jailed from one year to three years. This is to enhance the fines and the period of jail.

(Question of the amendment proposed)

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

*(Question, that the words to be inserted
be inserted, put and agreed to)*

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Hon. (Eng.) Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move that:-

THAT, Clause 61 of the Bill be amended in Sub Clause (1)
in—

(a) paragraph (a) by inserting the words “or a professional”
immediately after the words “Auditor-General”;

(b) paragraph (d) by inserting the words “or a professional”
immediately after the words “Auditor-General”.

Hon. Temporary Deputy Chair, my proposed amendment is to enhance the amendment by the Committee Chair and what I am seeing here is that this obstruction should not just extend to the Auditor-General only, but even to the professionals engaged by the Auditor-General under this Act.

(Question of the further amendment proposed)

*(Question, that the words to be added
be added, put and agreed to)*

(Clause 61 as amended agreed to)

Clause 62

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Hon. (Eng.) Gumbo.

Hon. (Eng.) Gumbo: I beg to move:-

THAT, Clause 62 of the Bill be amended by deleting the words “for committing” appearing immediately after the words “found guilty” and substituting therefor the word “of”.

The Temporary Deputy Chairman, it is an issue of grammar - Ogundiye and D. Best.

(Question of the amendment proposed)

(Hon. (Ms.) Nyasuna pressed the intervention button)

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Hon. (Ms.) Nyasuna, this is not deliberate. Is it?

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, it is not deliberate.

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

(Question, that the word to be inserted in place thereof be inserted, put and agreed to)

(Clause 62 as amended agreed to)

(Clauses 63 and 64 agreed to)

Clause 65

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chair.

Hon. Langat: I beg to move:-

THAT, Clause 65 of the Bill be amended by deleting the word “ten” appearing immediately after the words “a period of” and substituting therefor “five”.

Clause 65 reads: “A person who is convicted of an offence under this Act shall not be eligible to hold a public office or work with an entity owned in whole or in part by the State for a period of ten years following the conviction.”

I am proposing that we reduce that period from 10 years to five years. This is because it is like you are murdering that person to say if you commit an offence now, you have been punished in a court of law; you have paid the fine and in addition to those ones; you will never work again in any Government Office for a period of ten years. Though we want this thing to be deterrent, we also want the law to be humane enough so that we do not keep somebody out for long. We believe in correction. You correct somebody but do not kill that person.

(Question of the amendment proposed)

Hon. Temporary Deputy Chairman (Hon. Kajwang’): I know there are some of us - and for some very good reasons - who would want a death penalty for this. But you may want to consider and make law more certain and let the law compare itself. Hon. (Dr.) Pukose!

Hon. (Dr.) Pukose: Hon. Temporary Deputy Chairman, if we have to fight corruption in this country, we have to be serious. We have to make laws that are deterrent and not having a human face that now you can do this and after five years, you can still come back to work. We want to make it in such a way that people will feel that you cannot do this. We must reach that stage.

I want to oppose what the hon. Chairman is saying.

Hon. Langat: On a point of order, hon. Temporary Deputy Chairman.

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Let me give a chance to another person whom I am sure will ask for a death penalty on this. Hon. (Prof) Nyikal!

Hon. (Prof) Nyikal: Hon. Temporary Deputy Chairman, I have become more lenient but in this, I will oppose it. Procurement is the main area of corruption in this country. It kills people and it has retarded our economy. This should be as it is and, therefore, I oppose that amendment.

Hon. Langat: On a point of information, hon. Temporary Deputy Chairman.

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Just a minute hon. Chairman. Let us hear from hon. Aburi.

Hon. Aburi: Ahsante sana, Mhe. Naibu Mwenyekiti Wa Muda. Katika nchi yetu ya Kenya, kumekuwa na ukora mwingi. Ukiingia ofisi za Serikali, wakati wanataka kupeana zabuni, unasikia mtu mwingine kwa mfano, “Bw. Stephen” amepewa stakabadhi kumi kwa mtu moja. Ni kwamba, ikiwa hiyo kazi ilikuwa ya Kshs.100 milioni, yeye anasema ya

kwamba kwa sababu mtu mmoja ndiye amepewa kazi hiyo, wacha niweke iwe Kshs300 milioni. Kama ni ya Kshs300 milioni, anafanya iwe Kshs500 milioni. Kama ni ya Kshs500 milioni, anafanya iwe Kshs600 milioni. Lakini usisahau hiyo kazi ni ya Kshsh100 milion. Hiyo kazi---

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Hon. Aburi, we are on the Third Reading of the Bill. We are not on the Second Reading.

Hon. Aburi: Hon. Temporary Deputy Chairman, I oppose.

Hon. Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Let us listen to a few words of wisdom from hon. Anyango.

Hon. Anyango: Hon. Temporary Deputy Chairman, the principal of correction is accepted in our Constitution right now. Longer prison sentences are not likely to be rehabilitative or correctional. So, five years should be enough if our Prison Service will be doing their job in accordance with the new Constitution. I agree with the Chairman that we should accept that.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, I am not persuaded. I know that the Chairman of the Committee is saying that it is not about corruption; rather it is about sisters. You know ethics, integrity and corruption are sisters. If you want to be serious about the fight against corruption and similar crimes, we cannot be treating people with kid gloves. So, five years is a joke. If the Jubilee Government is serious about fighting corruption, why should he come here and propose a period of five years?

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. We need to move. Member for Homa Bay, can you be the last on this? We need to move.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Speaker, to be honest, I want to support the Chairman of the Committee on this one. The reason is that you have already gone to prison for ten years. The fine was already Kshs10million.

The Temporary Deputy Chairman (Hon. Kajwang’): And you have paid both.

Hon. (Ms.) Nyasuna: You have done both. Then you come out. After you come out of prison, now they are saying: “You cannot work for any State corporation for another ten years!” First of all, we are hoping that when you were in prison, you have reformed and you have changed your mind set. You have children and a wife to feed. Surely, five years is good time.

The Temporary Deputy Chairman (Hon. Kajwang’): I am sure Member for Homa Bay has persuaded you as much as she can.

*(Question, that the word to be left out
be left out, put and negated)*

*(Question, that the word to be inserted
in place thereof be inserted, put and negated)*

(Clause 65 agreed to)

(Clause 66 agreed to)

Clause 67

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 67 of the Bill be deleted.

To be honest, this Clause is superfluous because every citizen in this country is governed by the laws that we make. So, to say that in performance of his duties, the Auditor-General should be guided by the Public Finance Management Act, the Public Procurement and Disposal Act and any other Acts of Parliament--- Honestly, what is the use? These laws are there. They govern everybody. So, this is a superfluous provision.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, you have a similar amendment.

Hon. Ochieng’: Hon. Temporary Deputy Chairman, before you put it to vote, I do not think I need to---

The Temporary Deputy Chairman (Hon. Kajwang’): I will hear you.

Hon. Ochieng’: I adopt what hon. (Eng.) Gumbo has said. There is nothing else to add.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you again.

(The proposed amendment to Clause 67 by hon. Ochieng’ dropped)

(Question, that the words to be left out

be left out, put and agreed to)

(Clause 67 deleted)

Clause 68

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 68 of the Bill be amended by—

(a) deleting the words “The Cabinet Secretary responsible for finance, in consultation with the Auditor-General” and substituting therefor the words “The Auditor-General, in consultation with the Cabinet Secretary responsible for finance”;

(b) by renumbering the existing provision as Sub-clause (1);

(c) by inserting a new Sub-clause immediately after the renumbered Sub-clause (1)—

“(2) The power to make regulations shall be exercised only after a draft of the proposed regulations has been approved by the National Assembly.”

Hon. Temporary Deputy Chairman, this is about making of regulations pertaining to the Auditor-General. It is for the Cabinet Secretary in charge of finance, in consultation with the Auditor-General who should do that. However, the Committee felt that it should be the other way round given that we believe that the Auditor-General should be independent. So, we are saying that it should be the Auditor-General in consultation with the Cabinet Secretary responsible for finance because he represents the auditees in this process.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, you have an amendment here and so that is why I am inviting you to speak first.

Hon. (Eng.) Gumbo: My proposed amendment is---

The Temporary Deputy Chairman (Hon. Kajwang’): Your amendment is likely to be affected by this. So, can you support or oppose the amendment on the Floor?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I would like to oppose that amendment because I do not see what it is adding to this Clause.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay. Member for Ugenya.

Hon. Ochieng’: Thank you so much, hon. Temporary Deputy Chairman. I have been talking to the Chairman of the Committee and I have been able to convince him. What we want to remove from that paragraph based on my amendment is reference to anybody else including---

The Temporary Deputy Chairman (Hon. Kajwang’): Are you speaking to the issue in (a)?

Hon. Ochieng’: Hon. Temporary Deputy Chairman, I am talking about Clause 68(a). My point is that we want to remove any reference to anybody else apart from the Auditor-General in the sense that when making regulations, the Auditor-General may want to consult anybody not only the Cabinet Secretary for Treasury. So, putting there “in consultation with” binds him that he must consult somebody else and yet, we know that he is independent. From the other day and even today morning, we removed any Articles or any parts of the Bill that require the Auditor-General to consult or work with anybody else. I want to convince the Chairman of the Committee on this that because the regulations will come before this House. Let us leave it the way it is.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I am also opposing, but for wrong--- Different reasons.

The Temporary Deputy Chairman (Hon. Kajwang’): Did you say that you are opposing for wrong reasons?

Hon. Ng’ongo: I said for different reasons. I would request the hon. Temporary Deputy Chairman to be awake because I said “wrong” and then I changed immediately. So, if you were really awake---

The Temporary Deputy Chairman (Hon. Kajwang’): Are you inferring that the hon. Temporary Deputy Chairman is asleep?

Hon. Ng’ongo: Sorry, hon. Temporary Deputy Chairman. With all due respect, I can see you are awake. Maybe, you were absent minded. Let me put my point.

This amendment should remain as it was: “The Cabinet Secretary responsible for finance in consultation with the Auditor-General.” The common practice of legislation, including subsidiary legislation, is that the Ministry is responsible for those legislations through Parliament. So, I do

not see the reason why we should deviate from that. Let the Cabinet Secretary consult the Auditor-General. So, I oppose.

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

(Question, that the words to be inserted in place thereof be inserted, put and negated)

Hon. Ochieng’: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 68 (1) be amended by deleting the words “Cabinet Secretary responsible for the National Treasury in consultation with”,

As you may realize, I am proposing a very specific amendment. I propose that we remove any reference to the Cabinet Secretary, Treasury. The Auditor-General is the one to make regulations without consulting anybody. I wish to plead with the Members to support it. This is an independent office. The Constitution Implementation Commission (CIC), the Independent Electoral Boundaries Commission (IEBC) and the Kenya National Commission on Human Rights (KNCHR) make their own regulations and bring them here. Why do we want to tie this particular independent office - that the Auditor-General must consult with the Treasury? I want to plead with the Members that we remove reference to the Cabinet Secretary of the National Treasury.

(Question of the amendment proposed)

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

(Clause 68 as amended agreed to)

(Clauses 69, 70 and 71 agreed to)

Clause 72

Hon. Ochieng’: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 72 be deleted.

When we debated this Bill, we hoped that the Auditor-General is not only looking at figures, but also at things like value for money. He should look at whether the policy being prepared or implemented makes sure that the way the money is going to be used gives value for money to Kenyans. If you tell us that the Auditor-General cannot look at the efficacy of a policy, then we are going in the wrong direction.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I support the amendment by the Member for Ugenya. Performance audit, in fact, may sometimes require questioning the given policy. It negates the constitutional mandate of the Auditor-General, as the Constitution requires him under Article 229 (6) to report on whether public funds have been used lawfully and effectively.

I support the amendment.

Hon. M'uthari: Thank you, hon. Temporary Deputy Chairman. I rise to support the amendment.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I support the amendment.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I support the amendment fully. I do not even know who put this legislation here.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Just end there. Order! The hon. Member for Nyando.

Hon. Outa: Hon. Temporary Deputy Chairman, I support the amendment.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairman, I support the amendment.

Hon. (Ms.) Odhiambo-Mabona: Hon. Temporary Deputy Chairman, as it stands, Clause 72 is unconstitutional. I support the amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Everyone is supporting the amendment. Let us have the Chairman of the relevant Committee.

Hon. Langat: Hon. Temporary Deputy Chairman, my amendment to Clause 72 reads as follows:-

THAT, Clause 72 of the Bill be amended by—

(a) inserting the words “the national or county” immediately after the words “policy objective of”;

(b) deleting the words “or any other state organ or public entity” appearing immediately after the word “government”.

I know the Members have expressed support for this amendment, but for the wrong reasons. That provision is there because a policy objective is like a campaign manifesto for every Government in place. The Auditor-General cannot say that the laptop project is a wrong policy. He can only audit the procurement and the value for money within that policy framework. This provision has always been there. You cannot question the manifesto of a Government in place.

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

(Clause 72 deleted)

The Temporary Deputy Chairman (Hon. Kajwang’): So, all of you preferring amendments on this Clause, the rest of them fall by the way side.

(Clause 73 agreed to)

Clause 74

Hon. Ochieng’: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 74 be amended in Sub-Clause 2 by deleting paragraph (f).

The succession of bodies like these ones must be done in an orderly manner. If someone is proposing that a contract subsisting between the Kenya National Audit Office (KENAO) and another person before the enactment of this Bill must cease within 30 days, it is not right. Contracts have timelines. You cannot purport that through this law, you want to kill all the contracts done by KENAO and yet, KENAO is just a successor of this institution. I want it to be deleted, so that we can have a smooth transition.

(Question of the amendment proposed)

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 74 of the Bill be amended in Sub-clause (2) by deleting paragraph (f) and substituting therefor the following new paragraph—

“(f) a contract subsisting between the Kenya National Audit Office and any other person before the commencement of this Act shall continue to exist as a contract entered into between the office of the Auditor-General and that other person”.

I was in the process of requesting hon. Ochieng’ to step down his amendment in favor of mine. In addition to what he is proposing, the Committee is specifically making a transitional clause for any contract that existed before this law to continue upon the enactment of this law. Those contracts are live and not cancelled as per the proposal that was there in the Bill. My proposal is a better one.

(Loud consultations)

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): I will give a chance to one Member. As I am doing so, I counsel the Member for Ugenya to move close to the Committee Chairman, so that you can close the ranks. You have already agreed? So, can you speak on that, then?

Hon. Ochieng’: Hon. Temporary Deputy Chairman, my amendment was just deleting, but the Chairman has deleted and put a positive provision providing for what I wanted. So, I withdraw my amendment and support the Chairman’s amendment.

(The proposed amendment to Clause 74 by hon. Ochieng’ withdrawn)

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

*(Question, that the words to be inserted in place
thereof be inserted, put and agreed to)*

(Clause 74 as amended agreed to)

New Clause 31A

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, on the new Clause 31A.

Hon. Ochieng’: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting immediately after Clause 31 thereof a new clause as follows:-

Audit reports to be submitted to Parliament and the relevant county assembly.

31A. (1) All reports of an audit shall be submitted to Parliament or the relevant county assembly.

(2) Within seven days of receiving the report, Parliament or the relevant county assembly shall publicize it on their official website and other public spaces.

(3) Within fourteen days after the expiry of days upon submitting the report to Parliament or the relevant county assembly, the Auditor-General shall publicize the report on their official website and other public spaces.

The idea is that we put timelines. We already talked about this. We put in timelines on how we treat the report when submitted to us in the National Assembly and the county assemblies.

The Temporary Deputy Chairman (Hon. Kajwang’): So, are you still pursuing the amendment?

Hon. Ochieng’: Yes, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Move it.

Hon. Ochieng’: Hon. Temporary Deputy Chairman, I move that this be read a Second Time.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Langat, if hon. Ochieng’s amendment is carried, yours would have been subsumed. So, because of that, I will allow you to have a word on it.

Hon. Langat: Hon. Temporary Deputy Chairman, because I lost my amendment to Clause 39 which was related to this, I am withdrawing this one.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. That is in good faith.

(The proposed amendment to New Clause 31A by hon. Langat withdrawn)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Schedule

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda.

Hon. (Eng.) Gumbo: I think the amendment to the Schedule was consequent upon my proposed amendment to Clause 13 being carried. Since it was defeated, that proposed amendment becomes superfluous. So I withdraw.

The Temporary Deputy Chairman (Hon. Kajwang’): I appreciate you for your forthrightness. Therefore, that is withdrawn.

(The proposed amendment to the Schedule by hon. (Eng.) Gumbo withdrawn)

(Schedule agreed to)

Clause 2

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended in the definition of “effectiveness” by inserting the word “cost-effective” immediately after the word “means”.

What I am trying to do in Clause 2 is just to include the word “cost-effective” in the definition of “effectiveness”.

(Question of the amendment proposed)

*(Question, that the word to be inserted
be inserted, put and agreed to)*

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Rarieda.

Hon. (Eng.) Gumbo: It is a small one on Clause 1. I hope that when the Act is finally gazette, it will become the Public Audit Act, 2015 and not 2014 as per the Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): That one is editorial. That is with the legal people.

Do I hear the Mover to be on an intervention?

Hon. Katoo: Thank you, hon. Temporary Deputy Chairman. I beg to move that the Committee doth report to the House its consideration of the Public Audit Bill (National Assembly Bill No. 38 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker (Hon. (Ms.) Shebesh in the Chair)]

REPORT, CONSIDERATION OF REPORT AND THIRD READING

THE PUBLIC AUDIT BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The Chairperson.

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Audit Bill (National Assembly Bill No. 38 of 2014) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Mover.

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request hon. Dennis Waweru to second the Motion for the agreement with the Report of the Committee.

Hon. Waweru: Seconded.

(Question proposed)

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The Chairman of the Committee.

Hon. Langat: Thank you very much, hon. Temporary Deputy Speaker. I beg to move that the Motion for Agreement with the Report of the Committee of the whole House be amended by inserting the words “subject to re-committal of Clauses 35 and 40”.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please, be very clear on which clauses are for re-committal.

Hon. Langat: Hon. Temporary Deputy Speaker, Clauses 35 and 40.

Hon. Members: No.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): You need to be seconded.

Hon. Langat: I request hon. Kiptanui to second.

Hon. Kiptanui: I second.

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, hon. Gumbo, what is your point of order?

Hon. (Eng.) Gumbo: It was on an earlier point.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. Hon. Jakoyo Midiwo.

Hon. Midiwo: Thank you. I am not sure whether what we are doing is procedural. The re-committal should have been reported to the Chair. He is now amending a Motion after he should have done the re-committal. What he has just done is very un-procedural. You and I know it.

Secondly, when you are doing a re-committal, it cannot be on a deleted clause. There is nothing to recommit. Once the House deletes and replaces, you cannot re-do it. That is just our procedure. Clause 40 was deleted and replaced. You cannot take that to debate as a procedure.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, hon. Mbadi.

Hon. Ng'ongo: I really do not know what hon. Benjamin Langat wants us to do. That is because if you want to re-commit any clause of a Bill, you have to seek leave at the Committee Stage. Then the Committee of the Whole House should have approved the re-committal once it is reported. You are reporting the past Bill with amendments. So, you cannot again re-commit. What are you re-committing? I should accept that hon. Benjamin Langat has been overtaken by events. The only thing that he can do is to wait for six months and bring an amendment. It is possible. We have done so many such as the VAT Act and other laws. I understand you but, for now, let us follow our rules and procedure. Thank you. The reporting is done.

The Temporary Deputy Speaker (Hon.) (Ms.) Shebesh): Please, give us one second to consult.

The Temporary Deputy Speaker (Hon.) (Ms.) Shebesh): Hon. Members. Thank you for your patience. I want to give the Floor to hon. Tom Kajwang'.

Hon. Kajwang': I do not profess to know everything about Standing Orders but we can consult and agree. I am looking at Standing Order 136. If we could all get there, it will be good. Paragraph 3 says:-

“ A member who desires to delete or amend any provision contained in a Bill, or to introduce a new provision in the Bill under paragraph (2)

may propose any amendment to add, at the end of a Motion under paragraph (1) the words “subject to the re-committal of the Bill (in respect of some specified part or of some proposed new clause or new schedule) to a Committee of the Whole House.” and if that Motion is agreed to with such an amendment, the Bill shall stand so re-committed and the House shall either forthwith or upon a day named by the House Business Committee in consultation with the Member in charge of the Bill, dissolve itself into a Committee to consider the matters so re-committed.”

It is pursuant to this explanation that the Table is of the view that this committal is therefore done in the House rather than in the Committee. Other Members are looking at Section 137 which states that:-

“The report of a Select committee on a Bill shall be laid on the Table of the House by the Chairperson or Vice-Chairperson of the Select Committee or by some other Member authorized by the Committee in that behalf.”

Hon. Members, the reading in the plain understanding of the Table is that this amendment is done in the House rather than in Committee. I have said that I do not profess to understand everything, but my understanding of Section 136(3) seems to suggest that this amendment is done in the House rather than in the Committee.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes. Hon. Jakoyo.

Hon. Midiwo: I do not know if we have two Standing Orders but my Section 136(3) reads as follows:-

“A Member who desires to delete or amend any provision contained in a Bill, or to introduce a new provision in the Bill under paragraph (2), may propose any amendment to add, at the end of a Motion under paragraph (1) the words “subject to the re-committal of the Bill (in respect of some specified part or of some proposed new clause or new schedule) to a Committee of the whole House”, and if that Motion is agreed to with such an amendment, the Bill shall stand so re-committed and the House shall either forthwith or upon a day named by the House Business Committee, in consultation with the Member in charge of the Bill, dissolve itself into a Committee to consider the matters so re-committed.”

If you go further to Section 137(2) it says:-

“The House shall consider the Bill as reported from the Select Committee upon a Motion “That the report of the Select Committee on the House..... Bill be approved”

He has already done the reporting. So, what we are attempting to do has been passed and it is there. I have underlined it in this Standing Order. It says Committee of the Whole House. This cannot be a Committee of the whole House. This is the House. I am very clear. This does not even need interpretation. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona: Thank you. I want to agree with hon. Jakoyo Midiwo. The Standing Orders are very clear that this must be done in the Committee of the whole House. Over and above that, I have been in this House and I was agreeing with my colleague here that some of us are experts at Third Reading. Even in the last Parliament, sometimes in the Third Reading, we were only three Members and I have never in the history of my over six years in Parliament seen what we are trying to do today. The re-committal is usually done in the Committee of the whole House and then it is taken to the House after the Committee of the whole House. What we are trying to do in the entire time, and I sit in most of the Third Readings---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, can I just explain that you are probably not getting--- I did hear you.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): No! No! No! We are all reading Standing Order No.136 (1). We are also reading Standing Order 136(3) (i). The understanding of the Chair is that we will put the Question and then the House will resolve to go back into Committee. That is the understanding.

Let us hear hon. Mbadi.

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, I would urge you and the Clerks-at-the-Table to carefully listen to me on this matter. Let us refer to Standing Order 136, starting with paragraph (1). When a Committee of the whole House has reported progress on a Bill, the House shall consider the Bill as reported upon the Motion “that, the House doth agree with the Committee in the said Report.” Paragraph (2) of this Standing Order says that the Question on any Motion moved under paragraph (1) shall be put forthwith; no amendment, adjournment or debate being allowed.

What hon. Langat is doing is amending the Motion “That the House doth agree with the Committee in the said Report”, which paragraph (1) of Standing Order 136 (2) says shall be put forthwith with no amendment or

adjournment or debate being allowed; unless any Member decides to delete or amend any provision contained in the Bill. What is allowed is this: If you want to amend a provision in the Bill, and that is consequent upon a re-committal, it is if it came as a re-committal from the Committee of the whole House. That is what we have been doing all the years.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Mbadi, continue reading.

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, I am very clear on this one. I am very clear on this.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Continue reading hon. Mbadi.

Hon. Ng'ongo: Therefore, paragraph (3), which many of us are trying to emphasise on, comes in recognition of deletion or amendment or introducing a new provision, which is a re-committal that must have come from the Committee of the whole House. This is something we have done over the years. You cannot convince us otherwise. I would urge the Clerks-at-the-Table---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Mbadi, have you read the Standing Order through to the end?

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, we have read paragraph (3). That is why I am saying that a Member who desires to delete or amend any provision contained in a Bill, or introduce a new provision in the Bill, under paragraph (2), may propose an amendment to add, at the end of the Motion under paragraph (1), the words "subject to the re-committal of the Bill" in respect to some specified part or some proposed new part. However, that should have been preceded by the Committee of the whole House agreeing to re-committal. Unless we are creating a new procedure in this House, we cannot go back to that one.

The Temporary Deputy Chairman (Hon. (Ms.) Shebesh): Let us hear the Departmental Committee Chairman first.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): No, it is my decision on who goes first. Let him go first.

Hon. Langat: Hon. Temporary Deputy Speaker, I want hon. Mbadi to relax because this is not a matter of life and death.

(Loud consultations)

The Temporary Deputy Chairman (Hon. (Ms.) Shebesh): Order, hon. Members! I am listening to what the Committee Chairman is saying.

Hon. Langat: Hon. Temporary Deputy Speaker, this should not be a matter of life and death because this is a Bill which still has another stage, as per the Constitution. Therefore, in order to save the House the agony of lengthy debate, I propose to withdraw my Motion, so that we can proceed with the Bill since we still have many stages in this Bill, at which my issues can be addressed.

(Question put and agreed to)

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to move that the Public Audit Bill (National Assembly Bill No. 38 of 2014) be now read a Third Time and request hon. Dennis Waweru to second.

Hon. Waweru: I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I want to thank all the Members who have contributed. This is a landmark Bill for this country. This is not time for debate but I am particularly gratified by the provisions of Clauses 52 and 53 of this Bill, which provide for the implementation of reports of accounting officers, and withholding of funds by the Parliament of Kenya or a county assembly. This is very important. Clause 53 says that where there is a serious material breach or persistent material breaches of the provisions of the Act, the Auditor-General may, in his audit report to Parliament or the relevant county assembly, pursuant to the Public Finance Management Act, 2012, recommend the withholding of funds to a state organ. This is very important because, for the first time, it gives us the stick with which to punish those state organs that withhold information unnecessarily.

With those remarks, I beg to support.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Next Order!

MOTION

APPROVAL OF NOMINEES FOR APPOINTMENT AS JSC COMMISSIONERS

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move the following Motion.

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the vetting of the nominees for appointment as Commissioners to the Judicial Service Commission, laid on the Table of the House on Tuesday, 31st March, 2015, and in accordance with the provisions of Article 171(2) of the Constitution and Section 15(1) of the Judicial Service Commission Act, approves the appointment of Mr. Kipng'etich Arap Korir Bett and Mrs. Winifred Waceka Guchu as Commissioners to the Judicial Service Commission.

Hon. Temporary Deputy Speaker, the Committee vetted the nominees as forwarded by the Speaker. The Report of the Committee was tabled in the House. I am told that sufficient copies were distributed but it appears that some Members do not have copies. I have requested that sufficient copies be made. Those copies will be here before I complete moving the Motion. The nominees were forwarded to the Committee on Justice and Legal Affairs Committee. The Committee conducted a hearing approval for the appointment of Kipng'etich arap Korir Bett and Mrs. Winifred Waceka Guchu.

Mrs. Guchu is currently working as a Management Consultant with WMG Management Consultancy Limited. She is a Training Director and Senior Consultant. She has also worked in various other institutions including FIDA. She has also been a Programme Officer at the National Alliance (TNA) Party.

She cited the following as her achievements. She participated in the organization structure, job descriptions and the recruitment process of the newly established Election Management Board in Kenya, namely, the IIE. She was in the selection panel that appointed members that took over from the defunct Electoral Commission of Kenya (ECK). She also developed training modules for by-elections and referendum management, which she says were very successful. She also developed the Voter Education

Programmes for the electoral circle in preparation for the Referendum of 2010. She participated in the drafting and the development of the Referendum Rules and Regulations 2010, the Independent Election and Boundaries Act, 2011, the Elections Act, 2011 and the Political Parties Act, 2011.

She also developed the Elections Operation Plan, which has been institutionalized for the running of elections in the electoral body. She also conceptualized and developed the operations of call centres at the constituency and national levels during by-elections and referendum. Finally, she reviewed the National Voter Education Curriculum and the Interim Independent Electoral Commission (IIEC) exit report, which she says were all successfully used during the 2010 Referendum for the new Constitution.

In 2008, she developed the action plan guidelines and indicators for gender mainstreaming in the national HIV responses. She also developed the National Framework on Gender Based Violence. The instructing client was the National Commission on Gender and Development. In 2009, she developed the Implementation Framework for Gender Based Violence including child sexual abuse. The instructing client was the East, Central and Southern African Health Community.

Since 2002, she has developed strategic plans for the following institutions: - The International Republican Institute (IRI), Uganda, the National Democratic Institute of Kenya, the National Aids Control Council, the Kenya Human Rights Institute, Gender and Governance Programme in Kenya and Associations of Persons with Disability in Kenya. She has also developed training materials for Law and Health Initiative Project, IIEC, Kenya Women Judges Association and Women in Law and Development. She has also worked in Rwanda for Rwanda's Women Network. She has worked for the National Democratic Institute in Kenya. She has worked in Somalia for the Somalia International Medical Course and many others. This is just to enumerate a few of them.

The Committee noted that of importance, she developed a handbook on sexual and gender-based violence in refugee camps for the UNHCR. We thought that, that was very important. She has been dealing with the public. She also developed Voter Education and Electoral Process for the Electoral Commission of Kenya.

From 1992 to 2015, she has conducted evaluations for the following in different countries:-

In Ethiopia, she has conducted evaluations for Enrique Ball Foundation on Effectiveness. In Kenya, she has conducted evaluations for CIDA, Abantu Development, Education Centre for Women in Development, ITDG in Nyanza and Western Provinces and the Christian Children Fund.

The key issues which were of concern to us when the nominee presented herself are the following:-

First, we just wanted to know what she would bring to the Judicial Service Commission if she was successfully approved by the National Assembly. One of the things that we noted is that she participated in the Judicial Transformation Programme that is being used currently by the Judiciary to transform the judicial processes. We thought that, that would be a good experience that she would be bringing to the JSC. More importantly, she will be participating in the implementation of the programme that she has worked on.

With regard to her relationship with the JSC, she says that she is a team player and intends to work with all the other Commissioners. Of concern to us is that in the past, Commissioners of JSC have refused to appear before the Committee on Justice and Legal Affairs. We wanted to know whether she would convince her colleagues that appearing before the Committee is the right thing to do if she is appointed. We reminded her that she was on oath and if she does not do so, she will be puncturing herself. That is if they fail to appear before the Committee. She confirmed in the affirmative that she believes in the rule of law and the Justice and Legal Affairs Committee is the right Committee that the JSC Commissioners must appear before for purposes of accountability and oversight as required in the Constitution. So, we were happy with the response.

Another issue that we raised with the nominee is the slow conclusion of court cases. This is a matter that we are all concerned about. We represent voters who have cases in court running from the 1990s. We explained to her that those are matters that should have been concluded long time ago. We asked her what she was going to do if she was appointed as a JSC Commissioner. She said that she will work with her colleagues to ensure that the backlog of cases is cleared within the shortest period. She undertook to appear before the Committee from time to time to inform it of the progress of the clearance of the backlog within the Judiciary and what the JSC is doing.

Of concern to the Committee is the public perception on her representation when she played an active role in the victory of the TNA in the 2013 Presidential Elections. The Members were concerned that she

would be compromised because she leans heavily towards a particular party. Her response was that she has been a consultant through and through and when she is retained as a consultant, she does her work, finishes and moves on. She said that she was contracted to work for TNA. She concluded what she needed to do and has since moved on. She said that she works for pay. The Committee noted that, indeed, she has been a consultant in many other institutions and ceased working for the TNA after the 2013 Elections. She is a consultant in the private arena.

Professor Yash Pal Ghai and Gill Cottrel Guy, in a memorandum, claim that the nominee and Mr. Chirchir were allowed access to the IEBC National Tallying Centre for the 2013 General Elections at the Bomas of Kenya to the exclusion of other agents.

That was a claim which was contained in the affidavit of Senator Janet Ong'era, who is currently a nominated Senator for the Orange Democratic Movement (ODM). She swore the affidavit in support of the Presidential Petition filed at the Supreme Court after the presidential elections. We noted that the court merely cited without making any conclusion at all. It was merely quoted as an item that was stated by Senator Ong'era with regard to what she may have observed. The court was non-committal at all as to whether what was stated was true or not. We put the question to her. We asked her whether they had an unfair advantage at the tallying centre, in response to which she said all the agents that had been nominated by their respective parties were allowed at the tallying centre, and that they were at the tallying centres as nominees of the parties that they were representing. Senator Ong'era was also a nominee representing a party and she equally had access to the tallying centre. She said that there was no complaint that was reported to the IEBC that they had unfair access to the tallying centre.

We wanted to know her view on the relationship between the Judiciary, the Executive and the Legislature. I know that hon. Ng'ongo would like to contribute. I am in the process of concluding. On the observations and findings of the Committee, we noted that Mr. Bett had the necessary qualifications and competence. Equally, we also noted that Mrs. Guchu was also qualified to be appointed, in accordance with the Judicial Service Act. I will read the general observations which were of concern.

The Committee observed with concern that recent nominations for approval by the House for appointment of various Government positions favoured two regions and condemned this trend. In future, the Committee will not recommend to the House for approval, nominations whose representation does not reflect the face of Kenya.

(Applause)

This does not require any support. It is a factual statement made by the Committee. It is contained in Appendix 10 to this Report. As you know, we are required to consider regional and ethnic balance, as per Chapter 15 of the Constitution. That was considered and it is contained in Appendix 10 of our Report. Hon. Members can look at the various office holders of the various commissions as set out in Chapter 15.

Hon. Temporary Deputy Speaker, the recommendations of the Committee are as follows:-

(i) that the House approves the appointment of Mr. Kipng'etich arap Korir Bett as Commissioner of the Judicial Service Commission by the President;

(ii) that the House approves the appointment of Mrs. Winifred Waceka Guchu as Commissioner of the Judicial Service Commission by the President; and,

(iii) that, the President should in future ensure that names submitted to the House for approval for appointment reflect the true face of Kenya, failure of which the House will not approve them.

Hon. Temporary Deputy Speaker, I beg to move and request the Member for Ugenya, hon. Ochieng', to second.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Yes, hon. Ochieng'.

Hon. Ochieng': Thank you so much, hon. Temporary Deputy Speaker. I also thank the Chair for his able moving of this Report. I want to start from where he has ended. He has ended by reading a very telling observation by the Committee. If you allow me, I will read it in full. It reads:-

“The Committee observed with concern that recent nominations for the approval by the House for appointment to various government positions favoured two regions and condemned this trend. In future, the Committee will not recommend to the House for approval, nominations whose representation does not reflect the face of Kenya.”

This is one of the decisions that the Committee really haggled over. We had a lot of soul-searching. In fact, even as I second this Motion, I do so with a heavy heart because of what we have seen in this House.

Hon. Temporary Deputy Speaker, three weeks ago, this House had to reject a Report of the same Committee because of the way the President put

the names before this Assembly. We also know that the position available for filling up at the JSC was one. Prof. Mango had retired. We now have two names here. We have the names of Mr. Bett and Mrs. Winifred Guchu. That means one of the Commissioners, Rev. Kobia, was asked to resign. That is what was worrying us. Was that person asked to resign so that they can create space for gerrymandering of having two communities coming on board? These are the issues that we grappled with as we prepared this Report.

I also wanted the House to know that, for example, Mrs. Winifred Guchu was the Electoral Director of The National Alliance (TNA) for a while. However, we could not stop her because when this Assembly passed the Judicial Service Act three years ago, instead of providing what is in the IEBC Act – to bar anybody who has been doing politics in the last five years from holding a JSC position – they simply said that if you are appointed and you were a member of a governing council of a political party, you resign. There is a lacuna in the law. That is why we are allowing a political person into the Commission because the law allows it. As a Committee, we could not prevent her from joining the Commission. If this was IEBC, she would not join it because that law is very clear that if you have been doing politics for the last five years, you cannot be a member of the IEBC. So, these are the issues we grappled with when we prepared this Report.

Hon. Temporary Deputy Speaker, we also grappled with the issue of national values and principles of governance, as provided for under Article 10 of the Constitution, to ensure that there is the face of Kenya in appointments such as these ones. This Report had a dissent because of the national values and governance principles. The principles of equality, freedom and participation, as provided for under Article 27 of the Constitution, are very important. That is why, as a Committee, we are saying that the President runs the risk of having very qualified people being brought and rejected by this House not because they are not qualified, but because the President keeps on choosing people from only two communities. We need to amplify the fact that this House is tired and has been watching. It will not allow the President to pit two communities against the rest of the country. The President is pitting members of the Kikuyu and Kalenjin communities against the rest of the country. Every time he brings names here, he brings names from the two communities.

As we approve this Report, we express our disgust at the way the President thinks and sees only two communities in this country.

With those many remark, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I hope all the people whose names are on the request list want to speak on this Motion.

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I cannot see your intervention on the screen of my gadget, hon. Kangara. Are you the one with a point of order?

Hon. Kangara: Yes, hon. Temporary Deputy Speaker. I want your guidance. I am a Member of the Justice and Legal Affairs Committee and I recorded my dissent on this Report. But, maybe, by design, the Chairman has not acknowledged that I dissented. I ask for your indulgence to know whether this Report gives the true picture of what we discussed in the Committee.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please repeat what your point of order is and be clear.

Hon. Kangara: My point of order is: I am a member of the Departmental Committee on Justice and Legal Affairs. I dissented from the Report. I hoped that the hon. Chairman was to capture my dissent when moving the Motion, because there were some issues. I also believe that this Report does not give the true picture of what we discussed in that Committee; it does not capture my dissent.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chairman, can you clarify whether or not there was dissent?

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, this is a debate that has been going on between me and hon. Mutura. He truly dissented and that is contained in the minutes.

(Hon. Kangara spoke off the record)

It is in the minutes. It is not a deliberate omission. It is all in the minutes. What I was reading is the Report and he is here himself. In fact, I had told him to be here; so, there is no problem.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. That point is made. You dissented and it is contained in the minutes.

(Hon. Wandayi gestured at the Chair)

Please do not do my work, hon. Wandayi. What is the point of order hon. Kajwang’?

Hon. Kajwang’: Hon. Temporary Deputy Speaker, there are things that we need to say from a point of honesty, faith and professionalism. The hon. Chairman of the Departmental Committee on Justice and Legal Affairs knows that he is a man of respect because his colleagues expect him to exhibit the highest level of professionalism. He also holds us accountable because he knows that we are worthy of faith and truthfulness. I was one of those who dissented from this Report. We dissented on very clear terms that we expressed; we specifically asked the Clerk to record our dissent and make it part of the Report.

You know that the Standing Orders say that where there is a dissent, it will be incorporated in the body of a report. So, for the hon. Chairman to treat the Member of Parliament for Makadara as though he has been discussing with him to withdraw his dissent is, in my view, unprofessional. Much more, it is a great professional dishonour if he cannot come forth to explain why exactly the dissent did not appear in a Report coming from lawyers of great repute, and so many years at the bar. Can the hon. Chairman explain why our dissent does not find itself in the body of the Report?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chairman, I will also want you to do what you have done for hon. Mutura and confirm whether or not hon. T. J. Kajwang’ dissented.

Hon. Chepkong’a: Hon. Temporary Deputy Speaker, let me first and foremost confirm that there was no dissent by my very good friend, hon. T. J. Kajwang’. The dissent that was there at the time when we were adopting the Report is contained in the executive summary. We are not unfaithful to truth. On page 8 it states as follows:

“The Report has been adopted by a majority of members with only one member dissenting on grounds that the nomination favoured two regions.”

Unfortunately, it looks like the Clerk did not state the name of the hon. Member when he was recording proceedings. I assumed he should have put it here because it has already been stated in the body of the Report itself. It is not that it is not in the body of the Report. There is nothing that we have done which is untoward to hon. Mutura. It is already here in the body of the Report.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I think the point that there was dissent is already made and it has been captured in the Report, although not in the Report that the hon. Chairman has presented.

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker for giving this chance. I have read this Report, but before I contribute to it, I am not sure whether what I have read and what I am hearing from Members of the Committee is representative of what was discussed in the Committee. I am worried that we might be discussing a Report which does not capture the issues which were raised in the Committee. I would want, before I continue to get your advice, to know whether it might not be wise to have this Report withdrawn and we get the right--- This is going to be a record and if we are going to discuss a Report which we are not sure whether--- Some Member was not in that Committee and my input is based on my reading of the Report. I do not know whether I can just continue assuming that things are correct. I do not know whether that is procedural, or whether the Report should be withdrawn and then we get these statements properly recorded, and the reasons why they were not agreeing with the other Members, so as to convince non-Members of that Committee that we are fully informed in terms of what went on in discussions.

I believe that the essence of a committee report is to help those of us who are not Members of that Committee to make an objective judgement in terms of what is contained in that report. I do not know whether I should just continue assuming that things are okay. Maybe, you can guide me; I want to contribute to this Report.

The Temporary Deputy Speaker (hon. (Ms.) Shebesh): What you have said at the end is what I would like you to take into consideration, so that we can we move on.

Hon. Mulu: Sorry, I cannot hear you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (hon. (Ms.) Shebesh): I wanted to give hon. Cheptumo a chance first.

Hon. Chepkong'a: I would like to clarify something.

The Temporary Deputy Speaker (hon. (Ms.) Shebesh): Okay; you can clarify.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I was moving fairly quickly in the interest of time; if they want me to be extremely thorough, I will. I am assuming that what is contained in the Report is obvious to everybody. But to be accused of what I have not done is unfair. In the minutes of 31st March, 2015 of the Committee meeting held on 5th Floor, Continental House, those who were present are all indicated. Nineteen Members were present at various times. People walk in and walk out. Apologies are recorded. Hon. (Ms.) Kajuju, hon. (Ms.) Ombaka,

Messrs. Waiganjo, Koech, Kajwang', Mati, Cheptumo, Baiya, Oyugi, hon. (Ms.) Fatuma ali and hon. (Ms.) F. I Ali attended. Under Minute No. 44 of 2015: Adoption of the Report of approval of appointment of nominees as commissioners to the Judicial Service Commission (JSC). I wish to read this for the benefit of Members.

“The Committee, by a majority, adopted the report on the approval for appointment of Mr. Kipng’etich arap Bett and Mrs. Winifred Waceke Guchu as commissioners to the Judicial Service Commission to the effect that the House approves them for appointment. Hon. Otsiula proposed the adoption of the Report, and hon. Cheboi seconded after which the Chairperson signed the Report. The attendance list is annexed here with. Hon. Kangara and hon. Kaluma dissenting from the Report.”

I told hon. Kangara that he had better state the reasons why he had dissented. These are the reasons contained in the minutes. He said as follows:-

“Hon. Mutura’s dissent was based on grounds that the appointment of the two would not reflect ethnic balance, and further that Mrs. Winifred Waceke Guchu’s integrity was questionable; she had been part of the Independent Electoral and Boundaries Commission (IEBC) that was responsible for the irregular procurement of election materials and that was suspected in the ‘Chickengate’ scandal which was the subject of Ethics and Anti-Corruption Commission (EACC) investigations.”

Hon. Kaluma dissented on the grounds that the appointment of the two would not reflect regional balance. He further stated that Mr. Kipng’etich Bett’s integrity was questionable, having been a beneficiary of illegal land allocation in the Mau Forest, while Mrs. Winifred Waceke Guchu, who is affiliated to TNA party, would compromise a fair representation of the public at the JSC.”

I signed it on 31st March, 2015. If I did not believe in it, I would not have signed; I would have changed it. *Mhe*. Mulu, all of it is contained here; I have not redacted anything. I am not an International Criminal Court (ICC) judge. I thank you very much.

The Temporary Deputy Speaker (hon. (Ms.) Shebesh): Hon. Mulu, can you complete your contribution.

(Hon. Kajwang’ spoke off record)

What is it hon. Kajwang’? What is the Procedural Motion? Give him the microphone.

Hon. Kajwang’: Hon. Temporary Deputy Speaker, I am reminded about Standing Order No.97. I know we are just about to begin debate. I also know that we have extended the sitting time of the House, but if we are going to go by resolutions of the House that we last made, it will mean that speakers will have ten minutes each. If we go by that, we may, in my view, take longer in the House than is normal. Will I be in order to propose that under Standing Order No.97 before we begin debate on this, we reduce the contributing time to five minutes for every Member speaking?

The Temporary Deputy Speaker (hon. (Ms.) Shebesh): Can I hear the mood of the House on that?

(Loud consultations)

(Question, that contributing time be reduced from 10 to five minutes. put and agreed to)

Okay, five minutes each speaker. Hon. Mulu.

(Loud consultations)

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker. I will try as much as possible to be within the time.

From the outset, I oppose this Motion. Looking at these nominees and their curriculum vitae (CVs), they are very experienced people. They have worked everywhere. They have done what needs to be done by anybody in this world. I am just wondering why it is that we could not give a chance to Kenyans who are young and would want to benefit from this kind of participation.

(Applause)

I believe the Jubilee Government came to power on a platform of being for the young people and willing to support them; but when you look at nominees for appointments that have been brought to this house, I keep asking myself, where our youth will really go if we keep on recycling people who have been in all the commissions in this world. If you look at the first nominee, he has been in almost every commission. I really wonder: Are we saying that there are no other Kenyans who can sit in commissions?

The other thing is the issue of regional balance. Even though we are supposed to look at regional balance in totality, it becomes very difficult for us, as a House, to have that picture unless we are told these are the commissions and these are the people who sit on them. It has been said in this country that when you look at the composition of the Public Service today, we have challenges. When you look at what we call “national representation”, there is a bit of bias.

(Loud consultations)

The Temporary Deputy Speaker (hon. (Ms.) Shebesh): Hon. Members, your consultations are very loud?

Hon. Mulu: Thank you, Temporary Deputy Speaker. If we want to talk about national unity as a country, there is no way we will talk about it when some citizens of this country continue to feel that they are marginalized, just because we do not have a national outlook in some of the commissions. So, by supporting these two names, we are going to make the situation worse.

To be frank, it is like any appointment that comes in terms of commissions: nominees are from either the Rift Valley or central Kenya and the other regions of this country do not exist. This is very unfair because when the President of this country addressed us last week, he really emphasized reconciliation and national cohesion. He cannot talk about these issues when every appointment goes to the Rift Valley and central Kenya.

(Applause)

I do not think we are going to achieve it.

So, I want to appeal that as we move forward, let us not forget that Kenya belongs to all of us and we must feel like we are all represented on commissions.

Hon. Temporary Deputy Speaker, with those remarks, I want to oppose these nominees,

(Applause)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon (Dr.) Shaban.

Hon. (Dr.) Shaban: Thank you, hon. Temporary Deputy Speaker for giving this opportunity. I beg to support this Report that Ms. Winnie Waceke Guchu and Mr. Kipng'etich arap Korir Bett should serve on the Judicial Service Commission. It is only fair to look at the composition of the Judicial Service Commission. It would be very wrong for us to keep on talking about two communities when we have not looked at who are the members in the Judicial Service commission. I wish to remind people that in the Judicial Service Commission, the Chief Justice who is the President of the Supreme Court is hon. Justice (Dr.) Willy Mutunga, I do not have to say where he comes from. Then there is hon. (Dr.) Justice Smokin Wanjala, Justice Mohamed Warsame, Justice Aggrey Mchelule, Prof. Tom Ojienda, Prof. Githu Muigai, who is the Attorney General, Emily Ominde who represents the Magistrates, Florence Muoti Mwangangi, who is an advocate of the High Court of Kenya, Prof. Magaret Kobia, who is the Chair of the Public Service Commission. That is by virtue of their offices.

When we started talking about the Constitution Implementation Commission (CIC), we started going wrong. When we said that there was too much representation from Nyanza, we were told that there was nothing wrong with having this kind of thing. So, since we set the precedence, we have to go on with that because we have representation from the other communities. We have no reason to say they do not have a right to be commissioners.

Hon. Temporary Deputy Speaker, when Prof. Christine Mango, who was a Member of Parliament in the past and a politician, was appointed, people never came up with issues of a politician sitting on the Judicial Service Commission. Prof. Christine Mango was my friend. I had no problem with her sitting there. What is important is that a Kenyan can serve this nation. That is very important.

We also have to look at the representation in all the commissions. This is just one commission. It has a maximum of 11 slots. We need to look at that in totality, so that we see how Kenyans are represented.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, just give me a minute. I cannot see your name in the intervention for points of order. Give him the microphone, please. What is your point of order?

Hon. Oyoo: On a point of order, hon. Temporary Deputy Speaker. Is it in order for a seasoned Member of Parliament, whom I respect so much, hon.(Dr.) Shaban, to mislead this honourable House that the positions on the Judicial Service Commission dominated by people from Nyanza when

she knows that all the people from Nyanza represent professional bodies? The appointments to be done now are two. These are the appointments we can debate. Those are the two who represent professional bodies.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, that is a point of argument. That is not a point of order. Remember that the Speaker said that you should stand on a point of order.

Go on.

Hon. (Dr. Shaban: Hon. Temporary Deputy Speaker, it is important for people to listen. I talked about the CIC. That is where we did things which were not right. We have to look at all commissions to make sure that they are okay. It is wrong when it concerns somebody's community. I am a Mtaveta. I do not have a Mtaveta sitting on any of these Commissions. When a Kenyan is qualified, then he or she ought to sit on a commission.

It is important for us to quote certain things. As much as we are talking about unifying Kenyans, it is important for all of us to know where we are coming from and where we are going. When a woman is being given a job somewhere, we have to respect that.

I beg to support.

Hon. Kajwang': Thank you, hon. Temporary Deputy Speaker. I wish that we could debate this matter with a lot of sobriety, because we are talking about the Judicial Service Commission. It is the employer of all the judges and the custodian and the embodiment of the judiciary. I want to begin not from looking at ethnic blocks, but by looking at the Report as it is.

The Chair has ably discussed the first nominee. However, look at page 12 of the Report, which deals with issues of land allocation at the Mau Forest. This nominee informed the Committee that even the famous Ndung'u Report on Illegal Land Allocation named him as a beneficiary of illegal land allocation. Secondly, he applied for land allocation in his area, but he never got a response to the application.

We have just been discussing the Presidential Speech. It pleased me to see that Members are now becoming serious on issues of corruption, integrity and Chapter Six of the Constitution on leadership and integrity. Today, we are discussing a nominee to the Judicial Service Commission (JSC), to which Chapter Six must apply with full force. Here is a nominee who admits that he is in the Ndung'u Report. You remember that the Ndung'u Report was laid before the before this House, and a specific resolution that those adversely mentioned be investigated first was passed.

Secondly, he admits that he applied for land. If he was just given land, like some of my friends who told me that they just found themselves

with pieces of land, that would have been something else. He applied for land that he knew was forest land. This land was gazetted. It has been gazetted since 1960s, before I was born. He could not have said that he did not know that this was forest land. Since he found himself with a piece of land, it is very difficult to convince Members of this House that he was too lucky a Kenyan; that he just found himself with pieces of land in the Mau Forest. First of all, let us deal with this nominee in the spirit in which we have decided in the last two weeks, that we be serious about integrity and Chapter Six of the Constitution on leadership and integrity.

In terms of his credibility, this nominee does not qualify even if he has all the schooling that we have seen. This is a person who has been in all banks. We asked him a simple question and you will find it on page 12. We asked him whether he could demonstrate that he had done anything for the public. His response was that because he has been on boards of schools and boards of banks, then he knows something about the public. One needs to show that he understands. The two nominees are going to represent not professional groups, but Kenyans. We needed him to say whether he had dealt with the public enough to know what he is qualified for.

The last one is about the lady that we are speaking about. With regard to regional balance, do not think about Luos and Kikuyus. Think about Kisiis, Kambas, the people of north eastern and Suba, where I come from. This assumption that because there is a name starting with the letter 'O' then Luos are there, and because Luos and Kikuyus are there, all the tribes represented should not exist. Let us think about those other people who make up the 42 tribes.

This lady has been nominated to the JSC. She is going to employ the Chief Justice and has shown so much partiality and political persuasion. If I was appointed to the JSC, I am sure Members would say that I am so "Raila" that I cannot do the job. I am partisan. If I am partisan, then I should do things which relate to my party. If you are going to talk about the JSC, there are so many Kenyans out there who have never gone into politics, never supported any party and can still do the right thing. Can the President give us another name? There are so many names. This is not a problem. We can return the names. Can the President give us another name, even if it is of a Kikuyu or a Kalenjin?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up, hon. Member. Hon. William Cheptumo.

Hon. Cheptumo: Thank you, hon. Temporary Deputy Speaker. As I support the Motion, I wish to say that I am a member of the Departmental

Committee on Justice and Legal Affairs. In the process of vetting these two nominees, I noted that they have a wide range of experience in very many areas. It is important for us to note that these two nominees have a special role to play in the Judicial Service Commission (JSC). The role of these members is to represent the public. That means they have to stand for the more than 40 million Kenyans. So, experience in public service is critical because it is going to facilitate their work.

Each of the nominees was able to clearly tell the Committee how they are going to play their role. We have had a very serious problem of late between this House and the Judiciary to the extent where we even invite the Chief Justice or the Members of the JSC and they do not appear for reasons I do not want to deal with here.

From their presentation, it was clear to us that these are persons who know that they are going to represent the public. They will even insist to the Commission that it is important for them to appear before the House.

Things have been said about nominee Bett. I would like to refer this House to paragraph 4 (7) on page 12 of the Report, where it talks about the illegal land allocation in Mau Forest. This nominee submitted an affidavit, attached as Appendix IX, affirming that he does not own any land in Mau Forest. As a lawyer, I know that if you swear an affidavit to state a fact that is the highest level at which you can demonstrate that you do not own land in a particular area. There is nothing better than that. This nominee has taken an oath and that affidavit is attached to this Report. Therefore, I would urge my colleagues that do not use the fact that this person applied for land in Mau to punish him. When he has sworn an affidavit.

On the second nominee, I hear my learned colleague, hon. Kajwang', talking about this lady having been an official of The National Alliance (TNA). Fortunately, I was in the Tenth Parliament. We passed the law. You were also in that Parliament. We did not pass a law that excludes people who have served in political parties from being appointed. As we move forward we will need to amend these laws to deal with some of these issues.

Finally, the fact that it does not represent a balanced list is true. The Committee, on page 21, has recognized that fact and in Recommendation No. 3, the President should in future--- We have recognized it and it is part of the Report that in future, beginning from tomorrow and the day after, there will be more nominations and the President will ensure that names submitted to the House for approval for appointment reflect the true face of Kenya, failure to which the House will not approve them. That is the highest level at which we can commit ourselves as a House.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up. Hon. Daniel Maanzo.

Hon. Maanzo: Thank you, hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this very important matter. As a lawyer, I would like to say that the JSC is a very important organ of the Republic of Kenya. This is the Commission which takes care of matters justice in this country. It also takes care of a whole are of the Government because the Government is divided into three arms. What the President is now doing, unless he does not mean it, is to fight corruption on a very serious level. Any small allegation made against any person in public office, including Members of Parliament, the practice now is to step aside for proper investigations to be conducted. When the person has been cleared of the allegation, he or she can continue serving the public. I believe the President is very serious in this. For him to have sent to us names of persons who have been mentioned in one way or another and there is no sufficient clearance of them---

I have listened to what hon. Shaban has said and I think it is very important. She refreshed our minds on the current composition of the JSC. If you follow you will see that there is almost the true face of Kenya in that and that was considered. That is not the problem now. The problem is that these persons, if there are allegations against them, we do not want to appoint people who will be forced to step aside the next day, or who will appear on allegations before the Ethics and Anti Corruption Commission (EACC).

For that reason, it is only fair that other names be brought. We do not mind even if they came from the same communities as these ones. People who have not been mentioned in anything are likely to be impartial when executing matters justice in this country. So, it is very important that we think about that as a nation. If somebody has been mentioned in whatever way, and whether an affidavit has been sworn or not, it is not sufficient. I respect my senior very much but as long as the allegation remains unresolved, the affidavit is of no consequence, because this is a matter of a criminal nature and proof must be beyond reasonable doubt. It is not on a balance of probabilities as normal affidavits will do. It is very important that we do not sit here debating, present names and then within a week these people are again at the EACC, or in newspapers, and have to step aside.

While opposing, I want to urge this House to reject these names and we request names other from the two communities. We have done that before. This is a House of record and it has been successful in the past.

Whenever somebody is mentioned, or the feeling in some parts of the country is that this person is not likely to deliver justice, the worst place they can be in is the Judicial Service Commission (JSC). So, let us have fresh names of people with no trace of any claim by anybody whatsoever, and we shall accept them.

I oppose. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have hon. Grace Kiptui.

Hon. (Ms.) Kiptui: Thank you, for the opportunity. I support the Motion---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Go ahead.

Hon. (Ms.) Kiptui: Protect me from hon. Wanga. I am on the Floor. I support the Motion. I come from Baringo County. One of the nominees by the name Kipng'etich Bett is very well known to me. I am taken aback by the opposition to his nomination on very flimsy reasons. I happen to have been an advocate of the High Court. I know the present composition of the JSC. That is not a place where you sent young Kenyans without experience. We have been told that they have worked in several places, which is good because that is a place where justice in this land is dispensed. They are going to be the ones employing the judges, magistrates and paralegals.

They have to be people who have experience, are mature and whose emotions are settled, and in that respect I support.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have hon. John Mbadi.

Hon. Ng'ongo: Thank you, hon. Temporary Deputy Speaker.

First of all, I am alive to the fact that these appointments are made pursuant Article 171(2) (h). One woman and one man, not being lawyers, are supposed to represent the public; they are appointed by the President, with the approval of the National Assembly. I ask myself why this was necessary when it is clearly specified which bodies are supposed to nominate members to the JSC. If the President has the mandate of the Republic, he should be careful enough to speak for the people of Kenya through these two appointments. Therefore, when the President makes these two appointments, it is expected that Kenyans will look at them and see people who will actually represent them in the JSC. Looking at this gentleman called Kipng'etich and the lady called Winfred Guchu, I ask myself whether if the people of Kenya were given a choice and we had representation in, say a college, to pick two people in this country to represent them, these two

people would be picked by the people of Kenya. I am confident that the people of Kenya, through their representatives, would not do so.

Therefore, I urge my colleagues in this House that, as the representatives of the people of Kenya, we should speak loudly and clearly to the President and remind him that on Thursday he was here. He spoke to us and talked about national cohesion and national unity. He even apologised to the people of Kenya for the historical injustices that they have gone through over the years. One of the historical injustices is skewed appointments, where some communities feel excluded, and feel like they are outsiders in this country. It does not make any difference if you talk about Nyanza being represented. Those are some of historical injustices; if at all the people of Nyanza are over-represented in whatever Commissions--- Even then, we are not talking about regions. We are talking about communities. I want to restrain myself from mentioning the communities by names, because Kenyans know them. It would really be un-parliamentary to target two communities and mention them by name, especially after going through what we went through in late 2007 and early 2008.

Hon. Deputy Temporary Speaker, if the President is serious that he wants to unite this country, all the appointments he makes must be seen to be reflective of the face of this country. We cannot sit here as a House and continue approving appointment of names that are clearly from two ethnic communities. We know where the President and the Deputy President come from. This is polarizing this country. That is why I am happy with the Member of Parliament for Makadara. That is why he is representing a cosmopolitan constituency.

(Applause)

Even though the hon. Member is not from the same party as me, I have a second thought about him. In fact, I would urge his constituents to look at him favourably, regardless of whichever communities they come from. I have heard that Mr. Kipng'etich comes from Baringo.

Hon. Kamanda:--- *(Off-record)*

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, protect me from hon. Kamanda.

I would have been happy if this Member was from the Ilchamus community, which is the most marginalised community in Baringo

Country. The nomination should not have been made from the dominant community in Baringo County. I want to add that this man left the Central Bank of Kenya at the age of 35. That is indicative of non-performance. We have to face it. There is no organization that can retrench a young man of the age of 35, if he is performing, just because of restructuring. This guy is a non-performer.

I do not want to talk about corruption because that has been spoken to, but let me come to Ms. Guchu. Even if the law does not say one, two and three, that is why we vet nominees, as a House. This House does not only look at the legal technicalities. We also look at fairness and impartiality in the appointments.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Do you have a point of order? I am not allowing a point of order now.

Hon. David Gikaria, the Floor is yours.

Hon. Gikaria: Hon. temporary Deputy Speaker, mine is to say we look at Article 95. I support the Motion brought by the Departmental Committee on Justice and Legal Affairs Committee. I also would like to echo the sentiments of the Deputy Leader of the Majority Party and what she has read regarding the composition of JSC. As much as we want to look at these things from the angle to which we are being driven, I think it is the wrong direction to go.

Secondly, if you look at the records that are here, you will realize that these nominations were done before the President came here to give us his Speech. Hon. Cheptumo has indicated clearly that under Recommendation No. 3 the Committee has taken notice of what is happening. They have advised the President, through their Report that, in future, he needs to look at the composition in general in subsequent appointments. So, saying that we only have two communities is not right.

The JSC is a very serious body. Yes, I am a proponent and supporter of the youth in every respect. However, if we are going to admit very young people to this Commission they might not be able to handle the issues that ought to be handled.

Lastly, I want to make it very clear that Ms. Guchu has never been mentioned in the “chicken” scandal. The Member who alleged that she was involved in the chicken scandal ought to have come with evidence here. Flimsy grounds such as owning land cannot be taken seriously---

The Temporary Deputy Speaker (Ms.) Shebesh): Hon. Gikaria, there is a point of order.

Hon. Midiwo: On a point of point of order, hon. Temporary Deputy Speaker. It would be right for the hon. Member to be informed that on page 20 of the Report tabled by the President, all the former officials of IIEC are condemned. That is factual. So, when you say that she has never been named, I think that is incorrect. I think he is out of order. They defeat us because “we want to make this Government so bad so that we can send it home.” We can get better people.

The Temporary Deputy Speaker (Ms.) Shebesh: Hon. Gikaria, please, conclude your contribution. Hon. Midiwo, if you have a point of argument, please, do not rise on a point of order.

Hon. Gikaria: I have always admired hon. Washington. He has been a very good friend of mine. I have learnt a lot from him together with hon. Mbadi.

However, in this one, if the condemnation is wholesome, then we ought to be given an annexure where her name appears.

I also want to talk about my friend and a colleague in the Jubilee Coalition, hon. Benson Mutura. Hon. Mutura is here as an individual and he made an individual comment. It is not because he is in TNA. I also want to agree with hon. Kamanda that we will donate Mutura. Hon. Mutura is a very competent legislator in this House. He made his own decision and it is not because he is in the TNA. He did not disapprove of the Report. He did not dispute the Report because he is supporting the minority. He only made a point and I agree with him. Recently, I also did not agree with Mr. Kimemia’s name appearing on the list.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your time is up! Hon. Opiyo Wandayi.

Hon. Wandayi: Thank you, hon. Temporary Deputy Speaker. I oppose this Motion. When you look at what is happening, it is good to call a spade a spade. The fact of the matter is that the Jubilee Government is now preparing ground for a total take-over of the Judiciary. That is the fact of the matter. We know that shortly, the offices of the Chief Justice and the Deputy Chief Justice will be falling vacant. Therefore, for you to have people in those positions who will sing your song, you must have a plan for the JSC. You must have a JSC which you control. That is why we are having people of questionable backgrounds being forced down our throats to populate the JSC, which is a very important constitutional Commission.

The Supreme Court plays a pivotal role in determining the outcome of a presidential election in this country. It is a fact that the Supreme Court has the final say on the results of a presidential election. So, if the process of

identifying and appointing judges to the Supreme Court is skewed from the word go, you are setting ground for anarchy. If Kenyans lose faith, or confidence, in the Supreme Court because of the manner in which the judges have been appointed, then you are preparing ground for chaos. I believe the President cannot go that direction. Therefore, it is in order for this House to return these names to him, so that he makes nominations which are going to be acceptable to Kenyans and not just this House alone. What I have said is correct.

Nigeria has just come out of a very hotly contested election. The Nigerian election has come and passed.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is your point of order, Member for Mandera North.

Hon. Nooru: On a point of order, hon. Temporary Deputy Speaker. I do not want to interrupt my friend, the Member for Unguja, but is he in order to mislead this House and the nation at large that these persons have been nominated with the intention of the Jubilee taking over the Judiciary? It is a constitutional requirement that they be appointed.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): That is a point of argument. Hon. Wandayi, please, complete your contribution.

Hon. Wandayi: Hon. Nooru is my Chair in some Committee somewhere. So, I do not want to argue with him on the Floor of the House. It might embarrass him.

We have seen what Nigeria has gone through. The Nigerian transition has been peaceful because of the faith and confidence Nigeria citizens have in their institutions. One sure way of making Kenyans lose faith in the institution of the Judiciary is through these nominations. Therefore, I plead with my colleagues that we should return these names, in good faith, to the President and let him bring to us some new names, which we will be acceptable to Kenyans.

There is this trend of forcing commissioners in constitutional commissions to resign. We are aware that Commissioner (Dr.) Kobia was forced to resign to pave way for one of these nominees. Those who are forcing commissioners to resign are known. It is one Njee Muturi. We are aware that recently they tried to force commissioners of the Ethics and Anti-Corruption Commission to resign. In fact, Commissioner Jane Onsongo succumbed to pressure from people who are hell bent on enforcing their own decree on these commissions. There are people who want to control the composition of these commissions by hook or crook.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is your point of order?

Hon. (Dr.) Shaban: On a point of order, hon. Temporary Deputy Speaker. It is important for Members to be factual. When a Member says that Dr. Kobia was forced to resign, could he substantiate? It is so important. We cannot go on falsifying matters and bringing propaganda here.

Hon. Wandayi: Hon. Deputy Speaker, it is clear that Dr. Kobia's term had not come to an end. He still had more than a year when he resigned. It was not even announced to us. We were not even told why he resigned. Going by what has happened in the last few days at the EACC, we can only conclude that he was forced to resign. The idea of the Jubilee Government forcing commissioners to resign so as to replace them with people whom they can control should be condemned in the strongest terms possible.

As I conclude, I must state that this is a Motion that has to be opposed in the strongest possible terms.

Therefore, I oppose.

*[The Temporary Deputy Speaker
(Hon. (Ms.) Shebesh) left the Chair]*

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

Hon. Deputy Speaker: Yes, hon. Kipchoim!

Hon. (Ms.) Kipchoim: Thank you, hon. Deputy Speaker. I rise to support the Report of the Justice and Legal Affairs Committee on the appointment of the two nominees.

On the outset, I want to say that Kipng'etich arap Korir comes from my constituency. I know him by name. He is one of my constituents in the far-flung location of Tuloimngoi. Last Thursday, the President announced that the Committee had already approved the nominees, and that those names were not on the list.

When it comes to Madam Guchu, she has sufficient experience and is a lady. I wonder why my colleagues are against her. As ladies, we are a rare species in leadership. When one of us is nominated for appointment to such an office, we should support her by all means. I want to echo her nomination.

Hon. Deputy Speaker, the name of any of us here could be on the list that was presented here by the President last week, because what are contained

therein are mere allegations. If any of your constituents today alleges that you have stolen CDF money, you can find your name getting into such list. The names that were found on the list that was annexed to the President's Speech to this House could be names of any one of us. The Members whose names are on that list will clear their names and come back to the House.

With those few sentiments, I beg to support the Report.

Hon. Deputy Speaker : Yes, hon. Member.

Hon. Kobado: Hon. Deputy Speaker, I thank you very much for giving me the opportunity to contribute to this Motion.

In the interest of time, allow me to go straight to page seven of the Report. For the benefit of those who do not have copies of the Report, may I just read the last paragraph, which states that the Committee recommends that the House approves the nominees for appointment but wishes to state that in future, it will not recommend for approval names of persons whose representation does not reflect the face of Kenya.

Hon. Deputy Speaker, if you look at that final statement, there is guilt conscience. Indeed, we are wasting time discussing this Report. We should unanimously reject it, so that we take it back to the Departmental Committee on Justice and Legal Affairs. This is because, for one what is the definition of "future"? I have already looked at its definition in the *Oxford: Advanced Learner's Dictionary*, and it says that the future is "the time that will come after the present..."

This Report was signed on 31st March, 2015. That was their present and today is the future. We want to reject this Report on that basis, first of all. Secondly, Parliament is a very unique institution because of its visibility. We are highly visible and Parliament is highly accountable, because we represent a multiplicity of audiences out there. We are already suffering an image in terms of what Kenyans perceive us to be. This House is already suffering a negative image and integrity issues. If you look at the Presidential Address, he had to apologize to Kenyans. He apologized for historical injustices meted out to certain communities in this country. If we go by that, because, I believe the Presidential Address is direction-giving, it means there is no more business as usual. It means there will be no more impunity in this country. If we are going to stop impunity, let us walk the talk and stop these kinds of appointments.

We are here on delegated authority by those who elected us. Out there, if I were to give you a summary of the candidates whom we are considering today, let me start with Mr. Kipng'etich arap Bett. The summary is this and I am very good at it. I am an expert in communication skills. One,

he was the Managing Director of Uchumi Supermarkets Limited – an institution that went under with him at the top. Two, he was a Joint Receiver/Manager of Muhoroni/Miwani Sugar Mills. He mismanaged that institution thoroughly and it has collapsed. This fellow was in the Kenya Anti-Corruption Commission (KACC) as an advisor – an institution that failed. This fellow, it has been alleged, grabbed land in Mau Forest and he is, a candidate, and even a customer, of the Ethics and Anti-Corruption Commission (EACC). He should be there answering certain questions.

Now, let me come to Mrs. Winfred Guchu, an Executive Director of The National Alliance Party (TNA), the President’s party. She filed an affidavit in support of the President in the presidential election petition. She was a TNA agent in 2013 and a consultant for Independent Electoral and Boundaries Commission (IEBC), which is a rotten institution. She was also a Commissioner of the Interim Independent Electoral Commission (IIEC), which was involved in the “chickengate” Scandal. What is the conclusion hon. Temporary Deputy Speaker?

The President is working to shape the political terrain for 2017. We cannot mismanage institutions like this and get away with it.

Hon. Deputy Speaker: Your time is up, hon. Kobado.

Hon. Anthony Kimaru.

Hon. Kobado: Hon. Deputy Speaker, I strongly oppose these names.

Hon. Kimaru: Thank you, hon. Deputy Speaker. I stand to support the nomination of these two candidates. It goes without saying that these are very experienced and learned fellow Kenyans who deserve the jobs that they have been given. Why do I say this? It is because whenever you apply for a job, you cannot say that a person will be disqualified because he is thoroughly experienced. Secondly, when we talk about regional balance, there is a misconception that we have had for a long time. It is that there is no regional balance if a Luhya, a Luo, a Kikuyu or a Kamba is not there. When you look at all these constitutional commissions, they are dominated by Luos, Kikuyus, Kambas and Luhyas – I mean all constitutional commissions. That is a fact. So, when we speak here of regional balance, I would want us to think of the Pokot, Ogieks, Tavetas, Samburus and the Turkanas whom I represent.

(Loud consultations)

Let us not make it look like regional balance is only about the big tribes.

If we look at the Judicial Service Commission (JSC) and that is a fact,

we have one Meru, two Luhyas, two Luos, two Kikuyus and one Kalenjin. So, when people are talking of regional balance, I would even ask them--- I would even urge hon. Ng'ongo to urge one of the Luos to step down, so that a Suba can be appointed. One of the Luos should step down.

(Loud consultations)

Hon. Deputy Speaker: Please, desist from raising any temperatures; we are just about to finish.

(Hon. Ng'ongo consulted loudly)

Order, hon. Ng'ongo.

Hon. Kimaru: They come from the same region but Subas are sidelined.

Away from that, when we talk of Mrs. Waceke and the chickengate, it is not fair to involve her. We know the people who are alleged to have been involved in the chickengate scandal; she was not there. Let us be fair to the good lady. Let us give her an opportunity to serve.

Again, we must also not forget that in this House, the retention rate is below 30 per cent - 70 per cent of us who are seated here today will be out there in the field, and will be looking for jobs. When those jobs come up, shall we say that we are not qualified because we are politicians? Being a politician does not mean that your life starts and ends with politics. You can be out there and you need a job. So, when we vilify these people because they have been in politics, we are not being fair to them; we are also not being fair to ourselves.

When we talk of people who have resigned from jobs, we should know that the majority of us here today resigned from jobs. Does it mean that they resigned from jobs to come to Parliament because they were corrupt? When you resign from one job to go to the next, it does not mean that you are corrupt. You cannot be vilified. You cannot be judged harshly just because you left a job.

So, I urge this House to support these two candidates. Thereafter, we will embark on true and proper regional balancing. Remove the Kikuyus and the Luos, and put in a few Turkanas, a few Pokots, a few Tugens and Subas in support of my friend hon. Ng'ongo.

Thank you; I beg to support.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members!

(Hon. (Ms.) Nyasuna consulted loudly)

Order, hon. (Ms.) Nyasuna.

Hon. Kilonzo: Thank you, hon. Deputy Speaker. I rise---

Hon. Deputy Speaker: You are talking of regional balance. Your speaking also has to be regionally balanced.

Hon. Kilonzo: Thank you. I rise to support these two individuals for four critical reasons. One, if we are to look for any Kenyan who can manage, lead and support the current reforms within the JSC, I have every reason to believe that Mr. Kipng'etich arap Bett and Mrs. Guchu are the right candidates. Look at the experience and gender parity within the JSC and look at the competence of these two candidates. When you look at the first candidate, Mr. Bett, he is a director of an international company, this is Rift Valley Bottlers, which is---

(Loud consultations)

(Several hon. Members withdrew from the Chamber)

Hon. Deputy Speaker: Hon. Members, everybody now wants to leave! If you start leaving, or if we start raising points of order, we will never get through with this. Allow us to proceed.

Proceed hon. Kilonzo!

Hon. Kilonzo: When you look at Mr. Bett, he is a director of Coca Cola Bottlers in the country.

Hon. Deputy Speaker: Hon. Kilonzo, are you reading, yet you know the Standing Orders?

Hon. Kilonzo: No, I am not reading, hon. Deputy Speaker.

Hon. Deputy Speaker: Proceed, your time is getting spent.

Hon. Kilonzo: If we are to address the issues and the challenges relating to our Judicial Service Commission (JSC), I think these are very key candidates. One, they have experience. Look at their professional and academic qualifications. These two individuals are highly qualified and experienced. We know where our Judiciary is coming from. We know the history of our Judiciary; considering where we are, during this transitional

period in our country, I think these are the individuals we need within the JSC.

Hon. Ng'ongo: How do you know?

Hon. Kilonzo: I know from the report.

Hon. Deputy Speaker: Order hon. Members! Allow him to have his say.

Hon. Kilonzo: Hon. Deputy Speaker, protect me from the Chairman of ODM. Since hon. Ng'ongo was appointed the Chairman of ODM he has-- - I think he is drunk with power.

Hon. Deputy Speaker: Hon. Members, do not raise your temperatures. Just be calm.

Hon. Kilonzo: Hon. Deputy Speaker, all said and done, I want to make my point and it is to support these two candidates for the reasons, I have already given; they have experience, academic qualifications and maturity.

I rest my case by stating that I support fully.

Hon. Onyura: Thank you, hon. Deputy Speaker. I stand to oppose this Motion. First of all, one of the nominees, Madam Winfred Guchu, has been nominated to replace Prof. Christine Mango, whose term has expired. I was just wondering--- I have an interest in this because Prof. Mango comes from my constituency and is a very worthy predecessor of mine, because she represented my constituency before me. It has not been explained why Prof. Mango's term was not renewed. I know that she did a good job when she was there. In fact, at one time even before the Chief Justice was sworn in, she was chairing the JSC. She was doing a good job. I am not satisfied that her term was not renewed. I have noticed a certain trend that when one commissioner, director or a member gives way, we look for somebody within that village or close there to replace them. This position should have been given to somebody from Butula Constituency, or at worst somebody from Busia County. I do not know why that did not happen.

I was looking at the profile of Mr. Bett. It looks as if he is already overloaded. If you look at page 10, we are told that he is currently a director of Rift Valley Bottlers, Image Registrars Limited, Save More Distributors Limited, Council Member, Kabarak University, Flora Ola Limited, Salt Lake Trading Limited among others. We do not know how many others. Why should we be giving a position to somebody who already appears to be so overloaded with work? We should be looking for a person who will have time to devote to a job like this one; not a person who is already overloaded.

At page 7, it is pointed out that even the Committee felt that this list does not represent the face of Kenya. The Committee tells us that in future--- We do not want to be told about the future or tomorrow, which, as we know, never comes. If an anomaly has been detected or seen, deal with it now. Do not start telling us about the future or tomorrow, which we know will never come. Because of all these observations that I have made, I strongly oppose the nomination of these two candidates.

Hon. (Ms.) Korere: Thank you, hon. Temporary Deputy Speaker for this opportunity. I rise to support the Report of the Committee. It is only yesterday---

(Loud consultations)

Hon. Deputy Speaker: Order Members!

Hon. (Ms.) Korere: Hon. Deputy Speaker, it is only yesterday we were discussing the President's Speech. With regard to the annexure of the list of shame that the President handed to this House, I am a bit disturbed by our show of double standards, in that a lot of Members who spoke said that this list is just but a list. In fact, they were called allegations. Now, what we are being told about Mr. Kipng'etich are allegations. I want to refresh the minds of the Members here that during Moi's era, the President would actually order for degazettement of forest land and order the same land to be issued to Kenyans. So, if this fellow applied to be given land in Mau Forest, that time then, he was within the law, in my own opinion.

Secondly, I am surprised how Members want to legislate themselves--
-

Hon. Deputy Speaker: Order, hon. (Ms.) Korere. There is a point of order by hon. (Ms.) Kajuju.

Hon. (Ms.) Kajuju: Thank you, hon. Deputy Speaker.

In view of the various omissions that have been made in this House today, I rise under Standing Order No.95 move that you call upon the Mover to reply.

Hon. Deputy Speaker: Hon. Members, you know how we do it.

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

Hon. Deputy Speaker: Hon. Chepkong'a! Order, Members! We have already passed the vote. The Mover is now to reply.

Hon. Chepkong'a: Hon. Deputy Speaker, I wish to thank all the Members who have contributed in a very effective manner and ventilated concerning the nominees. It is important that we discuss them as we approve them because they are going to occupy very important positions. Just as a matter of clarification, under Article 250, the Committee considered the following:-

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, can we allow the Mover to reply?

Hon. Chepkong'a: Hon. Deputy Speaker, when the Committee sat to consider this, we considered Article 250(4) of the Constitution, which states as follows:

“Appointments to commissions and independent offices shall take into account the national values referred to in Article 10 and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya”

Therefore we have attached Appendix 10 for the Members to consider. When we calculated the ethnic composition of the entire Chapter 15 commissions, these were the results.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, you have canvassed this point throughout. Can you, please, now listen to the composition of the commissions, because this is the biggest point that you have been making about them. Order Members!

Hon. Chepkong'a: Hon. Deputy Speaker, I will be very brief. This is the last point and then I will sit down. When we calculated the ethnic balance, and that is why we have attached Appendix 10 to our Report; it provides for ethnic balance. This shows the tribal composition of the Chapter 15 commissions. These were the results. In all the Chapter 15 commissions, there are 14 Kikuyu commissioners; 14 Luo commissioners---

(Laughter)

Hon. Deputy Speaker: Order Members! This is information that you can verify. Allow him to finish.

Hon. Chepkong'a: Hon. Deputy Speaker, there are 11 Luhyas commissioners in all the commissions, 11 Kamba commissioners, six Kalenjin commissioners, six Kisii commissioners and six Somalis. We considered the population as has been set out.

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

Hon. Deputy Speaker: Order Members! I am not entertaining any points of order, please.

Hon. Chepkong'a: Hon. Deputy Speaker, the composition of Kikuyus in this country is 22 per cent. If you calculate the number of Kikuyus and Luos who are here, the Luos are more than their percentage in the population. If we were to consider it, we should reduce the number of Luos in the commissions and add to the Kalenjins, who are fewer.

(Loud consultations)

Hon. Deputy Speaker: Order Members! Hon. Members, you have taken the whole afternoon canvassing that very point. Now, the Mover is replying and you do not want to be given the information. He is just summarizing, so that we can put the question. Can we just, please, hold our horses? We are completing this session. Have you completed, hon. Chepkong'a? This is information that you can verify, hon. Members.

Hon. Chepkong'a: Hon. Deputy Speaker, I will not repeat it to the annoyance of hon. Mbadi. I want him to stay in peace.

I beg to move.

(Question put and agreed to)

(Loud consultations)

(Several Members stood up in their places)

Hon. Members: Division! Division!

The Deputy Speaker: All right, Members. You have the numbers. We can have a Division. Ring the Division Bell.

(The Division Bell was rung)

Hon. Deputy Speaker: Order Members! Please, you can now move to your seats, and Settle down Members. Sit down, hon. Members! Move to your seats! The Bar can be drawn.

(The Bar was drawn)

Hon. Members, log out. We are doing electronic voting.

(The hon. Members logged out)

Hon. Members, you can now log-in.

(The hon. Members logged-in)

Remember the Question, which is that the House approves the nomination of Mr. Kipng'etich and Mrs. Guchu for appointment as Commissioners to the JSC.

Hon. Members, you have 60 seconds to vote, starting now. Those without cards should come here.

(The hon. Members voted)

END OO

JCK

PP-02.04.2015

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! Numbers do not lie. Please, just accept what you are seeing on the screen.

An hon. Member: My card is not showing!

Hon. Deputy Speaker: No! No! If it is not, then you come with your card here. Do not leave your card there. Come and register with your card. Make sure you do not tell anybody.

(Loud consultations)

Hon. Deputy Speaker: Members, anybody coming to register here should come with the card.

An hon. Member: It is not going to show!

Hon. Deputy Speaker: No, it will show. If there is any interference, the numbers will change.

(Loud consultations)

Hon. Deputy Speaker: We are also physically doing the head-count as you can see. Our Serjeant-at-Arms are confirming the numbers that are in the House.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, these are the results of the Division. The AYES have 50 that voted with the cards plus four that voted manually. That is a total of 54. The Noes have 36 voted with the cards and two voting manually. That makes it 38. There is a total of 92. So, the AYES have it. Plus there are two absentees. This makes 94.

(Question carried by 54 votes to 38)

AYES: Messrs Nakara; Ms. F. I. Ali; Messrs Limo, Lomwa; Ms. Kajuju; Messrs Kilonzo, Njomo, Melly, Langat, Abongotum, Kanini Kega; Ms. Korere; Messrs Sang, Kamanda, Dido, B. K. Bett; Ms. Otucho, Ms. Mbugua, Ms. Munene, Ms. Kipchoim; Messrs Nooru, Kiptanui, Rop, Linturi, Kimaru, Eng. Mahamud; Messrs Cheboi, Lessonet; Ms.(Dr.) Shaban; Messrs Gaichuhie, Gikaria, Ngunjiri, Mwangi, Rotino; Ms. Kanyua; Mr. Letimalo; Ms. Machira; Dr. Pukose; Mr. Tonui; Ms. Mitaru; Messrs Mwaita, Chepkong'a', Chumel, Bowen, Katoo; Ms. Chebet; Mr. Kipyegon, Dr. Munyaka; Messrs Cheptumo, J. K. Chege---

(Four who voted manually are missing)

NOES: Messrs Midiwo, Lempurkel, Oyoo, Wandayi, Aden, Oyugi, Mwadime, Simba, Kangara, Wakhungu, Maanzo, Ochieng', Outa, G.W. Omondi; Ms. Nyasuna; Mr. Chea; Prof. Nyikal; Mr. Opiyo; Ms. Mbalu; Messrs Kobado, Mlolwa, Magwanga, Ndiege, Kajwang', Mulu; Ms. Keraa; Messrs Ng'ongo, Onyura, Kisoi; Ms. Odhiambo-Mabona; Eng. Gumbo; Messrs Makenga, Anami; Mule, Bosire, Juma---

(Two who voted manually are missing)

ABSENTION: Ms. Banticha and Mr. Mohamed Diriye.

ADOPTION OF THE SECOND REPORT OF POWERS
AND PRIVILEGES COMMITTEE

Hon. Cheboi: Thank you, hon. Deputy Speaker. I am fairly ready to move this Motion, but I have been convinced and I have also convinced myself that due to its gravity in terms of the fact that we are discussing something which is unprecedented, it would be prudent, if you indulge me, that we have this Motion when we resume after the short recess when the Members will have sufficient opportunity to discuss it. Secondly, because of kind of issues that we are having in Garissa, you can see that the Members do not have the mood. That is my honest plea. This is something that touches on the Membership. I would rather they be present and in good numbers when they are not tired.

Hon. Deputy Speaker: I believe the Members are in agreement with what hon. Cheboi has said. Therefore, hon. Members---

(Hon. Maanzo stood up in his place)

Hon. Deputy Speaker: Hon. Maanzo, what is your point of order? You have heard what the Chair of the Committee has said. You are out of order. Please, remain seated, hon. Maanzo. Hon. Cheboi has given us his view and we have all agreed that the Motion will be moved when we resume. Therefore, we move to the next Order.

(Motion deferred)

MOTION

RATIFICATION OF EIGHT INTERNATIONAL CONVENTIONS
AND PROTOCOLS

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

Hon. Deputy Speaker: What is your point of order, hon. Millie? I hope you are not bringing a point of order in relation to the Order that we have moved from.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Deputy Speaker. Of course, I had an issue there, but will not bring it up. My point of order is in respect to the fact that as a nation, we are in a crisis. From the information that we are getting, several Kenyans have been killed in Garissa through a terrorist attack. We have said that we are sitting until the business of the House is finalized today, but it would not be prudent for us, as a House, to sit and turn a blind eye to the fact that there is a crisis in the country. I seek your indulgence that you use Standing Order No.1 and, instead of us moving this Order on Ratification of Treaties, which we can ratify even when we come back, we immediately proceed to discuss the crisis in Garissa.

We are a House of leaders and if there is a crisis in the country, we cannot sit - when we know that we are going on recess - and turn a blind eye to the crisis. So, kindly, indulge us using Standing Order No.1 and allow us to discuss the crisis in Garissa.

Hon. Deputy Speaker: Thank you, hon. Millie Odhiambo. We hear you and I believe all these Members are of the same opinion that we are in a crisis. We have a grave matter before us.

(Loud consultations)

I will indulge you that we allow hon. Maina Kamanda to spend as little time as possible on the Motion on ratification so that, instead of the Adjournment Motion taking half an hour, we can request that it takes an hour, so that the Members can have two minutes each having in mind that not all of us will be able to speak.

(Loud consultations)

Order, hon. Members! He is already on his feet and he has promised to take the shortest time possible. Let us allow him to move the Motion. I will give you some extra time, in addition to the half-an-hour, so that you can express your feelings about what is happening in Garissa.

Proceed, hon. Kamanda.

Hon. Kamanda: Thank you, hon. Deputy Speaker. I appreciate your concerns and the concerns of hon. Members. But I want to inform the House that some of the conventions will end on 12th April, 2015, when we will be on recess. Those are negotiated conventions. If hon. Members allow me, I

will read out all of them because other countries have already ratified them. It is only Kenya which has not ratified them.

MOTION

RATIFICATION OF EIGHT INTERNATIONAL CONVENTIONS AND PROTOCOLS

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

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works & Housing on its consideration of Eight International Conventions and Protocols relating to the Maritime Industry laid on the Table of the House on Wednesday, 1st April 2015; and pursuant to Section 8 of the Treaty-Making and Ratification Act, 2012, approves the ratification of:-

- (i) The 1988 Protocol to the Load Lines Convention, 1966;
- (ii) The 1978 Protocol to the 1974 Safety of Life At Sea (Solas) Convention (Solas 78 Protocol);
- (iii) The Protocol of 1988 relating to the International Convention for the Safety of Life At Sea, 1974;
- (iv) The International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001;
- (v) Convention on the Limitation of Liability for Maritime Claims 1976 (LLMC 1976);
- (vi) The 1996 Protocol to the Convention on Limitation of Liability for Maritime Claims (LLMC), 1976; subject to reservation of the right to exclude claims for damage within the meaning of the Hazardous and Noxious Substances (HNS) convention to avoid two systems of liability arising from the consolidated LLMC and the HNS Convention.
- (vii) The Nairobi International Convention on Removal of Wrecks, 2007; and,
- (viii) The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.

Hon. Deputy Speaker, these are conventions which other countries have ratified. I have brought them together because we have a candidate who is contesting the position of Secretary-General of the International Maritime Organisation (IMO). He is a Mr. Shiundu. Unless we rectify these conventions, he cannot qualify to be a candidate. While we were in

Australia, we were challenged by that country's Government to have these protocols and conventions ratified. When we came back, as a Committee, we talked to the Cabinet Secretary and we were told that the documents were before the Cabinet. We fast-tracked them and now here they are.

If we pass these documents, they will help us generate revenue and enable our people to get jobs across the country. The conventions and protocols are for the benefit of our country.

With those remarks, I beg to move and call upon my Vice-Chairman to second the Motion.

Hon. Deputy Speaker: He may proceed.

Hon. (Amb.) M. Maalim: Hon. Speaker, I rise to second the Motion. These are very important conventions and protocols. We are a member-State of the IMO. All these conventions and protocols have been negotiated and agreed upon, with our participation. Our ratification of these documents will help us to participate, as a member State of the IMO. We have gone through the documents, together with the experts. We have seen nothing wrong with them. We, therefore, request the House to ratify them.

With those remarks, I beg to second.

(Question proposed)

(Loud consultations)

Hon. (Ms.) Odhiambo-Mabona: On a point of order.

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

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Deputy Speaker. The point of order I will want to raise is in relation to what has just been moved pursuant to the Treaty Making and Ratification Act, 2012. I just want to request that you give a substantive ruling on this issue. From what you have heard the hon. Member read, he has read eight conventions and protocols. If you look at the Treaty Making and Ratification Act, what it envisages is that we will be bringing the conventions as substantive law. What we are actually doing now is that by this Act, we are passing eight laws at once. That is more or less like bringing a Miscellaneous Act and passing substantive law through it.

I am the one who brought the Treaty Making and Ratification Act. So, I am very familiar with that law and that is not the intention of that law. I am, therefore, calling on the hon. Deputy Speaker to make a ruling that, that is not in the intention of the law. We cannot pass eight substantive legislations like we are passing a minor Motion. We are passing laws that

bind this country on very serious issues in one sentence. This is doing a disservice to that Act. I would, therefore, want to call on your kind office if you could, please, consider giving a substantive ruling as to whether we can move this Motion or whether it is, indeed, proper that we bring conventions as miscellaneous amendments. This is because there are many other conventions that will come before this House.

Thank you.

Hon. Kimaru: Hon. Deputy Speaker, in as much as we have so many laws clumped together, let us not lose sight of the fact that these are very closely related. Again, we also have timelines to ratify these laws. As we have always said, desperate times call for desperate measures. As leaders of this nation, let us not allow those particular protocols to go un-ratified just because of technicalities. If we look at the bigger picture and the fact that they are closely related--- We have a time-line to stick to in the interest of doing the right thing. I would be of the opinion that we be allowed to proceed.

Thank you.

Hon. (Eng.) Mahamud: Thank you, hon. Deputy Speaker. With respect to my colleague hon. (Ms.) Odhiambo-Mabona, let me say this: These protocols and conventions are very inter-related and they are relating to:-

One, loading lines which talk about loading on ships. Load lines help to control weight on ships. The other one is on safety at sea. The other one is on liability in case of accidents. They are all inter-related. In fact, these conventions have all been discussed with Kenyan lawyers. Kenyans participated in this. What we are looking for now is only gratification. In fact, one of the conventions has Nairobi - because they were negotiating in Nairobi in 2007. It will be very shameful for Kenya not to be available on 14th April when the convention is due for ratification and that convention bears the Kenyan name: Nairobi Convention.

In fact, we went through this in a detailed way as Members of this Committee. We, on your behalf, went through it. We have been assured and we saw that there is only one reservation which was registered by Kenya during the process. So, I will plead the following: There will be nothing which we will achieve by delaying this. We will achieve nothing by delaying this. This will enhance the safety of our sea and the safety of our country by us ratifying this and put us in the international map as a country which has a long coastal line. We are a country that has a lot to do. About 95 per cent of our exports go by sea. Unless we ratify this, frankly, we are at risk of

pollution. The one on bunkers is the issue of spillage of oil. All these things have been looked at by the experts in the maritime authority. We became Members of the International Maritime Organization (IMO) in 1973. We have done a lot of work on this as a country. By having this, we stand to gain. Let us not use legalities to deny us ratifying this convention by delaying by a day later or one month later. We will add nothing. That, I can assure you!

With those few remarks, I beg that we proceed and ratify this. Thank you very much.

Hon. Anami: We are the peoples' representatives. Some of these conventions that we are hurriedly bringing to the House have been with us for more than 30 years. What is the hurry for? If we have waited for 30 years, why can we not wait for another one week? If what is at stake is what we have been told by the Chairman, my friend, my former Minister, hon. Kamanda, then I will say we will be out of order to hurry the passage of each of these conventions. Let him single out the individual convention that will affect that particular election that he has cited.

Otherwise, why would eight of them be the cause of the crisis? Where has this deadline been if these conventions were adopted 30 years ago? We have done a lot for Kenyans and in the spirit of the President's apology to Kenyans last week and in the spirit of inclusiveness, it will only be unfair for us to allow this to go on.

We are interested and we will like to look at the detail and the devil is always in the details. It is good for us to be participative while passing these conventions. While ratifying these conventions, we need to be informed. We need to give information that is correct.

Hon. Deputy Speaker, it is my strong opinion that it is important that we allow this to wait until we return from the Easter break.

Hon. Deputy Speaker: Hon. Members, I want to appreciate the fact that you are asking why it has taken 30 years. I am sure hon. (Ms.) Mabona-Odhiambo will tell you that the Ratification Act came into force the other day. It is not a question that it was there before. We appreciate the fact that you quite understand since it was your Bill, hon. (Ms.) Mabona-Odhiambo. But I would like to rule that on this one, we stand with the Committee which has had time to interact with this. It is a fact – as they have said – that they are all inter-related and it is not like it is three or four different Bills that have nothing to do with each other. You will get a comprehensive report on how we are going to handle the ratification of treaties in future in this House.

For this one, I beg that we go with the Committees' recommendation which has had time to interact with these treaties.

(Loud consultations)

Hon. Members, I said that when we will have our next Sitting, we will get a comprehensive report on this.

(Question put and agreed to)

Hon. Deputy Speaker: Hon. Members, next, we have the Adjournment Motion. As we promised, we would like to extend by an hour. Ordinarily, it would be half an hour for us to show our empathy with the ongoing---. So, let us measure what we can say even as we sympathize and empathize with the involved families. You can start to tell us a little, the hon. Junet, if it is true.

Hon. Members, I call the Deputy Leader of the Majority Party to move the Motion. We are a little bit tired. So, we can understand.

**MOTION FOR ADJOURNMENT UNDER STANDING ORDER No.
28**

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move:-

THAT, pursuant to the provisions of Standing Order 28, this House adjourns until Tuesday, April 14, 2015, in accordance with the Calendar of the Assembly (Regular Sessions).

I wish to state that this House works through a Calendar which is gazetted. It is time we go for the short recess before we come back again to resume our regular business in this House. It is particularly very sad that on this day when we are asking to adjourn, many Kenyans have lost their lives. It is so sad that while we think the insecurity issue is settling down, it is getting worse. Innocent lives have been lost. We cannot go on this way. I know the Government has put in several measures in place but, what I do not understand is why this keeps on recurring. I send my condolences on my own behalf and also on behalf of the Members of Parliament and Kenyans to the families who have lost their loved ones. The people who lost their lives today are students. They are young people who do not mean harm to anybody. They are studying so that they can have a future in this country. For how long are we going to be living this way entertaining our neighbours,

some of whom have become part and parcel of the terrorist actions that have been going on in Kenya?

Hon. Deputy Speaker, it was just the other day when we had the Westgate issue. We have had incidences all over the place. Today, Kenya faces a crisis that requires us to work together, speak with the same voice and make the whole world know that Kenya is under siege. Even developed countries have been attacked. The occurrence of those incidences in Kenya is too much. We cannot go on this way. Sometimes, I feel sad and helpless. But I think something can be done. We do not want our country get to a level where we cannot walk, study or do our daily chores safely.

We do not know where else those people are planning to strike. Just the other day, we tried to change our laws, so that we can have prior information and the Government can take action as it gets the information. Today is the saddest day of Kenya's history because of what is happening. I feel that, as Members of the National Assembly, apart from just talking and expressing our anger, we need to sit down and see how best we can work with the Government to make sure that, that does not happen again in our country.

Tourism has gone down. People in Coast Province, who depend on tourism, have really suffered. They are hungry. Their children are not going to school. Now, we have students whose lives have been curtailed and destroyed at this point when we thought that Kenya is on the right track. We cannot be talking about our country going forward development-wise if we cannot deal with terrorism and stamp it out once and for all.

I beg to move. I ask the Deputy Leader of the Minority Party, hon. Midiwo, to second.

Hon. Midiwo: Thank you, hon. Deputy Speaker. I rise to second the Motion of Adjournment. Before I go to the "meat" of the Adjournment Motion, let me join my colleague, hon. Naomi Shaban, in expressing my shock and sending my condolences to the bereaved families.

This House has a duty, as stated by hon. Naomi, to find solutions and work with the security agents and the relevant authorities to deal with this. I do not think this country is being helped by the structure of security as we know it. Something must happen. Even though we are mourning, we need to mourn with solutions. I have said on this Floor and I want to say it again, that the Administration and National Security Committee must give us a solution. We must fix the disorder in the structure of the Police Force in the Constitution. We must take the bold step. If we do nothing else, we must have a structure where there is a proper security structure in our country to

protect Kenyans. If we change nothing else, we must revisit the security structure in our Constitution.

We are dealing with a lot of insecurity issues because of ineptitude. The security forces have refused to work together. Garissa is nowhere near any border. We are now talking about building a wall so that we can fortify our country against Somalia. You will never find an answer in that. We are in Somalia fighting a war. We said we were going to a war in an operation called *Linda Nchi*. It is time to be in an operation called “Protect our Borders”. We need to militarize the borders as we find a solution in our Constitution.

We are going on recess on a week that the President’s Address was much debated across the country. Many of us said it was a good Address. What is shocking is that exactly seven days after the President moved the nation with a bold step; he has been mis-advised again to defy a court order as far as police recruitment is concerned. That is a tragedy. We are struggling to support the Government, but why shock us with an unlawful act? Some of the things we do---

(Hon. Abongotum spoke off the record)

You may want to do it your way, but I can tell you, my brother, that even you talking when I am trying to make a point show the unlawful nature of our nation.

(Laughter)

We are lawless. We must help the Government. It should shock some of these people when we congratulate Gen. Buhari for showing Africa something. Somebody will be shown something if nothing changes. When you want to curb and curtail the powers of the Auditor-General in the 21st Century, after saying seven days before that you want to deal with corruption, what are you telling Kenyans? You people are not helping the President. You are asking us to help him, but you are not helping yourselves. When you want to have a useless and powerless Auditor-General, you are not helping yourselves. When you talk about the Judicial Service Commission (JSC), you may want to do it the way you have done it. But I can tell you and you will hear it in funerals and corridors of power---

Hon. Deputy Speaker: Thank you. You will continue with the debate. There is no proposing of the Question. Hon. Johana Kipyegon.

Hon. Kipyegon: Thank you, hon. Deputy Speaker. I am very saddened especially with the situation that the country is facing now. As we speak, terrorists are holding several Kenyans hostage. Terrorists have killed more than 70 young Kenyans. I wish to pass my condolence to the bereaved families.

Before I even support this Motion, I want to say that sometimes, we as Members of Parliament, when such happenings occur--- Kenyans are mourning while an hour ago, we were busy voting and doing some business in this House, which is not even taking this country anywhere. I wish to say something about terrorists. As a country, we must now show a very convincing way of fighting terrorism in this country. I remember it is only a week ago when Western countries, including the United Kingdom (UK), issued a terrorist alert. Thereafter, they issued to their citizens travel advisories. What did we do? Our President, including the Cabinet Secretary (CS), rubbished that advisory. I remember even when I was going towards the University of Nairobi, I found that same advisory stuck on the notice board that there is going to be a terrorist attack. People should be careful and our President and the CS are busy rubbishing and telling the UK: “You are just telling us nothing.”

(Applause)

It is time the President tells us - and the CS too - although the CS is still new--- It is time the President of this country stopped sending condolences. Western countries are issuing travel advisories and terrorist alerts and ours are waiting to send condolences.

(Applause)

We are citizens of this country and there is no citizen who is more superior to the other. We spend billions of money. We even appropriate billions of shillings in this House on intelligence and security. For how long are we going to appropriate money for nothing? We have our forces in Somalia. We cannot send our forces to Somalia. We cannot recruit our forces to go and protect Somalis while our own are dying

(Applause)

We do not spend billions of money funding army barracks, training *askaris*, buying guns to go and protect Somalis, while our own children are

dying. I think this House should bring a Motion to bring back our security forces from Somalia.

(Applause)

They are doing a lot of nonsense in Somalia. They are subjecting this country to unnecessary dangers. When we speak about it here, the Leader of Majority and others will stand up and say that we are not moving out of Somalia until we complete a mission. You are not commandos in Somalia my brother! We need to remove our forces from Somalia. You want to tell us that you want to build a wall. I was in Germany for some time where I did some of my studies. They were destroying the Berlin Wall and here in Kenya, you want to invest in building a wall. Remove our soldiers from Somalia and our country will be safe. If we do not know how to protect our country--- We pretend that we have to be in Somalia like Uganda, Ethiopians and Americans. Those are people whose intelligence is respected. Ours is not respected. It is high time we reasoned like Kenyans.

Hon. Deputy Speaker: Your time is up. Let us have hon. Abdikadir Omar.

Hon. Aden: Thank you. On the outset, I wish to say that this is a very sad day for our country. Coming from Garissa, it is, indeed, an even more saddening situation in my county today. I wish to take this opportunity to send my very deep and sincere condolences to the families, friends and the people of Kenya who have lost their loved ones in that particular attack. It was un-provoked. It was an attack against very innocent young lives and very productive lives of Kenyans and it is a very saddening thing.

I also wish to condemn that attack and say that, indeed, those who conducted that attack are people who are seeking to divide us as a nation. Those are people who are envious about the wellbeing of this country of Kenya. They are our enemies. That attack must be condemned in the strongest terms possible. I also wish to send a word of encouragement to our very hard working forces. Those of us from Garissa have been in very close contact with the ground literally minute by minute. We have heard that our security forces have been casualties on that particular incident while saving the lives of Kenyans.

We encourage you. We are with you as you work up to this minute, trying to save the lives of those Kenyans who are still being held hostage. In the same vein, I would like to pass a word of encouragement to the various hardworking Government agencies, NGOs and the Kenya Red Cross

Society, who have also shown a lot of commitment in standing strong to ensure that we come out of the situation a stronger nation. As Kenyans, we must stand in solidarity with each other and conduct prayers during this difficult time. It is a very sad day.

At this point in time, our enemies would like to see us blame ourselves and get divided. Those are things we cannot afford at this moment. We will sit round a table some day after this incident is behind us and take audit of exactly what happened. I want to urge my colleagues to be alive to the fact that, even as we contribute to this debate, our security forces and other Kenyans are on the ground. The Cabinet Secretary for Interior and Coordination of National Government has been there since the very early morning hours of today, together with the Inspector-General of Police and other top security officers. Let us be careful about the words that we utter at this point in time. We will take count and reflect on the issues that caused this particular incident. But at this point in time, we need to remain united and strong, as a country. We need to go into prayers. We need to stand in solidarity with our security forces as they do their best to resolve this issue.

Hon. Deputy Speaker, I can tell you that according to the messages that have come to us from the ground, had it not been for the very courageous and brave intervention of our security forces, the situation would have been worse and grave than it is. We have lost 70 lives. We could have easily lost hundreds of lives. Let us stand in solidarity with them at this moment. Let us pray and stand in solidarity with the families that have suffered losses. Let us stand with the people of Garissa County, who are today devastated. Indeed, I wish to send my word of encouragement and urge the people of Garissa to continue donating blood, as they have been doing since morning, so that the lives of those who have sustained injuries can be saved.

Hon. Deputy Speaker, today is a very sad day. I cannot say more, except to once again, send my condolences to the bereaved families.

Thank you.

Hon. Deputy Speaker: Next is hon. David Kangongo.

Hon. Bowen: Thank you, hon. Deputy Speaker. I want to take this opportunity to send my condolences to the bereaved families---

Hon. Deputy Speaker: Hon. David Kangongo, can we hear hon. Gerald Opiyo? He is on an intervention. Let it be a point of order, hon. Opiyo.

Hon. Opiyo: Thank you, hon. Deputy Speaker. Owing to the interest exhibited by hon. Members on this Motion, and given that we have been

sitting here since morning, would it be possible to reduce the speaking time for each Member to three minutes, so that as many Members as possible may speak to this matter?

(Question, that the speaking time be reduced to three minutes for each Member, put and agreed to)

Hon. Deputy Speaker: Three minutes it shall be!

Hon. Bowen: Hon. Deputy Speaker, I want to also join my colleagues in mourning those who have lost their lives. On behalf of the people of Marakwet East Constituency, I send my condolences.

Regarding insecurity, yesterday, I talked about the Baringo, Turkana and the Kerio Valley region. As much as I applaud the President for directing that the 10,000 new police recruits report to the training colleges due to a shortage of officers, there is also need for the National Police Service to be given their own budgetary allocation. If it were not for helicopters availed by the Kenya Wildlife Service (KWS) and the Kenya Forest Service (KFS), deployment of personnel would not have been possible. That is because the NPS helicopters are grounded. The NPS does not have a Vote of its own. We have appropriated Kshs67 billion to the NPS through the Vote of the Office of the President.

Money has been lost in scandals such as Anglo Leasing and what PAC was investigating. This time round, we want the police to have their own money to respond to such crises. If there is one point in Jubilee Manifesto which they have failed to deliver, then it is security.

(Applause)

We might have succeeded in all the other areas but, if this country is not safe, then neither this Parliament nor our children are safe.

Hon. Deputy Speaker, I do not want to speculate but it seems these acts of criminality are not about terrorism. It is like a religious war. That is because the non-Muslim students in Garissa were being pulled out and shot. I urge my fellow colleagues to unite. Let us not be divided by terrorists along religious lines. Let us work together. Let us stand united as Kenyans, especially at this time.

When we passed the security laws, some of us were so much against it. This time round, they are saying that the President is not doing anything. This is the time you are realizing the importance of those security laws. Again, you want to say that the President has gone against the law. Which

law is that, if I may ask? We are talking about loss of lives and you are talking about the Bill of Rights. Is there a right to die? I want to end on that note in order to give a chance to my colleagues to also contribute. I send my condolences to those who lost their lives.

Hon. Deputy Speaker: Hon. Fatuma Ibrahim.

Hon. (Ms.) F.I: Thank you, hon. Deputy Speaker. I stand to condole with the families and friends of the Kenyans who have died in Garissa. On my behalf and that of the people of Wajir and the people of North Eastern Province, I would like to say that it is a very sad moment for Kenya and, particularly, for the families who lost their loved ones.

That scenario is very saddening and shocking for all Kenyans and all human beings who care about life. The sad part is that the terrorists are with us everywhere and they are terrorizing Kenyans and other human beings every minute, and nothing is being done to apprehend them. It is very sad that the terrorists are dividing Kenya. They are also trying to create an impression that they are connected to a religion. I want to confirm that those terrorists are not human beings; they have no religion and they attack anybody. They are always creating a rift between human beings. They do not respect any religion or life. They are people who terrorize others. They are always fighting people within the communities that they live in.

Hon. Deputy Speaker, what saddens me is that there were reports that an alert was given that the same Garissa University was likely to be attacked by *Al Shabaab*. What is shocking is that the security agency in Garissa and the National Intelligence Service did not provide adequate security to protect the students and other people who were under threat. One sad thing is that the national Government is not devolving enough money to security agencies at the county level, which is evident in our counties. In Wajir, recently, the County Commissioner and other security agencies could not respond to emergencies because of lack of vehicles, fuel and other resources that could enable them do their work properly. It is a high time the national Government devolved money to the security agencies so that they can be able to operate effectively and restore law and order.

Hon. Deputy Speaker: Your time is up, hon. Fatuma.

Hon. ole Lemein: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. On my own behalf and on behalf of the people of Narok South, I want to pass my condolences to the bereaved families. It is, indeed, painful. Terrorists have attacked an institution of higher learning and killed innocent harmless students who were trying to get skills to develop themselves and their beloved country. I join the rest of my colleagues in

saying that this country needs to fix security matters. Until we develop systems and have officers who are skilled through a lot of training, it will be very difficult.

I agree with my colleagues that the Police Force is facing a lot of challenges. A week or so ago, we had a challenge between my constituency and Tanzania. Whenever you approach the police, they always say that they do not have vehicles or fuel. It is pathetic. It is disheartening to look at what is happening in Garissa. I have been following it up and I want to congratulate the KDF and the Kenyan police. They have done a good job. I want to join the rest of Kenyans in mourning the young people who have lost their lives in Garissa.

Hon. Kiso: Thank you, hon. Deputy Speaker. Let me join my fellow Kenyans in condoling the bereaved families. Today is a sad day for this nation. The nation is bleeding. We have lost harmless, innocent young Kenyan lives. As we mourn and express our displeasure on the security issue, we should ask ourselves where we went wrong. Insecurity has now become quite serious. It has got out of hand and it is time, as a nation, we carefully scrutinized and interrogated our actions.

As we mourn the loss of young Kenyan lives, we need to ask ourselves how, as a nation and a security team, we are consuming security information. That is intelligence information. It is quite saddening that that information had been relayed to every Kenyan. We seem not to have taken heed and taken the necessary intervention measures timely to avert such incidences. It is quite unfortunate that we are seeing what is happening today. The photos that are circulating in the social media are quite saddening. It is only in Kenya where we allow such things to be going on every now and then. We have moved Motions of adjournment to discuss emergencies in quite a number of Sessions. We discussed the Mpeketoni, Baragoi, Kapedo and other incidences. It is high time, as a country, we said enough is enough and reviewed the budgetary allocation to our security agencies.

We should commend the officers who are on the ground trying to save the remaining lives and avert further casualties. I thank the Red Cross Society and the team that is already on the ground. I urge Kenyans to be very sensitive and careful with the statements they utter at this very critical moment because they may have---

Hon. Deputy Speaker: Your time is up. The Floor goes to hon. hon. (Ms.) Kanyua.

Hon. (Ms.) Kanyua: Thank you, hon. Deputy Speaker. I am also happy to contribute to the Motion. I start by offering condolences to those people who have been affected and the many that are still being held hostage. It is really one of the saddest days in this country. News that this is going to be bigger than the Westgate Mall attack and bigger than any of the other attacks that the country has suffered before is quite sad. The condolences of the House and Members of Parliament are inter-twined with the sadness that we share with the rest of Kenyans on this matter. Just as we agreed to move the Adjournment Motion, I want to state that it is quite sad. If there is a time we need unity in this country, it is a times like now. If there is a place we need unity, it is reforms in the security sector. Reforms in the National Police Service were started and then stopped. I speak as a Member of the Human Rights Caucus. It is sad to hear the President, in offering condolences, dismiss what the Judiciary is doing. It is sad that, that is the tone he adopted. It is important to get the 10,000 police officers we need. However, it is important that corruption in the security sector is dealt with. There can be no other way. We might want to hide under the bed, but we must know that there is corruption in the security sector. We have to deal with it.

I also speak as the Vice-Chairperson of the Justice and Legal Affairs Committee. We spent the whole day on the petition of the Ethics and Anti-Corruption Commission. When we listened to the allegations, we wanted to cry for our country; that we can let corruption bring this country down to its knees. As we look at this Motion, I still urge that the House spends time carrying out a surgery of our security sector. We need a radical surgery. It is not about personalities. It is good that we have Cabinet Secretary Joseph Nkaissery. However, hon. Nkaissery will not do much in a rotten institution with corruption. We have to adjust our ideals on patriotism. We have to look at the question of why we have radicalization and why *Al-Shabaab* would attack an institution of learning. We have to look at the root causes of these issues. We have to do a better report than what we did with the Westgate terror attack. As a House, let us commit ourselves to helping our President. Moving this country forward involves dealing with corruption and other issues that bedevil the security sector and embrace human rights. Dealing with human rights issues is not like wearing a jacket when the rain comes. Human rights are principles that you live with every day. As we confront insecurity, we should use human rights and confront corruption.

Hon. Deputy Speaker: Next is hon. Maanzo.

Hon. Maanzo: Thank you, hon. Deputy Speaker, for giving me this opportunity to speak once more. I would like to condole with the families of the bereaved and state that security has become a very serious matter in the country. We have had all manner of threats directed at this House, primary schools, secondary schools and universities. Now it has happened to a university. Only cowards will attack defenceless people. It is very painful to us as a country. If they are really serious people who want to fight our country, then they should go where they should be and fight with equally armed people. Those are cowards and we must deal with them ruthlessly as a country. Again, other countries are giving us security intelligence while our own country is not releasing any.

Our security forces need to strengthen the intelligence team so that we have information. Those people were 300 and more kilometres into Kenyan soil. Somebody from the border up to Garissa should have known that there is an intended attack. That person did not release that information to the intelligence. Even if it was released to the intelligence, it has not been acted upon. Therefore, hon. Deputy Speaker, it would be prudent if we could even increase the budgetary allocations and also relook at the whole security structure. Now that we have our colleague hon. Nkaissery there, we should give him all the necessary support with budgetary allocations. I believe he will be able to re-arrange the security system in Kenya - especially the intelligence - so that we can be able to know before they strike and we strike them before they strike our country. It is very sad that we now have to deal with over 70 deaths. The images on the social media are really appalling and, as a nation, we are really looking “fallen”. I would like to encourage our country to work together, face and conquer the enemy.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Adan Nooru.

Hon. Nooru: Thank you, hon. Deputy Speaker. I want to join my colleagues in passing my condolences to the bereaved families who lost their loved ones. Those were very young, energetic and potential people who could have built this country. I want to take this opportunity to appeal to Kenyans so that this attack does not take a diversion from real terrorism to religious issues. We have to be very careful. I remember the same number of young people who had just finished college from a medical school were killed in Mogadishu, despite that they were all Somalis and Muslims. So, those people have no borders. They are enemies of this world. They kill any colour and religion. They do not choose.

The real issue is: Where did the rain start beating us? Are we really learning from the first mistakes? We had Westgate, the Mandera attack and we have this one. Are we really learning from those past mistakes? Where did we go wrong? What is wrong with our intelligence system? Where are we training and where are the rest training? Look at our neighbours who are Africans like us and who have more or less resources and have the same knowledge and police workforce or whatever. They are able to secure their countries. Yesterday, I said that this country is going to be overrun. Some people were just laughing at me when I said that this country can be overrun by *Al-Shabaab* anytime. That it is not a laughing matter. It is not an issue of people moving from Garissa to Mwingi. They will still follow us wherever we are. People may be thinking that those people came from Somalia. They may have left Nairobi and went to attack Garissa. They are all over. They are here with us.

So, we have to be very careful. We need to address this issue, change our approach and have a special force which is specially trained to deal with those people.

With those few remarks, I support the Adjournment Motion.

Hon. Deputy Speaker: Hon. James Nyikal.

Hon. (Prof.) Nyikal: Thank you, hon. Deputy Speaker. On behalf of myself and the people of Seme Constituency, I wish to pass my condolences to those who have been bereaved. I must also condemn that act and those who have perpetrated it and also thank the security team that has responded in whatever way. I also agree that this is a time we must work together as a nation and look at this issue of security together. What we have and whatever we say is a failure of the security system.

We have passed laws, shouted at each other here, torn each other's clothes and beaten each other. In the end, what have we received? I have said before that this country is at war. We went into Somalia and actually won the war in Somalia. But the warfront was brought back into Kenya. We are not responding as a country at war.

This is guerilla warfare; a continuation of what happened in Somalia. In my mind, the single biggest failure we have is the failure of using security information. Nothing happens. No catastrophe occurs, for all the time we have been here, every month we have had these adjournments and each time there was a rumour that everybody knew. Other countries even passed information and advisories. How come we did not use the information if everybody knew?

We have a structural problem in our security system. Internal security is, to a large extent, a police matter. When we have the information, we cannot respond. There is no much time and we must respond to the police reforms and do them. We cannot minimize the issue of corruption. I once listened to a BBC report and it was asked how come other countries that are in Somalia are not being attacked. The response was, because in Kenya, it is easier to breach the security system because of corruption. So, we must look at it like that. I have been in Government. I know, sometimes, when you we give resources--- When departments ask for resources, they are so huge that we think they are joking. That is the amount of money we need to put in our security system.

Hon. Sang: Thank you, hon. Deputy Speaker. I also want to join my colleagues and Kenyans in expressing my condolences to the families of those who are affected. It is sad that today morning at around 5.30 a.m. some guys went and killed a good number of young Kenyans. We are supposed to do soul-searching. We need to ask ourselves some questions. I know that we have lost a good number of lives through terrorism. We have seen that a good number of people have been killed. We are supposed to sit and ask ourselves why we are having all those other problems.

Some of my colleagues have ventilated on some of the suggestions and issues of having our forces somewhere in Somalia. I do not know if it will help. I also want to congratulate the President because I have just seen that he has ordered the 10,000 recruits who were recruited the other time - and the court told them not to go - to report. I know they are going to report. I know we are trying as much as possible to do what we can. But I want to honestly say that we are supposed to do a soul-searching and see the best we can to help our people not to be killed. I want to say sorry to the families who have lost their loved ones.

Thank you.

Hon. Dido: Thank you, hon. Deputy Speaker. On the outset, I want to convey my condolences to the families of the young ones whose lives have been cut short today. The security of Kenya is paramount and it must be uppermost than any other thing because, if we do not have security, then we cannot talk about development, education and every other thing. University education is so important for every country. It is the best from our communities that we send to the university. For those lives to be cut short in the way it has happened today, it is the saddest moment in our country. I want to thank our security forces, particularly the KDF. I want to persuade my hon. colleagues that it is by having our forces in Somalia that we were

able to break the back of *Al-Shabaab*. The question that we must continue to ask is: What about the homeland security? How do we secure our towns, our villages, our roads and our supermarkets? In this country, there is a lot of finger-pointing.

It is true that hon. Uhuru Kenyatta is the President of Kenya. But Uhuru Kenyatta will not do each and everything under the sun to protect Kenyans.

What I want to say is that, as Kenyans, we must wake up and be part of the security architecture of this country. If we are not going to be sensitive and if we are not going to help our countrymen, this country will go down. For Muslims and our brothers from Northern Kenya, Wangari Maathai once said “If things around you are dying, know that you are the next”.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Mule.

Hon. Mule: Thank you, hon. Deputy Speaker, for giving me this opportunity to pass my condolences and those of the people of Matungulu to the families of the young lives that we lost this morning in Garissa.

It is the saddest Thursday before Jesus was crucified and it makes me sadder to imagine that those young people have lost their lives at a very tender age. We want to condole with their families and friends. We must rise to the occasion as leaders of Kenya without fear or favor of contradiction. There is total security sabotage and total collapse of our security system through corruption. It is saddening when we sit here, as hon. Members of Parliament, go through the Budget cycle to make money available to the security operators in this country and yet, they cannot do proper accounting of the money allocated by this House to make sure that hon. Members of Parliament know whether the money allocated went to the right place. It is against human rights and any right to life to terminate young peoples' lives like this.

This nation needs to go an extra mile until whoever is sabotaging the Government from inside is found and dealt with ruthlessly. We can be convinced today that somebody somewhere had information, passed it to the social media, but not to the relevant authorities so that what he or she was planning is not known. It is high time to say that, as a country, enough is enough. Kenyans should not die anymore and, as leaders, we do not want to hear endless speeches anymore where we are told: “We are not leaving any stone unturned.” Leave those stones the way they are and deal with the issue of corruption.

(Applause)

We do not want to hear stories that we are going to leave nothing untouched.

Hon. Deputy Speaker: Your time is up! Hon. Waiganjo.

Hon. Waiganjo: Thank you, hon. Deputy Speaker. On my own behalf and on behalf of the people of Ol-Jororok, I wish to express my deep sympathies to the bereaved families. This country must now unite more than ever before. It just goes to show that the ball is now back to the court of the National Security Council, the men and women responsible for our security. This is the time that we must debate and ask for a National Security Policy. We are very vulnerable and, sometimes, I think the *Al Shabaab* looks at us and decides to leave us alone. It is not by the might of our security organs that we sometimes enjoy relative peace; it is because of God's grace. But then again, we cannot just rely on God's grace. We must make concerted efforts now more than ever before.

For the country to unite, Christians and Muslims must know that there is a concerted resolve by the *Al Shabaab* to try and divide us along religious lines. So, we must all start together and decide never ever to be divided along those lines. We must also sympathize with our National Security Council because being the supervisors of our security organs, I believe they are doing everything that they can to make sure that the country is safe. It is a setback whenever *Al Shabaab* hits at us. So, let us also support them. Let us try to see that our security organs and agencies are well funded. Let us not pass blame. This is not the time to pass the buck. Kenya is at war with *Al Shabaab*. It is not going to stop. *Al Shabaab* has not said that this is their last hit. Indeed, they are on a journey to hit us where it hurts. It will not stop. Unless we come together and do something very drastic as a united country, this thing is going to "eat" us. So, I urge that the country remains united. However, let us have a policy on national security as a way forward. With those few remarks, I beg to support the Motion for Adjournment.

Hon. (Eng.) Mahamud: Thank you very much, hon. Deputy Speaker. Let me contribute to this Adjournment Motion. From the outset, let me pass my condolences to the families of the young ones who were killed today. In fact, the attack is still going on because I am told that a 100 of them are still missing. It must be condemned in the strongest terms possible. *Al Shabaab* fighters have decided to invade us. We are at their mercy now. Every month, we hear of attacks. There was the one in the quarry, the bars and now in the university. It is a very serious matter. We must do something about security.

As a country, we must know that *Al Shabaab* is out to destroy this country. We must strategize. We are now working without any strategy.

We are not detecting those people. As the President said the other day, they were detecting, disrupting and preventing *Al Shabaab*. Nobody is doing anything about those three terminologies. Nobody is detecting, preventing and disrupting *Al Shabaab* activities. We are only coming together to mourn when they do harm. It is unfortunate that the way the *Al Shabaab* are moving, they will bring disunity in this country. What we are hearing today is that they are selectively killing their victims. That is very bad.

It is high time that this country comes together and looks at the security issue as a national issue. There must be a conference that discusses the issue of security. What needs to be done? We must come up with a strategy to address the situation. The way we are handling it is no longer viable. The issues are so serious today to be left to the usual casual guys. Our security guys are normally very casual. It is unfortunate that today we are discussing this. I know that they have done some good job. They are trying their best. However, for us to avoid that happening again, we must address security issue. We must move from the issue of “business as usual” and this issue of being casual.

There is also the issue of corruption. The President talked about corruption. Just the other day, we got a dossier of people who are supposed to be corrupt. However, if you look at it, the worst corrupt institution is the one that deals with security matters. I know what has been happening in Mandera and other places. Unless we really deal with corruption--- Today, if you give information to the police, the information is sold.

We are in Somalia to secure that country. One can say it is our neighbour. We have an international obligation but we must secure our country. There is no moral authority that we have to secure a neighbouring country when we cannot secure ours. We are talking about building a wall. That is very primitive. We do not want a wall.

Hon. Deputy Speaker: Hon. John Waluke, for one minute.

Hon. Koyi: One minute.

Hon. Deputy Speaker: Yes, because it is time.

Hon. Koyi: Thank you, hon. Deputy Speaker, for giving me this chance to speak. I am not going to send any condolence because we have sent enough. Time has come to say no to the killers because we cannot continue sending condolence every time. As a country, we need to be firm with those killers. Time has come even if it is the country to divide--- It is

now because we know the people and the tribes that are killing our people. So, we cannot pretend and say every time that we are sending condolences. When are we going to stop sending condolences? If it is religion, time has come to say no. We can divide. We cannot watch our people being killed by one tribe and then we say we are sending condolences and we unite as a country. There is no unity in this country. We can be divided today, tomorrow or any other day.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time being 9.15 p.m., this House stands adjourned until Tuesday, 14th April, 2015, at 2.30 p.m.

The House rose at 9.15 p.m.