

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 21st April, 2015

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### ANNUAL NATIONAL PRAYER BREAKFAST

**Hon. Speaker:** Hon. Members, the Kenya National Assembly Prayer Fellowship Group shall host the Annual National Prayer Breakfast on Thursday, 28<sup>th</sup> May, 2015, at Safari Park Hotel, Nairobi. It is expected that over 1,500 guests shall be in attendance.

This Prayer Breakfast shall be an interdenominational prayer meeting sponsored by Members of Parliament. All Members of Parliament shall soon be receiving invitations to this event and are requested to confirm attendance in order to facilitate seating arrangements.

Hon. Members are, therefore, requested to confirm attendance with the Office of the Clerk at least by 30<sup>th</sup> April, 2015. You are kindly requested to make contributions towards the cause.

You may contact the Chairman, Prayer Breakfast Group, Hon. (Capt.) Clement M. Wambugu, for any further clarification.

I thank you.

### PETITIONS

#### RECOGNITION OF KENYA ASSOCIATION OF PRIVATE HOSPITALS BY NHIF

**Hon. Speaker:** Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, hon. Speaker, for giving me this opportunity to present this public Petition by the Kenya Association of Private Hospitals (KAPH) on recognition as a legal personality by the National Hospital Insurance Fund (NHIF).

I, the undersigned, on behalf of KAPH, draw the attention of the House to the following:-

THAT, NHIF is a critical player in funding healthcare delivery throughout the country.

THAT, the Constitution protects all citizens from all forms of discrimination with regard to provision of healthcare.

THAT, KAPH has a huge membership across the country and is committed to offer quality healthcare services to all Kenyans to actualise Capitated Civil Servants' and Uniformed Officers' Medical Scheme.

THAT, NHIF is unwilling to engage and/or to involve KAPH members, who are accredited providers of healthcare, in a structured consultative process that should pave way for smooth actualisation of the said Capitated Civil Servants' and Uniformed Officers' Medical Scheme.

THAT, over time, NHIF has been unilaterally reviewing the capitation rates downwards midstream, with no reference to KAPH members and further it has, on its own, been taking decisions to withhold both capitation and fees for services payments without engaging and involving the private hospitals which include medium and small private hospitals and clinics, licenced by the Kenya Medical Practitioners and Dentists Board (KMPDB), who are owners of KAPH.

THAT, NHIF has continuously declined to listen to KAPH grievances, despite its non-adherence to the terms and conditions of service in the capitation contract.

THAT, NHIF has proved that it is an unwilling partner to the contracts and agreements with KAPH members, specifically its refusal to share and discuss the results of the 2012 and 2014 actuarial studies that were carried out to help in determining the levels of capitation rates.

THAT, all KAPH members are ready and willing to play their part in delivery of quality healthcare services to all Kenyans and in the realisation of universal health coverage, especially to the patients who are poor, vulnerable and under-provided for, to have the country provide them with quality universal health coverage closest to where they live.

THAT, the matter in respect of which this Petition is made is not pending before a court of law.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Health considers passing legislation to give KAPH a legal personality to effectively become a *bona fide* representative of its members in the NHIF Board in order to play a leading role in driving provision of quality healthcare throughout the country; and, intervenes to compel NHIF to involve all *bona fide* healthcare providers in consultative discussions on all aspects of service contracts, and to strictly adhere to contracts concluded with healthcare providers and be ready to compensate the provider, among other key issues.

And your Petitioners will ever pray.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Abdullahi Diriye.

MANAGEMENT OF EWASO NYIRO RIVER WATER BY  
WATER RESOURCES MANAGEMENT AUTHORITY

**Hon. Mohamed Diriye:** Thank you, hon. Speaker. I, the undersigned, on behalf of residents of the Ewaso Nyiro North Catchment area in Wajir County, draw the attention of the House to the following:

THAT, all rivers, lakes and other water bodies in the country fall under public land as contemplated under Article 62 (1) (i) of the Constitution.

THAT, ownership in trust and management of water resources is a prerogative of the national Government through the National Land Commission and the Water Resources Management Authority as stipulated in Article 62 (3) of the Constitution and Section 8 of the Water Act, 2002.

THAT, management of River Ewaso Nyiro North Catchment area, which is classified as a water scarce region, falls under the National Land Commission and the Water Resources Management Authority.

THAT, the Water Resources Management Authority has been issuing permits for the extraction and abstraction of water in the upstream of Ewaso Nyiro River without due consideration of the procedure outlined in Section 29 (4) of the Water Act, 2002.

THAT, by so doing, the Authority has deliberately given priority to agricultural, Industrial and other non-domestic uses of water instead of giving precedence to domestic use as set out in Section 32(2) of the Act.

THAT, in this regard the Authority has acted in abdication of its solemn duty of ensuring equitable use of water resources in the Ewaso Nyiro North River Basin, thereby jeopardising livelihoods of downstream users in Wajir County.

THAT, even though the dire shortage of water resulting from flawed issuance of water usage permits upstream to users, has been raised to the Water Resources Management Authority, no remedial measures have been initiated by the Authority.

THAT, the issues raised in this Petition are not pending before any court of law, administrative tribunal, constitutional or legal body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Environment and Natural Resources:-

- i) investigates circumstances under which the water Resources Management Authority has been issuing water extraction and abstraction permits to upstream users in breach of Sections 29(4) and 32 (2) of the Water Act, 2002; and,
- ii) intervenes with the relevant authorities to ensure that any permits issued contrary to provisions of the Water Act, 2002 are revoked forthwith with a view to alleviating the acute water shortage caused to downstream users.

And your humble Petitioners will ever pray.

Thank you.

**Hon. Speaker:** Very well, both Petitions are referred to the relevant committees to act within the time frames that are provided for in our Standing Orders.

Next Order.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Tuesday, 21<sup>st</sup> April, 2015:-

The Constituencies Development Fund Board Report on Projects Approvals and Disbursements status, March, 2015, including restrictions on constituency accounts.

The Ministry of Information, Communication and Technology Half year Report on Project Implementation under the 2014/ 2015 Medium-Term-Expenditure Framework (MTEF) Budget.

The Report of the Auditor-General on the Financial Statements of the Office of the Attorney-General and Department of Justice for the year ended 30<sup>th</sup> June 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Council of Governors Secretariat for the year ended 30<sup>th</sup> June 2014, and the certificate of the Auditor -General therein.

The Report of the Auditor-General on the Financial Statements of Public Procurement Oversight Authority for the year ended 30<sup>th</sup> June 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the National Council for Science, Technology and Innovation for the year ended 30<sup>th</sup> June 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Kenya Sugar Board for the year ended 30<sup>th</sup> June 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Kenya School of Law for the year ended 30<sup>th</sup> June 2014, and the certificate of the Auditor-General therein.

Thank you.

**Hon. Speaker:** I have been informed that there will be sufficient copies, especially of the Report of the Constituencies Development Fund Board Report on the Projects Approvals and Disbursements Status, March , 2015, including restrictions on constituency accounts. I think it is absolutely important for Members to get those copies. Let us have Hon. Kathuri Murungi on behalf of the Departmental Committee on Environment and Natural Resources.

**Hon. Murungi:** Hon. Speaker. I beg to lay the following Papers on the Table of the House today Tuesday, 21<sup>st</sup>, April 2015:-

Reports of the Departmental Committee on Environment and Natural Resources on:

The United Nations Framework on Climate Change (UNFCCC) Summit, 2014 held in Lima, Peru from 1<sup>st</sup> to 12<sup>th</sup> December, 2014.

The Petition on the degazettement of Nyambene National Reserve; and,

The Petition by the residents of Bura Constituency on the degazettement of Legal Notice Nos. 39 and 40 of 2013 on the declaration of Bangali and Mbalambala as forest areas.

Thank you, Hon. Speaker.

**Hon. Speaker:** I am informed that the Vice-Chairperson of the Departmental Committee on Justice and Legal Affairs is to table a Report at 4.00 p.m . So go to the next Order.

## STATEMENTS

## RECONSTITUTION OF PUBLIC ACCOUNTS COMMITTEE

**Hon. A. B. Duale:** Thank you. Today was the last day for the leadership and the Committee on Selection to bring the names of the reconstituted Public Accounts Committee (PAC) to the House. We have met this morning under my chairmanship as the Chair of Committee on Selection, and both coalitions have submitted their names, and we have a reconstituted PAC, which we ultimately need to forward to the House Business Committee (HBC) to consider. We want an extension of time by one day, and tomorrow afternoon we will table the Motion for the approval or rejection of the new members of the PAC.

**Hon. Speaker:** I had already seen the communication in that regard and it is fair to appreciate that there was not much time for it to be considered by the HBC. So, the Report will be tabled tomorrow. There is extension of time.

**Hon. Maanzo:** On intervention, hon. Speaker!

**Hon. Speaker:** Before we get to Motions, I see hon. Members who have put in their cards for intervention. One of them is hon. Daniel Maanzo.

**Hon. Maanzo:** Hon. Speaker, during Statements last week the Speaker ordered that the Committee on Delegated Legislation makes a presentation on a matter touching on security and a matter touching on the Ministry of Education. I do not know whether--- It has not been reported as to whether they were to present it today.

**Hon. Speaker:** That the Committee tables a report?

**Hon. Maanzo:** It is about the Committee on Delegated Legislation. There were some regulations touching on the Ministry of Education, Science and Technology and on the intake of security personnel, which took place yesterday; they were to be brought to this House today.

**Hon. Speaker:** Hon. Cheptumo.

**Hon. Cheptumo:** Hon. Speaker, I confirm to the House that what the Member has said is business already done. Last week, on Thursday, I stood up before this House, in his presence, and I formally told the House, and the nation, that the regulations for the police recruitment were actually passed by the Committee even before the recruitment on Monday. The Basic Education Regulations, 2015 were tabled on Thursday. They are before our Committee for consideration. That is the position as of now. Since my colleague is a good friend of mine, I do not want to go beyond there.

**Hon. Speaker:** I appreciate that he is your good friend, but if he shows ignorance, he must be told. If it is a matter that you have already reported on to the House, he needed to check the *HANSARD* before pretending to raise it again. It was out of order for him to do so.

Hon. Maanzo, you may not have been in the House then. Is that not the situation? Or, is it that you heard but you chose not to remember today, especially with regard to the regulations about the police? It is also fair to appreciate the procedure. Sometimes regulations may be found by the Committee to be in order and there may not be debate on them. There are various options. It is fair to just cross-check with your good friend, hon. Cheptumo.

Let us hear another Member, who has also placed an intervention request; hon. Injendi.

**Hon. Injendi:** Thank you, hon. Speaker. I would like to know from the Chairperson of the Committee how long it will take them to consider Prof. Kaimenyi's guidelines on the education matter. What is happening at present is that, arising from his gazettment of the guidelines, school boards are being formed.

**Hon. Speaker:** Hon. Injendi, you also need to appreciate our own rules. Are we within the timelines? Not unless you are saying that time has elapsed. I am sure that the able Chairperson of the Committee would have sought extension of the House. As long as we are within the timelines for consideration of the regulations by the House, there should be no cause for alarm, unless you are urging them to put extra efforts and bring them here sooner. Anything that is done contrary to the law is a nullity. I do not want to pre-empt what they are likely to recommend.

Hon. Injendi, are you suggesting that they are out of the timeline?

**Hon. Injendi:** Hon. Speaker, I would appeal to the Committee to work extra hard because school management committees are being formed. I am sure that once they are formed, they will make decisions that may affect schools and education in general.

**Hon. Speaker:** Anything done against the law is a nullity. That is what I am telling you. If it is done *ultra vires* the law, it is a nullity. If people are acting in pursuant to those regulations and the regulations have not yet been passed by this House, whatever they will have done will be an exercise in futility. That is the long and short of it, unless hon. Cheptumo wishes to inform the House further.

**Hon. Cheptumo:** Hon. Speaker, your guidance is the true position. I assure my colleagues, and the nation at large, that we will do our best to conclude the consideration of the regulations. We are aware of the attention that this matter has received across the country. There are many stakeholders we will be having a session with. I assure my colleagues that we are all affected. I have a constituency like him. We have schools in those constituencies. We are not going to delay on this one. We will move with speed and report back to the House.

What the hon. Member said is true. Any attempt by the Cabinet Secretary, or any other person, to give directives based on the regulations will be null and void. The Cabinet Secretary should listen to what we are saying. We will not allow an abuse of the law. We are a country that believes in the rule of law. Matters of education are very sensitive. I call upon anybody who is aware of any action taken on the basis of the regulations to inform us. This is a House of elected leaders. We have the right to intervene.

Hon. Speaker, I know that, with your leadership, we can intervene in situations where things are done illegally.

Thank you.

**Hon. Speaker:** What is your point of order, Member for Pokot South?

**Hon. Losiakou:** On a point of order, hon. Speaker. Allow me to join my fellow hon. Members and make a small comment on the regulations. I would like to urge the Chairman and the Committee not to fall into the trap of activism. You may remember, hon. Speaker---

**Hon. Speaker:** Member for South Pokot, there is no debate on this matter. You cannot press the intervention button and then proceed to debate something.

**Hon. Losiakou:** Hon. Speaker, I am raising a crucial matter.

**Hon. Speaker:** It is nothing! There is nothing to debate. You pressed the intervention button.

Hon. Members, remember that rising on a false point of order is disorderly conduct. We agreed that we are going to enforce the Standing Orders strictly and to the latter. So, if you claim to be rising on a point of order, it must be a point of order. Otherwise, it is gross disorderly conduct.

If you read Standing Order 107, you will appreciate that the consequences are clearly stipulated. I intend to thoroughly enforce the Standing Orders. Make sure that you do not claim to be rising on a point of order only for you to engage in debate. You already know which button is for intervention and which one is for requesting to contribute to debate. Make sure that you do not press the intervention button when you want to contribute to debate. That will result in you being expelled or suspended from the particular sitting. Please, familiarise yourselves with the buttons. Know which one is for intervention and which one is for a request. The request button is for contribution, while the intervention button is for raising points of order. We do not want to have people who may be innocent in what they intend to do, falling into the trap. They say in Kiswahili “*Mtego wa panya hushika waliomo na wasiokuaomo*. It is, therefore, important that you familiarise yourselves with the buttons on your microphone component. *Mtego wa panya hushika waliomo na wasiokuamo, na walioelewa na wasioelewa*.

(Laughter)

Hon. Members, the Chair is permitted to mix English and Kiswahili. The rest of you are not. That is the other thing you must learn.

Do I still see another intervention? I hope that it is not an innocent mistake, hon. Joel Onyancha.

**Hon. Onyancha:** Hon. Speaker, I agree with your ruling on this matter. We are sometimes not clear as to how to raise a point of order as you give certain information to the House. One may want to raise a matter that does not really fall under points of order – like when one wants to give further clarification or information on a matter before the House. How should we approach the Chair in such circumstances? Is it not through intervention?

**Hon. Speaker:** Information is given to a Member who is contributing. If you claim to rise on a point of order to give information, the person to whom you want to direct the information to must be asked to say whether they want the information or not. If they decline your information, you should resume your seat and let the person proceed.

There is no point to claim you are rising on a point of order only for you to give information. If you do so, then the person for whom the intervention is intended must consent to the information. If the person consents, then you proceed. If the person says he or she does not need your information, you just resume your seat and relax.

Next order!

## MOTIONS

ADOPTION OF REPORT ON PUBLIC SECTOR OWNED/  
CONTROLLED SUGAR COMPANIES

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the Privatization of the Public Sector Owned/Controlled Sugar Companies (Nzoia Sugar Company, South Nyanza Sugar Company, Chemilil Sugar Company, Muhoroni Sugar Company and Miwani Sugar Company), laid on the Table of the House on Tuesday, 2<sup>nd</sup> December, 2014, subject to the insertion of the following new recommendations after Recommendation (ii) on Page 16:

(iii) That any ancestral land currently held by any of the sugar companies remains under the ownership of the local community; and,

(iv) That further consultations on the privatization process should be held between the Government, the sugar farmers and other key stakeholders, including the County Governments, before embarking on the implementation of the proposed recommendations.

*(Hon. Lang'at on 25.2.2015)*

*(Resumption of debate interrupted on 16.4.2015)*

**Hon. Speaker:** Hon. Members, I am informed that debate on this Motion was concluded last week and what remains is for the Question to be put.

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

*Resolved accordingly:*

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the Privatization of the Public Sector Owned/Controlled Sugar Companies (Nzoia Sugar Company, South Nyanza Sugar Company, Chemilil Sugar Company, Muhoroni Sugar Company and Miwani Sugar Company), laid on the Table of the House on Tuesday, 2<sup>nd</sup> December, 2014, subject to the insertion of the following new recommendations after Recommendation (ii) on Page 16:

(iii) That any ancestral land currently held by any of the sugar companies remains under the ownership of the local community; and,

(iv) That further consultations on the privatization process should be held between the Government, the sugar farmers and other key stakeholders, including the County Governments, before embarking on the implementation of the proposed recommendations.



## REPORT OF FIFTH ORDINARY SESSION OF PAN-AFRICAN PARLIAMENT

THAT, this House adopts the Report of the Fifth Ordinary Session of the Pan-African Parliament and the Annual Speakers' Conference (2014), together with the Revised Protocol to the Constitutive Act Relating to the Pan-African Parliament, laid on the Table of the House on Thursday, February, 12<sup>th</sup> 2015.

*(Hon. (Ms.) Shebesh on 16.4.2015)*

*(Resumption of debate interrupted on 16.4.2015)*

**Hon. Speaker:** Order, Members. What remains in this debate is for the mover to reply.

**Hon. (Ms.) Shebesh:** Thank you, hon. Speaker. I have been requested by hon. Gumbo that I donate to him a minute of my time.

**Hon. Speaker:** How many minutes?

**Hon. (Ms.) Shebesh:** Two minutes, hon. Speaker.

**Hon. (Eng.) Gumbo:** Thank you, hon. Speaker. I want to thank my good friend, hon. Rachel Shebesh, for donating two minutes of her time to me.

I want to support the Report on the Fifth Ordinary Session of the Pan-African Parliament. As I support, I wish to say that the spirit of pan-Africanism is to bring Africans together. As we debate this Report, we have to be conscious of what is happening in the seat of Pan-African Parliament, which is South Africa. Those of us who sympathized with South Africans when they were fighting apartheid wonder what is happening in that country. Black Africans from other countries are now feeling very unsafe in South Africa. When things happen like this, it really baffles us. This is because young people believed that Africa would not be free until South Africa became free.

To see South Africans turning their anger on fellow black Africans is, I think, most unfortunate. I want to quote the words of a person I admire greatly, the hon. Dr. Robert Mugabe of Zimbabwe regarding the xenophobia in South Africa. This is what he had to say:-

“South Africans will kick down a statue of a dead white man, but will not even attempt to slap a live one, yet they can stone to death a black man simply because he is a foreigner”

Hon. Speaker, I cannot understand this thinking of black South Africans turning their anger on fellow blacks, people whose countries provided refuge to South Africa hardly 20 years ago. It is total madness. I know that even Kenyans are affected. It is something that we stand to condemn. It is something that I hope PAP will debate. We hope it will be stopped and it shall never recur.

I support.

**Hon. (Ms.) Shebesh:** I would like to thank all those Members who contributed to this Motion. I want to reiterate that the session of PAP that we are going to be part of in May, 2015 will be opened by his Excellency the President of Kenya, Uhuru Muigai Kenyatta. We are proud and looking forward to that.

With those few remarks, I beg to move.

*(Question put and agreed to)*

THE DIVISION OF REVENUE BILL, 2015

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

THAT, the Senate Amendments to the Division of Revenue Bill (National Assembly Bill No. 11 of 2015) be now considered.

Hon. Speaker, let me take this opportunity to, on behalf of Members of the Budget and Appropriations Committee, rehearse the information that this House is already fully aware of with respect to the Division of Revenue Bill, a matter that we prosecuted here very ably, and to which amendments were moved by the Senate. I just wish to remind the hon. Members of the amendments that the Senate is proposing.

First of all, the Senate is proposing to vary the figure to be given to the national Government by Kshs1.766 billion. In the same token, the Senate is proposing that that money be made available to the county governments, in effect, reducing the equitable share of resources going to the national Government by that amount.

Secondly, I wish to remind this hon. House that the Senate is proposing to increase the conditional allocation to Level V hospitals by a figure of Kshs1.536 billion without telling us the basis on which this figure - it is supposed to be an additional amount to the money already allocated to the hospitals - was arrived at. The rationalization of that figure is not clear.

Thirdly, the Senate is proposing to introduce a new item to create a figure of Kshs4.4 billion to cater for what they are calling "the county emergency funds". The total amount that they wish to increase to the money we have given them is close to Kshs8 billion.

Hon. Speaker, I stand here to remind hon. Members that there is a problem with this amendment, and it is a fairly serious problem. First of all, we need to remind ourselves that when the Senate was considering the Budget Policy Statement (BPS), which is the basis of the Division of Revenue Bill, it, indeed, adopted the Report, yet the same Senate which adopted the Report wishes to vary its own decision on a policy that they have adopted. That policy was very clear that the sharable revenue was Kshs258 billion, and other additions that were to come later would make it a Kshs283 billion odd figure. The Senate approved the Fiscal Framework underpinning the basis of equitable sharable revenue and, therefore, the changes that they are proposing go against their very decision, and the resolution of this House as contained in the BPS.

Secondly, according to the Public Finance Management Act, particularly Section 110, the County Government Executive Committee may establish the County Emergency Fund. Normally, this Fund is 2 per cent of the total revenue. For the Senate to ask that this House approves an amendment that gives to the county governments an extra Kshs4.4 billion for an emergency fund, knowing that we have made available sufficient funds for Level Five Hospitals, is beyond us as the Budget and Appropriations Committee. We cannot understand why the county governments cannot go to the funds

they have been given and from there get their emergency funds. That is what any spending agency does.

I also wish to say that if we approve this amendment, we shall escalate the public debt. The monies that are sought are unfunded. We are not told where the money will come from. We have a responsibility to make sure that we do not pass on to future generations debts that do not make sense to this hon. House.

Finally, if you check the Public Finance Management Act (PFM), Section 187, there is established, by the PFM Act, what we call “Inter-Governmental Budget and Economic Council (IBEC)”. That Council is chaired by no lesser person than the Deputy President. It has the Cabinet Secretary to the National Treasury. It has, among other people, the Chairperson of the Council of Governors, every county executive member for finance and the Cabinet Secretary responsible for inter-governmental relations. The IBEC considers the contents of the BPS, the Budget review and Outlook Paper and the Medium-Term Debt Management Strategy, among many other things.

What I am trying to argue is that the figures we brought here were negotiated by the IBEC, chaired by the Deputy President, with all the different arms of the county governments represented. Indeed, Hon. Speaker, you will recall that we ourselves had issues with the BPS. We actually reduced the figure fairly significantly, from what was tabled here by the Cabinet Secretary, National Treasury, namely Kshs258 billion, and that caused a bit of a problem. My Committee had to go and sit down again with the leadership of the national Executive and be helped to respect the decision of the IBEC. So, the entire Committee went back and we were reminded of the negotiations that took place under the leadership of the Deputy President. We had revised that figure downwards not upwards.

The Senate is now arguing that we review this figure upwards but it is not telling us where the money will come from. These funds are unfunded. Therefore, on behalf of the Budget and Appropriations Committee, I stand here having considered these amendments based on the Message sent to us on the Revenue Division Bill, 2015. My Committee recommends, in no uncertain terms, that this House does not concur with the proposed amendments by the Senate, and, therefore, rejects the deletion of the Schedule as well as the proposed inclusion of a new Schedule.

I beg to move; I wish to ask Hon. Washington Omondi, the Member of Parliament for the great people of Alego Usonga, to kindly second the Motion.

I thank you, Hon. Speaker.

**Hon. Speaker:** George Washington.

**Hon. G. W. Omondi:** Hon. Speaker, I prefer being called George because Washington has already been taken by Hon. Jakoyo Midiwo. So, I am George Omondi not Washington Omondi.

I rise to second what my Chairman has said. I will add very few points to what the Chairman has said. For the Senate to come to us to vary the Budget, one may ask, of what importance is the BPS? It is brought to us here to look at and prepare ourselves for budget-making. It would appear the Senate went through the BPS but did not prepare themselves to make the Budget.

Two, the budget-making process is a very serious matter that calls for discipline. You cannot say that you are going to give money which you do not know where it is

going to come from. When the Senate wants to increase the whole Budget by Kshs7.7 billion and can only tell us where Kshs1.76 billion is going to come from, one wonders whether they are serious.

Thirdly, when they take money from the national Government without explaining to us where the national Government is going to fill that hole from, it leaves a lot to be desired. We cannot accept that.

Fourthly, the Senate is going against the Public Finance Management Act, which provides that 2 per cent of the funds given to them can be used for emergency purposes. They are now creating another Kshs4.4 billion without telling us where that will come from. The fund is already allocated by giving a percentage of what can be used for an emergency fund.

With all these shortcomings, it is difficult for this House to agree with what the Senate sent to us.

I second.

*(Hon. wa Kabando and other  
hon. Members stood at the gangway)*

**Hon. Speaker:** Order Members! Take your seats. Hon. wa Kabando and those others, take your seats. Hon. Members, the debate before us is a very momentous one. It is fair that we all pay attention to the arguments being advanced by both the Mover and the Secunder.

*(Question proposed)*

**Hon. Speaker:** Yes, Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, hon. Speaker. I rise to support the Report of the Budget and Appropriations Committee.

It is very unfortunate because we know that the BPS is there to provide a framework of the Budget process, including how the allocations are going to be done. The same BPS was debated and passed by the Senate. It is going to be inconsistent for them again to change it. The BPS is supposed to be consistent with the Division of Revenue Bill. It is completely out of order for them to, again, propose an additional allocation of Kshs1.76 billion to the county governments without justification. The Public Finance Management Act stipulates that 2 per cent of county governments allocation should be set aside for emergency cases. You cannot propose an additional sum of Kshs4.4 billion without giving a full disclosure as to where the money is going to come from. Does it mean that they are trying to collude with the county governments, so that the money can eventually end up with the Senators? We need to be told. We should be told where the Kshs4.4 billion will come from. Where are we going to borrow it from in order for us to allocate it to the county governments? This is a serious matter which might even need further investigations.

Sometime back, the Senate went to the Supreme Court for advice. We know very well that in many jurisdictions, budget matters have nothing to do with the Senate. However, through our goodwill, we gave them an opportunity, so that we can work

together as a team, but they want to act as if we are fighting a supremacy war. We do not want to go that way. The issue here is that we need to reject this amendment, even if it means taking the matter to a mediation committee. If the matter is going to be taken to a mediation committee, we need to have some new Members to represent the National Assembly in the way we want. We do not want to be represented by people who may not understand what we want. I know that the Budget and Appropriations Committee has done a good job, under the chairmanship of hon. Musyimi. I request the hon. Members who are here today to reject the Senate's amendments, and support what the Budget and Appropriations Committee has put in place.

With those remarks, I beg to support.

**Hon. Speaker:** Yes, hon. Alice Ng'ang'a!

**Hon. (Ms.) A. W. Ng'ang'a:** Thank you very much, hon. Speaker. The Senators understand the budget process. When the BPS went to them, they should not have accepted it if they really did not agree with the Report that we had made. They should have sent it back to us with recommendations on which areas needed to be amended, and specifying where we would source that amount of money from. The Senate is wasting our time. They know whatever they did is not possible. They are playing to the public gallery. They just wanted it to be seen that they added some points to the proposals of the Budget and Appropriations Committee. In all sincerity, they know that whatever they want is not possible. If they did not want to approve the Division of Revenue Bill, they should have said so and given reasons. They approved the BPS and, subsequently put in a rider. We are not interested in their rider.

With those remarks, I beg to support.

**Hon. Speaker:** Yes, Hon. Makali Mulu!

**Hon. Mulu:** Thank you, hon. Speaker. I oppose the amendment proposed by the Senate and support the Budget and Appropriations Committee.

The Senate is taking the entire budget-making process casually. It is very clear to Members of Parliament, including the Senators, that the BPS determines the micro-environment in terms of budget-making. Out of it, we derive the Division of Revenue Bill. As a result of the Division of Revenue Bill, the County Revenue Allocation Bill is supposed to be debated and passed by the Senate. They are playing games.

Hon. Speaker, you remember when this House was discussing the BPS, it recommended some amendments to it. We had recommended a reduction of the amount of money that was supposed to go to the county governments. However, when we were informed that the figures had been discussed by the Intergovernmental Budget and Economic Council, we decided, for the sake of this country, to drop the changes – which the Budget and Appropriations Committee had made. I am very surprised. Why would the Senate take us back to square one? You remember that last year, we ended up in a mediation committee. This year, again, we will end up in a mediation committee. The question I am asking myself is: Are we really serious about meeting the timelines of the Budget-making process? The process has very clear timelines. The more we delay the enactment of the Division of Revenue Bill, the more we will delay the enactment of the County Revenue Allocation Bill, and the passage of the Financial Estimates.

The Senators need to take this process very seriously. This is a matter of national interest. We are no longer talking about the supremacy wars that we have had between

the two Houses. This is a matter of national interest. I am surprised that people who, through the Constitution, are given the mandate to protect and champion the interest of this nation are the ones who seem to be taking back the process. What they are doing will not help the county governments. They are actually delaying the Budget-making process at the county government level.

The Senate needs to be serious. They should know that when you propose expenditure, you must propose ways and means of funding it. Any budget has revenue and expenditure components. When you talk about expenditure without mentioning the revenue component, you do not help anybody, including the National Treasury.

Hon. Speaker, I support the Report of the Budget and Appropriations Committee, and urge that we reject the changes that have been proposed by the Senate. As usual, we are going to end up in a mediation committee. This time round, even the mediation committee should tell the Senate that they are not doing any good to this country.

Thank you.

**Hon. Speaker:** Next is hon. Angwenyi.

**Hon. Angwenyi:** Thank you, hon. Speaker, for giving me a chance to contribute on this Motion.

I am shocked that the Senate, which comprises of people who have been doing some budgeting for this country for many years, can come to a conclusion where they want to add to the Budget some money whose source we do not know. May God forbid this House from becoming a vehicle for taxing Kenyans highly, in order to accommodate a wish of the Senate! May God prevent this House from getting this country into indebtedness to accommodate the wish of the Senate! This is the House that taxes Kenyans and we must be considerate to Kenyans' interests. What is the purpose of having the BPS, if we cannot consider it when we make final decisions? We should have rejected this proposal from the Senate yesterday.

Therefore, I oppose the amendments of the Senate and urge that we adapt what has been proposed by our Budget and Appropriations Committee.

**Hon. Speaker:** The Leader of the Majority Party!

*(Hon. (Ms.) Mbarire stood up)*

**Hon. Speaker:** Doing her third term, hon. Mbarire, should know that she should not stand between the person appointed to speak and the Speaker.

**Hon. A.B. Duale:** Hon. Speaker, they were asking me where the list is. I told them that they are not part of the security agents. They do not receive lists from us.

Hon. Speaker, I rise to support the Budget and Appropriations Committee and their able Chair.

In the 2013/2014 Division of Revenue Bill Kshs190 billion was allocated to the county governments; the National Assembly decided to take that Bill to the President for assent. That was what landed us in the Supreme Court. The Supreme Court gave an advisory opinion to both Houses to look at the Bill. We took that advisory opinion very seriously because we believe in the rule of law and respect the Supreme Court, which is the highest court in the land. However, the Division of Revenue Bill for 2015/2016 is a document that was negotiated by many stakeholders, which included the Commission on

Revenue Allocation (CRA), the Council of Governors (CoG) and the National Treasury, under an umbrella body called “Inter-governmental Budget and Economic Council (IBEC)” which is chaired by none other than the Deputy President. That is what brought about the current Division of Revenue Bill that was before the House.

The Division of Revenue Bill and the Budget Policy Statement (BPS) are documents that are prepared based on a balanced fiscal framework. It is not something you write like an *insha*, or a composition, while seated in your room. The books must balance. When it came to this House, the Chairman and his team of the Budget and Appropriations Committee did wider consultations with the National Treasury and the Executive. Even the CoG came up and said: “For the first time we have a consensus on the Division of Revenue Bill this year.” But, when it went to the Senate--- I want to say that we have nothing against the Senate. Nobody is a custodian of devolution. Nobody can say “Devolution is my baby.” Devolution is here to stay; it is not a choice; it is in the Constitution and each and every Kenyan voted for it in the year 2010. Nobody can chest thump about it, whether they be a Senator, Member of Parliament, member of CoG or even the National Treasury. The money divided among the national Government and the county governments, the Parliamentary Service Commission (PSC) and the Judicial Service Commission (JSC) is intended for service delivery to the people of Kenya. There is nowhere it is said that the national Government, PSC or the Judiciary, which is the custodian of the rule of law and justice, should not be funded.

So, a figure was agreed on. When the Senate Committee on Finance, Commerce and Economic Affairs increased this figure by about Kshs7 billion the question was: “Where are we getting that Kshs7 billion from? What does it mean when you talk of in excess of Kshs7 billion?” It means raising taxes. It means increasing either domestic or external borrowing. It means a reduction in the budget of another entity in the national Government, PSC or the JSC.

What does this extra Kshs7 billion do to the Division of Revenue Bill? One, it completely alters the balanced fiscal framework that was decided on by all the stakeholders. Two, it creates a serious adjustment in the national Government Budget Estimates, which are also geared towards making sure Kenyans get value and services from that money. It also limits the scope for additional borrowing because you are telling the Treasury to go and borrow. More fundamentally, if you look at the Public Finance Management (PFM) Act, Section 110, county governments have already been given ceilings to spend not more than 2 per cent of their allocations on emergencies. Is this emergency fund of Kshs4 billion you are giving to county governments?

The law already says that county governments will spend 2 per cent of the amount allocated to them on emergencies. This is completely not in line with Article 203 of the Constitution. If you look at Articles 96, 109 and 113 of the Constitution, these extra resources given to the counties by the Senate are not feasible, tenable and in line with the current fiscal position. It is going to bring a complication to our macro-economic stability and the growth we anticipate as a country.

I urge this House to set the trend that we have given the county governments over 32 per cent of the resources. There are 13 Governors who are in the list of corruption. Why can the Senate not deal with the corruption of those 13 Governors? Why can the Senate not deal with them and the wastage in the county governments? They have an

oversight role! Why can the Senate not ask: Do Kenyans get value for the money that is sent to the counties? The country is celebrating the second devolution conference today. It is not about speeches. It is about going to the counties. It is not about being in Kisumu. We want the Senate to go to Garissa, Wajir, Mandera, Kisumu, Homa Bay, Makueni, Mombasa, the Rift Valley, central Kenya and everywhere and ask the people of Kenya: How do you see devolution two years down the line?

I oppose the amendment by the Senate because it is not tenable, achievable and somebody somewhere should tell us where the Kshs7 billion will come from. I support the recommendation of the Budget and Appropriations Committee and thank them for their foresight.

**Hon. Speaker:** Before I give the chance to the Leader of the Minority Party to make his contribution, let me say something.

Hon. Members, if you look at the Order Paper - I believe hon. George Washington Omondi may have noticed this - the Motion reads that:

“THAT, the Senate Amendments to the Division of Revenue Bill (National Assembly Bill No. 11 of 2015) be now considered.”

Listening to the various contributions so far, it is like you do not want it to be considered, so that it does not go beyond the Second Reading Stage. Do I understand that the hon. Members also understand it that way?

**Hon. Members:** Yes.

**Hon. Speaker:** Of course, what would happen if that were to happen? If you were to vote and negative that Motion, it would mean that we will not go into the Committee of the whole House.

**Hon. Members:** Yes.

**Hon. Speaker:** Yes. That is what it means; the House will not go to the next stage, which is the Committee of the whole House. Do Members understand that?

**Hon. Members:** Yes.

*(Loud consultations)*

**Hon. Speaker:** No; No; hon. Members, I think it is fair that we hear more. This is because Kenyans also need to know that this House appreciates various provisions of the Constitution, particularly Article 95(4), which gives the National Assembly the power to divide revenue between levels of Government. That is the function of the Division of Revenue Bill, as opposed to Article 96(3) of the Constitution on others who are supposed to determine the allocations to the counties.

Let us hear a few more Members. I just wanted to make sure that every Member understands that consideration here means the Motion can be considered, or you can even vote against its consideration, and you do not need an amendment to clarify it.

**Hon. Speaker:** Hon. Nyenze.

**Hon. Nyenze:** Thank you, Hon. Speaker, for giving me this chance to contribute to this Motion. I support the Motion by the Budget and Appropriations Committee and I oppose the amendments by the Senate in that the Budget process was done fairly well. If these amendments are meant to benefit the county governments, they should have come at an earlier stage; now the Senate wants to put us in a very awkward situation.



First, where will we get the money to fund this Kshs7 billion from? Secondly, I want to urge the Senate to talk to the county governments to avoid wastage, to collect taxes and to try to operate with the budgets that they have. Devolution was meant to take resources to the people, but in many county governments, we find that they have not delivered services to the members of the public as required. We do not want a situation where every time there is an issue on a money Bill, it goes for arbitration. We do not want all the time to go for mediation; all the time, the Senate wants to come up with demands that will end up in a mediation committee. The other time they even took us to the High Court and there was a ruling. We do not want to go that route.

As my colleague said, the National Assembly has the mandate to plan and prepare the national Budget. Even the county governments budgets are not a preserve of the Senate. It should be very clearly understood. I urge this House to reject those amendments, because through my own calculations, it is not even Kshs7 billion. It is coming to Kshs8 billion, and every county government will get Kshs160 million. As we know, Section 110 of the Public Finance Management Act (PFM) Act provides for how to deal with county governments, and they are allowed to spend 2 per cent of their money on emergencies. What is this other money going to do? We have not seen services. Where I come from, there is a market called Matinyani and another one called Kabati. If you see the kind of shoddy job that is being done, you will cry. I urge the Senate to avoid trying to tax Kenyans and force the Government to borrow to fund projects in the county governments when we are not getting services and value for money. I am trying to urge this House to reject these Senate amendments because they are not relevant. I will not support it and I am sure most of the Members in this National Assembly will oppose them. I also urge that we debate a bit and you put the Question, so that we conclude this debate.

Thank you. I beg to oppose.

**Hon. Ekomwa:** Thank you, Hon. Speaker, for giving me this opportunity. I oppose the recommendations made by the Senate and support the recommendations made by the Budget and Appropriations Committee led by the able Chairman. We expected the Senate to recommend this to Kenyans. We know what happened in Garissa and we expected the Senate to say that whatever was to be taken to the counties should be added to the security department, because we need it. How can we use one helicopter from Mombasa to Garissa? That means we do not have enough of them. We expect that instead of giving these funds to the counties, we add them to the security docket. Besides, Kenyans are asking their governors and county governments what they have done with the billions that we have given them.

Let me cite a case of what is happening in some counties to confirm that funds are being wasted. Can you imagine a scenario where in a county there is no water and no drugs in the hospitals? Instead of having drugs in hospitals and putting up wards, they put up mortuaries. How do you put up a mortuary when you do not have enough drugs in a hospital? How do you purchase ambulances which transport a patient who has just missed Panadol in a dispensary? Instead of having enough drugs in a dispensary, or a health centre, you buy ambulances and build mortuaries. What is the essence of putting up a good mortuary when you do not have enough drugs in a hospital? This is waste. What Kenyans want are services.

It is very painful to find a woman who voted in 2013 facing water problem and waiting to vote again in the next election while still facing the same problem of water. Surely, does it make sense? We are telling Senators to consider the plight of Kenyans. Kenyans require security; Kenyans require water; Kenyans require health services. They do not require big houses for their governors. They do not require good cars for their governors because they will not eat those vehicles. They are pleading for basic needs---

**Hon. Member:** Or, seminars!

**Hon. Ekomwa:** Or, seminars!

Hon. Speaker, let me cite another example. Governors are saying that the Constituencies Development Fund (CDF) money is supposed to go into development. You saw what happened in Kisumu today. Some governors were showing CDF projects and claiming them to be theirs, yet they have done nothing.

*(Applause)*

Let me tell you that is not enough. Let me cite an example in my county. All the CDF money for six constituencies is Kshs500 million. In Turkana County Kshs500 million is entertainment allowance for the Governor. How can an entertainment allowance compete with Kshs9.2 billion? Surely, which amount are Kenyans supposed to ask for: Is it Kshs9.2 billion or Kshs500 million for entertainment? We should not add money to where we have not got value from. It is better that this money remains with the national Government and we improve security. I support the recommendations of the Budget and Appropriations Committee.

Thank you.

**Hon. Mwadime:** Thank you, Hon. Speaker, for this opportunity. At the outset, I am supporting the Budget and Appropriations Committee, simply because it has become the order of the day. As per Articles 95 and 96, Senators are supposed to be talking about what we give them and the distribution to the counties, rather than talking about the job of National Assembly and what it is supposed to be doing. Infact, I am requesting your good Office, if possible, to tell your counterpart to have a good induction course, so that they can know more about the Constitution and what it mandates them to do.

Hon. Speaker, just the other day, we had problems with our security. If this money was allocated to the village elders to be integrated into the National Intelligence Service (NIS), it would boost our security, rather than sending it to the counties when its use is not meant for services to the people. Furthermore, the money allocated to the counties--- Up to this moment, some of the counties cannot account for it. I believe that if this money is diverted to the national Government and given to the security sector, it will enhance our security.

Raising the allocation to the counties by 2 per cent and not knowing exactly where the additional money will come from, is out of order. They should indicate where this additional money is going to come from and what its purpose is. Furthermore, there is already an emergency fund with money. We should be consistent. We should be consistent because this Bill was debated and even the Senate--- I am wondering why it was brought back to the National Assembly. In future we should try to avoid acrimony

after we debate and finalize a Bill instead of going to the Senate. We should finalise it here once and for all.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Shaban.

**Hon. (Dr.) Shaban:** Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Motion about the amendments coming from the Senate on the Division of Revenue Bill. At the outset, I want to thank the Budget and Appropriations Committee. Without mincing their words, they have said openly what they think we should do with these amendments.

I want to say that it is important for all Kenyans to know what is in the Constitution. I know the Supreme Court gave an advisory opinion, and basically that advisory opinion was not done outside our society. We live in the Kenyan society, where people are supposed to work together. We are all in the Parliamentary Service Commission (PSC); the Senators who had issues should have given their input at the time when the Division of Revenue Bill was being debated on this Floor. They should have sent their issues as Messages for us to agree with them, or at least agree, disagree with them on certain issues.

Hon. Speaker, it is very sad that we use every opportunity to chest-thump and show that we have the might to stop something like this Bill from going through. This Division of Revenue Bill is what is going to set the pace for our Budget for the next financial year. It is obvious that Senators are playing a ping pong game, yet they know very well that we are not going anywhere with this.

Article 96(3) of the Constitution is very clear. I expected the Senators to be thinking on how best to close loopholes in the Budget framework. We hear cries from all over the place that revenue that is collected at the county level is not well accounted for, or well utilized. By now they should have come up with means and ways of closing loopholes in their financial systems. I ask governors to be careful in how revenue is collected and utilized. They should have also been busy monitoring, evaluating and making sure the work that the county governments are doing is done well, the money allocated to them is utilized properly, and that we get maximum value for the money that is given them. I want to say it very clearly that we cannot afford these kinds of games; we cannot go on like this.

Hon. Speaker, I beg to oppose.

**Hon. Speaker:** Hon. Gladys Wanga.

**Hon. (Ms.) Nyasuna:** Thank you, Hon. Speaker. At the outset, I would like to oppose the Motion and the Senate amendments. I would like to say, like many Members of this House, I am a great supporter of devolution. We would like devolution to work but what I am seeing---When I contributed to the Budget Policy Statement (BPS), I thanked you, the leadership of this House and the Budget and Appropriations Committee. I also thanked the leadership of the Senate as well. I reflected on where we had come from with the Division of Revenue Bill in the past years, and I said that we had made good progress, because we were now passing a very well negotiated document that we had all agreed on.

What we are dealing with here, in my view, is not an effort to promote devolution or increase money to counties. What we are dealing with is Public Relations (PR). What

we are dealing with is a concerted effort by the Senate to depict this House, the National Assembly, as a House that is anti-devolution. This is the perception we want the public to know that it is not the case, because in support of devolution, we allocated Senators, on the Floor of this House, Kshs 1 billion to go and monitor devolution; we want them to go and see that it is working. That is in support of devolution.

Hon. Speaker, when we say that we are adding money to Level 5 hospitals, when we debated the BPS, we made additional provisions to Level 5 hospitals. Why am I saying that this is PR? Why am I convinced that this is a concerted and continuous effort to portray this House as anti-devolution?

More than half of the monies that are being added are for emergencies. How critical is emergency? What is emergency? The county can allocate itself emergency funds, but when you say you want us to go to mediation to create an emergency fund, what are you telling the country? You are telling the country that you want the Senate to look like the saints, and that they are the ones who support devolution and the National Assembly look like the enemies of devolution. This is the perception that, as a House, I do not think we should concede to.

The Leader of the Majority Party has already said it and I associate myself with his comments, that there is no single person, institution or House that should claim ownership of devolution. Devolution is for all of us. We voted for it as a country; all of us voted to benefit from the fruits of devolution. We are struggling. There are weaknesses that have been pointed out. We hope that those weaknesses will be fixed, so that devolution works. We do not want to be squeezed to a corner, as a House, and portrayed as anti-devolution, because people want to play PR with an important process such as a budget-making.

Hon. Speaker, the leadership of the Senate must be serious. We must talk these things openly. We have spent a lot of money, as the Parliamentary Service Commission (PSC), on lawyers and lawsuits that we do not know where they come from and where they are going, simply because we want to make this kind of a mistake. The monies we spend on lawyers should be spent by Kenyans on other things. We do not want to be put in a corner, from where we are always running to court on things that can be avoided such as a process that has already been agreed on and has already moved forward.

The Senate must be sincere; I oppose.

**Hon. Speaker:** Well spoken. Hon. Joseph M'uthari.

**An Hon. Member:** He is not in!

**Hon. Speaker:** Okay. Hon. Ali Rasso.

**Hon. Dido:** Thank you very much, Hon. Speaker, for this opportunity. I want to support the proposal by the Budget and Appropriations Committee.

Hon. Speaker, when we are in this House we are not doing public relations duties; we are rendering service to this country. It is unacceptable for monies to be just given for the sake of "that the counties need more money." There must be adequate justification and we must know the source of that money.

I believe the Senate was fully on board with regard to the Budget Policy Statement that we received much earlier in the year. They took into understanding exactly what was required because there were three principal documents: The Budget Policy Statement; the Draft Division of Revenue Bill; the Medium Term Debt Management

Strategy Paper and the County Allocation of Revenue Bill, 2015. Over the last two years my county has received about Kshs9billion. That is a lot of money. However, I am not in the loop of how that money is actually being used in my county and what goes into my constituency. Many other Members of Parliament here share my views that we cannot just give counties more money when we do not know how they have been using the money we have already given them. I want to borrow a leaf from the Leader of the Majority Party. He said that many governors are facing corruption allegations today. If we say that they are facing corruption allegations and then we give them more money, then it is throwing good money after bad money and that is unacceptable.

It has been suggested that some of this additional monies go to Level 5 hospitals and the County Emergency Fund. Currently, counties are buying ambulances. Kenyatta Hospital, our principal referral hospital, has actually become a dispensary for counties. When accidents happen in counties, patients quickly board ambulances and they rush to Kenyatta Hospital. If you go to Kenyatta Hospital at the emergency wing, you will be shocked to find the whole of Kenya there. They are overloading that hospital. If anything, these sorts of monies, instead of being given to counties, must be given to Kenyatta Hospital so that Kenyans get the necessary help. We have to be very clear with regard to the County Emergency Fund. All governors are flying in choppers. They are like mini Presidents. Many of us drive for long distances to our constituencies and yet there are individuals who are using public funds to charter choppers every time. That is unacceptable.

Finally, there is the issue of arbitration. When such Bills come before this House and they are rejected, they should not go to arbitration because in the first place, they are frivolous. When we visited the Canadian Parliament we learnt that the first and last time they used arbitration was in 1945. They have used it only once! However, the Kenya's National Assembly and the Senate are in arbitration all the time as if we are in a law court. This House must reject what is frivolous. Some of these things are just brought before us to occupy us. We have an important duty to this nation.

Thank you, hon. Speaker.

**Hon. Speaker:** Very well, but remember Articles 112 and 113 of the Constitution on arbitration. It is unfortunate that it is there in our Constitution.

Hon. Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, hon. Speaker for giving me the opportunity to contribute to this debate. As a Member of the Budget and Appropriations Committee, I support the Committee's position that we reject the amendments that have come from the Senate.

I want to bring out one important issue, there is a lacuna in the law and in the Constitution that I think if closed, will help us so that every year we do not come to this position where after the Division of Revenue Bill---With regard to the Budget Policy Statement, the national Government has always carried out very good research. The central committees have met and have worked out a fair amount of detail of what their needs are. The Budget Policy Statement is for the whole country. However, there is relatively little that has come from the counties. It is from that Budget Policy Statement that the counties are supposed to derive the Fiscal Strategy Paper. So, by the time we go to division of revenue, we are only using two instruments: Commission of revenue

instrument and the 15 per cent in the Budget. We do not have information from the counties or what their needs are. We have looked at this in the Budget and Appropriations Committee. The Parliament Budget Office is doing research on it. This matter should be brought to the notice of the Senate so that we look at a process where before we go to division of revenue there has been some work at the county level which has been collated so that we have an idea which then helps us at the time of division of revenue.

Even though they have Inter-governmental Budget Economic Council (IBEC) discussions here, it is clear to me that had they gone through this process, obviously the need for this emergency would have been seen. The need for more funds for Level 5 hospitals would have been seen. It would have been canvassed much earlier when we were going through the process. I pray that those who will go into the Committee should not just agree on the numbers, but also look at the basic problem. I know that people may canvass or use ways to get more money particularly the Senate in its quest to look at the greatest supporter of devolution, but if there is a gap or lacuna in the law then that is very easy. We need to look at that.

Thank you, hon. Speaker.

**Hon. (Ms.) Seneta:** Thank you, hon. Speaker. I also support the Report of the Budget and Appropriations Committee. We have already looked into the Budget Policy Statement. We looked into all the areas that needed extra allocation. Therefore, the Senate is just playing a public relations exercise. If you go to our counties today, you cannot see any development on the ground in relation to the functions the county governments were given. Therefore, giving them more monies without this strong oversight from the Senate is actually devolving corruption more. All we are seeing in the counties are some people being transported in very heavy vehicles from the county headquarters to their homes. You only see County Executive Officers driving from one corner of the county to another. You only hear people going for seminars from Monday to Friday, but you cannot see actual development on the ground!

I urge the Senate to perform their oversight role. Let them look at what exactly is being done or not done in the counties and advise the county governments appropriately. Let them oversee the county governments in carrying out their functions, and in the use of the budgetary allocation that they have been given. Otherwise, we may end up devolving corruption to the counties, instead. We need to look into the county government functions. When I looked at the *Daily Nation* today, I noticed that some county governments have duplicated roles. Every county government is just giving bursaries and creating women's funds. That is duplication of roles. The monies for pre-school education and healthcare services cannot be seen anywhere. Nurses go on strike everyday because of salaries and allowances. There are drugs in the health centres. There are no water or agricultural services in our counties. These are services that Kenyans want to see but some people are busy duplicating roles. Some are busy overseeing committees, looking for allowances in Nairobi and playing the role of the National Assembly. It is high time the Senate played its role to save this country from counties which do not spend money as provided in the law.

Thank you, hon. Speaker.

**Hon. Speaker:** Yes, hon. Ogolla!

**Hon. Ogolla:** Thank you, hon. Speaker.

First of all, if one looked at the Report of the Budget and Appropriations Committee, it is not very easy to go against it. Their four points are very logical, and they connect what the House or the Senate needed to look at, which they ignored.

Another important thing I would like to point out is that sometimes we try to replace creativity with criticism. That is part of what the Senate is doing rather than being creative. This time round, the Division of Revenue Bill had a lot of creativity in it to an extent that you wonder why the Senate did not bring these suggestions last year. If you look at the issue of the foregone user fees that they have brought in, and the Fuel Levy Fund, you will appreciate that there was quite some creativity in what the Budget and Appropriations Committee did this year. The Senate came in just for purposes of adding more money and trying to create Vote Heads for the county governments. This is not very nice. We are trying to create Vote Heads for counties when we know very well that they can create their own Vote Heads.

The contradiction that the Senate is introducing in the Budget-making process is not very good. The logical bit that the Budget and Appropriations Committee has done is evident, in that there is a flow from one part of the Budget to the other in terms of the process. The Senate is ignoring this effort. We need to convey this very clearly. Rather than get into a situation of moving backwards, we need to move forward. When it is clear that it is not our role to create Vote Heads for the counties, it is not good for us to do so. They have the 2 per cent for emergencies in their own arrangement, just like they had their own arrangement where they could use money for roads. They were using that avenue even though we had not provided for them. Therefore, it is important that we allow counties to do this on their own rather than imagining certain things for them.

The other thing that has come out very clearly is the issue of Level 5 hospitals. For some time, we have debated the issue in this House. We have said that the counties have a big problem in running Level 5 hospitals. It is good that the House went ahead and reinforced the Level 5 hospitals in terms of providing for conditional grants. Those are enough creative efforts, which we cannot allow the Senate to interfere with.

It is important that we support the Committee and do away with what the Senate has recommended. They are not creative enough.

Thank you, hon. Speaker.

**Hon. Kipyegon:** Thank you, hon. Speaker, for giving me the opportunity to express myself on these particular amendments.

I wish to state at the outset that all of us support devolution. If devolution was to be implemented correctly and seriously, with the intended purpose in mind, this country would be much ahead of other countries. However, devolution has been abused in this country. The county governments have been turned into kingdoms, where people rule the way they want. The monies that we have appropriated to the counties have been turned into monies that people would want to use at their own whims. Instead of the Senate busying themselves with Bills and Motions that do not concern them, they should be looking into amending either the Constitution or county government Acts, so that we can have governors putting a lot of money into development rather than into expenditure.

The Senate is becoming an idle House. Sometimes we collide on matters which are clearly stated in the Constitution. In Article 95(4)(a), the Constitution clearly states the functions of the National Assembly as follows:-

“95(4) The National Assembly-

(a) determines the allocation of national revenue between the levels of governments as provided in Part (4) of Chapter Twelve”

Hon. Speaker, that means between the national Government and county governments. That is why we are looking at the Division of Revenue Bill.

The role of Senate, on the other hand, is stated in Article 96(3) as follows:-

96 (3) “The Senate determines the allocation of national revenue among counties-  
--”

Clearly, the Senate has no role to play in allocating the national revenue among the two levels of government. That means it is a function of the National Assembly to divide the money among the two levels of government, and a function of the Senate to divide the money among the counties. Looking at the role of the National Assembly in this respect *vis-a-vis* the role of the Senate, it is clear that the Senate is eating into the functions of the National Assembly.

That is why I state at the outset that I will not support the amendments by the Senate. We wish to tell the Senate that they have their functions. It is a function of the National Assembly to look into matters of revenue allocation between the two levels of government. It is this House which looks at the money that the Government has collected. It is this House which can divide that money between the two levels of government.

Hon. Speaker, therefore, I would not want the Senate to interfere with matters of the National Assembly, as it has happened in many matters we have dealt with previously. The Senate has been looking into matters which have not been devolved. I watched them question the Cabinet Secretary for Education, Science and Technology despite the fact that they are not supposed to be dealing with matters which have not been devolved. They even questioned him on the functions of Vice-Chancellors of public universities. Those are not devolved functions. It is idleness which is making Senators to deal with areas they are not mandated to oversee.

Lastly, I want to deal with the question which has been proposed by the Senate. The Senate is proposing that we allocate some additional money to the counties. It is in the interest of this nation that whenever we look at the budget which has been made, we look at the money we are supposed to send to the county governments and the money that is supposed to remain in the national Government based on the functions which are devolved and the functions which are not devolved. Coming back and claiming that we need to add some other money either in form of grants or for running some other activities--- The county governments do not lack money. It must be clearly known that the problems we have in the county governments are not about lack of funds. These people have enough funds. It is only that they have a lot of funds to move around, spending it the way they want and even dishing it out in form of handouts. That is why these counties are running down.

Although we may not categorically state the credibility of the report which was released by the World Bank, we believe the World Bank always produces credible reports. Most of the counties spend 90 per cent of their funds on recurrent expenditure.



Only 10 per cent goes to development. In my county, for example, which is usually given not less than Kshs4.8 billion, if you were to make a simple calculation of 10 per cent of that money times the four years that we are going to have these counties, you will realise that it will spend over Kshs20 billion on recurrent expenditure and only Kshs2 billion on development. If you calculate the Kshs20 billion times 47 counties, that is the biggest scandal that will have ever happened in this country. Even the Goldenberg scandal was only Kshs23 billion. That would only be for one county in the next ten years. Look at Triton and all these other scandals--- The money being spent recklessly by the counties would add up to not less than Kshs400 billion in five years. Where is this country heading?

The Senate must come up with a very serious amendment to ensure that every county spends not less than 80 per cent of the money sent there on development. If the counties think they can collapse because they do not have money for recurrent expenditure, let them cut down the number of employees. If the counties think that they cannot run because they may be having these other people who are just running up and down with their vehicles, let them use motorbikes. We have teachers in this country, including head teachers and principals, who move from one county to another and from one village to the school using motorbikes or bicycles. Nobody is looking at their welfare. However, in the counties governors are buying several vehicles even for people working at the ward level, including ward administrators who have nothing to do. They are given vehicles and a lot of money is spent on them and yet the people serving this nation diligently do not have anything to use. The Senate must go back and relook at the formation of county governments. If every county government was to have not more than 20 employees like we do in the Constituencies Development Fund (CDF), we would save a lot of money for development. The problem with our governors is that they think devolution meant devolving power and corruption.

I hope, as they are having their conference in Kisumu today, they will not be looking at the National Assembly as hampering devolution. I hope they will not be looking at us as trying to scuttle the prospects of devolution. I hope they will be discussing how they can turn around the reckless expenditures in the counties so that our people can benefit.

There are so many issues that we can deal with as the national Government. Some people are fighting the CDF knowing very well it is the only fund which has affected the local *mwananchi* in a positive way. The reason why they are fighting it is because projects that can be seen in the constituencies are only those done by the CDF. They are fighting it because they know if CDF is removed, they will be the only people having a say, holding brief, holding power and driving everybody in the villages mad.

I wish to tell the county governments that we are not sleeping. We will ensure that the functions of the county governments are done. We will ensure the money taken to the counties is spent properly. We also wish to tell the Ethics and Anti-Corruption Commission (EACC) to deal with the governors who have been mentioned in corruption scandals and take them to court. We want to see them put behind bars, especially my governor. I feel a lot of pain when I see my governor---

**Hon. Speaker:** Hon. Daniel Maanzo.

**Hon. Maanzo:** Thank you, hon. Speaker, for giving me an opportunity to contribute on the Division of Revenue Bill. I oppose the position taken by the Senate and support the position taken by the Budget and Appropriations Committee of this House. When they forward item (b) called “County Emergency Fund”, the country generally already has a big allocation for emergency or any disasters which may occur such as floods. There are very clear methods of getting to the people in whatever part of the country there is an emergency. The county governments have become more inefficient than the national Government. The national Government is usually very efficient. When an emergency strikes, it takes a longer time for the county government concerned, which is supposed to be on the ground, to respond. Therefore, this amount being given to emergency services is not necessary. It is not known when an emergency will happen and what this money is meant to do. In the event there are no emergencies to consume all the allocation, what happens to the monies? Are they returned to the Treasury? Already there are sufficient emergency funds allocated to the national Government secured in a way that an emergency in the country would be acted upon very quickly.

The other thing is that the Constitution is very clear on the roles of the National Assembly and the Senate. In this case, the Senate seems to have abdicated its role. It does not seem to have followed the law correctly. They must have acted beyond their powers or what is expected of them to reintroduce what had already been decided upon by the National Assembly and themselves in a manner that seems to breach the Constitution. Therefore, it would not be proper to support a position which is unconstitutional. In those circumstances, it is only better to reject the proposals they have made and support the proposals of our Committee so that we may save the country monies which are likely to go into waste at the county levels. This nation has serious Vision 2030 flagship projects which could do very well if supported by---

**Hon. F.K. Wanyonyi:** On a point of order, hon. Speaker.

**Hon. Speaker:** I see an intervention from hon. Ferdinand Wanyonyi.

**Hon. F.K. Wanyonyi:** Hon. Speaker, I do not mean to interrupt my good brother, hon. Dan. However, given the mood of the House and the fact that we have exhausted this Motion and we are all negative, I call upon the Mover---

**Hon. Kaluma:** You do not have to.

**Hon. Speaker:** Proceed and make your point. Do not listen to a person who walked in at 4.23p.m.

**Hon. F.K. Wanyonyi:** He just walked in.

**Hon. Speaker:** He must know that I keep time. The person telling you this or the other walked in at exactly 4.23 p.m. So, proceed hon. Wanyonyi.

**Hon. F.K. Wanyonyi:** According to Standing Order No.95, would I be in order to move that the Mover be now called upon to reply? The mood of the House is that we have exhausted this Motion.

*(Applause)*

**Hon. Speaker:** Other than the late comers, do I see the mood as being in agreement that the Mover be called upon to reply?

**Hon. Members:** Yes.

*(Question, that the Mover be now called upon to reply, put and agreed to)*

**Hon. Speaker:** The person who walked in at 4.23 p.m., I know your Committee has been meeting. I am aware and I permitted it. I know you may have been in the Committee meeting. Nevertheless, hon. Mutava Musyimi, proceed.

**Hon. Musyimi:** I am much obliged, hon. Speaker. I take this opportunity to thank the hon. Members for their very substantive and concrete contributions on this matter of the amendments by the Senate. I thank the Members because they are sure that we should reject the amendments. We reject the amendments for very good reasons. The primary responsibility of budget-making in the Constitution, all interpretations notwithstanding, is resident in this Chamber. We have done our work with respect to division of revenue. We have taken advice from all the sides that we should have, not least the Inter-governmental Budget and Economic Council (IBEC). So, we should stand ground in support of devolution, the Constitution and what is right.

I want to take this opportunity to tell our Members that in case they have forgotten, I should remind them that last year around April we made a resolution to do a socio-economic audit of the 2010 Constitution. I am happy to announce that before the end of next month, we will be able to get an interim report from the Kenya National Audit Office (KENAO). We have talked to the Auditor-General (AG) and hopefully by July or thereabouts the nation through this House will get the final report. I say that because in implementing the Constitution, we have seen sibling rivalries between institutions created by the Constitution. I have a feeling that is what we are dealing with today. The Senate is an honourable House but they are now entering areas that do not belong to them. The work that we have done belongs to this Chamber and we are right in rejecting this amendment.

Devolution will work if we are able to get the different State organs working together, the national Government, the county governments, the county assemblies and the Senate. We need to be singing from the same song sheet. It does not help to play politics with serious matters like the Budget. I thank the Members for their contributions. I am glad that we are in agreement to reject these amendments.

With those few remarks, I beg to reply.

**Hon. Speaker:** Well. I need to know how many of you are present so as to know whether your rejection is valid or not and to know whether we have the requisite numbers to put the Question. How many Members are in the House?

Hon. Members, I have been informed that we have the requisite quorum. Like I said, it is fair that I explain this point again. Sometimes it is good to listen to wise counsel. Let me allow the Members who are making their way in to take their seats quickly.

Hon. Members, as explained, the Motion is properly framed which is that the Senate Amendments to the Division of Revenue Bill, National Assembly Bill No. 11 of 2015, be now considered.

A “yes” vote will mean that we proceed to the Committee of the whole House. A “no” vote will mean that we do not proceed to the Committee of the whole House. It will

mean that the House agrees with the Budget and Appropriations Committee's recommendations which most of you have been in support of.

*(Question put and negatived)*

The next thing that I need to announce is that by that vote it means that we kick in the operations of Articles 112 and 113, of the Constitution, which is that we must then have a mediation committee. You are ably led by your Chairman of Budget and Appropriations Committee, but leaders will consult and give me names.

It is not my responsibility to appoint those who are going to be in the mediation committee. Therefore, the hon. Leader of the Majority Party and the hon. Leader of the Minority Party should give me the names possibly by tomorrow morning so that we can alert the Senate that their amendments have been rejected by this House and that we need to set up a mediation committee which again in terms of the Constitution has only 30 days within which to agree or come up with a version of a Bill that is agreeable to both Houses. If they do not agree in the mediation committee, the Division of Revenue Bill 2015 is as good as dead in the water.

If they agree and one House does not agree, similarly the Division of Revenue Bill 2015 will be dead. The consequences thereof are that in terms of Article 224 of the Constitution, the county governments therefore have no basis on which to prepare their budgets. I have always emphasised this point so that this so-called antagonism is usually not ---Most of you have said today that everybody supports devolution. Whether you support or not, it is there in the Constitution and it must happen. So, this is not a war about fighting devolution or not fighting devolution. However, it is fair for everybody to appreciate that in terms of that Article 224 the counties will not be able to prepare their budgets. This is because, it says that they will prepare their budgets on the basis of a Division of Revenue Bill passed by Parliament in accordance with Article 218.

Of course, the Cabinet Secretary for National Treasury will still be at liberty, proceeding under Article 221, to bring to the National Assembly the Estimates of Revenue and Expenditure for the National Government, the Parliamentary Service Commission (PSC), the Judicial Service Commission (JSC) and other national State organs. Even as people consider this, they must bear in mind that it is not fair that people think that we are in turf war. We must put the interest of the country before anything else. I am happy that both the Leader of the Majority Party and the Leader of the Minority Party are in the House. Therefore, they will give me names of the Members to be in the mediation committee.

Having voted 'no' to the Motion, it means that we should proceed to the business appearing as Order No. 11, for which I have already given withdrawal permission since the Committee is still working on the have amendments from various Members. Therefore, that business does not arise for now.

*(Committee of the whole House on Public Procurement and Asset Disposal Bill deferred)*

I had given an indication that the Vice-Chairperson of the Departmental Committee on Justice and Legal Affairs will be tabling their Report around this hour. Could she proceed?

### PAPER LAID

**Hon. (Ms.) Kanyua:** Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Departmental Committee on Justice and Legal Affairs on the Petition for removal of two Commissioners of the Ethics and Anti-Corruption Commission (EACC).

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON REMOVAL OF TWO EACC COMMISSIONERS

**Hon. (Ms.) Kanyua:** Hon. Speaker, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for removal of two Commissioners of the Ethics and Anti-Corruption Commission (EACC), laid on the Table of the House on Tuesday, 21<sup>st</sup> April, 2015; and that, in accordance with the provisions of Article 251(3) of the Constitution and Standing Order 230(5), finds that the Petition does disclose sufficient grounds for the removal of Mr. Mumo Matemu and Ms. Irene Keino as Commissioners of the EACC.

Thank you, hon. Speaker.

**Hon. Speaker:** Next Order!

### MOTION

#### ADOPTION OF SPECIAL PIC REPORT ON TELKOM KENYA

*(Hon. Keynan on 24.3.2015)*

*(Resumption of debate interrupted on 24.3.2015)*

THAT, this House adopts the Special Report of the Public Investments Committee (PIC) on the Recapitalisation and Balance Sheet Restructuring of Telkom Kenya Limited, laid on the Table of the House on Tuesday, April 29, 2014.

**Hon. Speaker:** Hon. Keynan, you were in the process of moving the Motion. I do not know how much time is left. Can you proceed?

**Hon. Keynan:** Thank you, hon. Speaker, for giving me the opportunity to continue moving the PIC Report on the Recapitalisation and Balance Sheet Restructuring of Telkom Kenya Limited, laid on the Table of the House on Tuesday, April 29, 2014.

As I had alluded to, the intention of privatisation was good but just like all other failed privatisations that have been initiated in the last two decades---

**Hon. Speaker:** Sorry, hon. Keynan. This is not to interrupt you but just to indicate to you that you have a balance of 46 minutes.

Proceed.

**Hon. Keynan:** Hon. Speaker, let me take hon. Members back. Telkom Kenya is one of the off-shoots of the defunct giant Kenya Posts and Telecommunications Corporation, which later on saw the birth of Communications Commission of Kenya, Telkom Kenya Limited, Postal Corporation and a number of other entities. Before privatization, Telkom Kenya was a 100 per cent Government owned entity. I will be demonstrating soon how in December, 2007 and December, 2012 two unique things happened. When the Government of Kenya decided to undertake the process of privatising Telkom Kenya, initially the idea was to sell 51 per cent of the shareholding of that entity. A number of companies registered with Telkom Kenya and purchased bids. The first one was France Telkom South Africa, Telkom South Africa, Reliance Communication of India, LAP Green Network, Alcazar Capital, MTNL India, VSNL Tata India and Sudatel South Sudan. The seven companies picked the bid; registered with Telkom Kenya and purchased all the documents but only four of them later on returned the completely filled technical and financial proposal. These were France Telkom, Telkom South Africa, Reliance Communication of India, and LAP Green Network, India. The bids were evaluated and eventually France Telkom, the consortium that included Alcazar Capital Limited, quoted USD390 million; Telecom South Africa quoted USD282.8 million and Reliance Communication of India quoted USD221 million. As a result of this, the consortium that consisted of France Telkom SA, which included Alcazar Capital Limited, won the bid. After successfully paying the USD390 million, they were allowed to launch the Orange brand in Kenya on 21<sup>st</sup> December, 2007.

Hon. Speaker, a number of events took place as a result of this privatization. First of all, the fact that the Government allowed the sale of 51 per cent of its shareholding means that it was reduced to a minority shareholder. The Government shareholding was reduced from 100 per cent to 49 per cent. The privatisation took place without the involvement of the Privatisation Commission, the Communication Commission and the Attorney-General of the Republic of Kenya. Therefore, the whole transaction was conducted in an opaque manner. It is because of this that today the giant entity once called "Telkom Kenya" has been reduced to a struggling small time communication company. We have always been reading bad news about Telkom Kenya. It is because privatisation process was not carried out in a transparent and prudent manner that would have given value for money to our taxpayers.

Hon. Speaker, 21<sup>st</sup> December 2007 was barely a week before the general election. That was the time when whoever was in charge decided to sell off 51 per cent of the shares of Telkom Kenya.

*(Hon. Speaker left the Chair)*

*(Hon. Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh took the Chair)*

Something shocking again happened on 31<sup>st</sup> December 2012. On that day, the Government of Kenya was expected to contribute to the further restructuring of Telkom Kenya by contributing Kshs4.9 billion. The Government of Kenya made a number of commitments without budgetary provisions. Later on, the consortium that bought Telkom Kenya went round and said that they were willing to write off all the debts totaling Kshs30 billion in exchange for further dilution of the Government shares from 49 per cent to 40 per cent. They wanted Kshs30 billion in exchange for 9 per cent of the shareholding. If 9 per cent of the shareholding of Telkom Kenya can translate into Kshs30 billion, what will 100 per cent of the shareholding of Telkom Kenya amount to?

All these were done without contacting any asset registry, conducting any valuation and going through the route that any transparent restructuring would have gone through. It is because of this that the Government of Kenya's shareholding was later on reduced. The Government allowed, in exchange of Kshs30 billion loan to reduce its shareholding in Telkom Kenya by 9 per cent. Again, the Government failed to honour the commitment that they had entered into with other groups in contributing Kshs4.9 billion. Eventually what happened is that, it lost a further 10 per cent of the shareholding of Telkom Kenya through dubious means because there was no budgetary provision yet the Government had entered into a commitment. The Government lost a further 10 per cent. Therefore, the shareholding of the taxpayers in Telkom Kenya was reduced from the initial 100 per cent to 49 per cent; from 49 per cent to 40 per cent; and, further from 40 per cent to 30 per cent. All these happened without the requisite involvement of institutions like the then Communications Commission of Kenya (CCK), the Privatisation Commission, the Office of the Attorney-General of the Republic of Kenya and by extension the Office of the Auditor-General. This created a confidence crisis. To date, one of the things that we have attempted to find out is the ownership of some of the companies that purportedly participated in this consortium.

Hon. Temporary Deputy Speaker, there is a company called "Alcazar Capital Limited." We went out of our way to find out more about its ownership. We were told the company was fully represented in the Board. We did due diligence. To date, none of the Public Investments Committee (PIC) members can tell the whereabouts of this company which participated in this consortium. Initially, we were told they are based in Dubai and we realised they are not there. Later on we were told they are based somewhere in Upper Hill Estate, but we found out they are not there. Then we were told they are based in United Kingdom (UK), but we also realised that they are not there. A telecommunication company is a quasi security entity. Allowing a nondescript company to participate in one of the biggest privatisation ventures in the Republic of Kenya without an identity, office, location and its true owners being unknown is something that we found suspect and we could not comprehend it. We are recommending to this House and other investigative agencies to put in place all the mechanisms in order to bring out the true identities of the owners, directors and the location of this company called "Alcazar Capital Limited." As a Committee, we were unable. Of course, this is not the first time, I know of privatisations that took place and I also have a history of mysterious companies that participated, but nobody could claim ownership of them.

Hon. Temporary Deputy Speaker, this being the case, we came up with a number of observations. The first observation is why the Government of Kenya and the players who were involved in this did not find it prudent to involve the key oversight agencies. Why did they exclude the Communications Authority which has the oversight role in telecommunication sector in this country? Why was the Attorney-General of Kenya not involved? Why was the Privatisation Commission, an entity that the taxpayers fund to oversee any privatisation venture, not involved? Why was the Auditor-General of the Republic of Kenya not involved? These are not entities in the streets; they are constitutional entities that are entrusted by the taxpayers to provide oversight on Government spending on any transaction. This in itself did not go well with the players. I believe that is why Telkom Kenya is where it is today. You know where Telkom Kenya is placed in the telecommunication industry.

The other bit is this: Why was this key process undertaken at a time when everybody was busy with the general elections that is, 21<sup>st</sup> December 2007 and 31<sup>st</sup> December 2012? Why did these individuals' time when Kenyans were very busy? On 31<sup>st</sup> December, how many Kenyans work? It is when the year is coming to an end and more so, it was an election year in 2012. Somebody sits in an office, crafts a privatisation programme that includes giving away over 40 per cent of the shareholding of Telkom Kenya that totals to billions of shillings. You can jot down the two dates in your mind, that is, 31<sup>st</sup> December 2012 and 21<sup>st</sup> December 2007. Somebody was just around waiting for the general election mood to set in and then craft this corrupt process and take away our resources. That is exactly what happened. Therefore, that question has not been answered.

The other thing is that there was no planning at all. There was no feasibility study done. The asset registry was not done, and there was no valuation; nothing at all was done and you know Telkom Kenya has property all over. It is a remnant of the giant Kenya Posts and Telecommunications Corporation. How do you carry out a privatisation programme without proper planning, valuation and involvement of key institutions required to play oversight role? We have asked for the asset registry, but none has been availed by both Treasury and the Ministry of Information, Communication and Technology, and even Telkom Kenya itself. That is something that we found wanting and, therefore, the only question is: Was this not by design?

Hon. Temporary Deputy Speaker, privatisation, to date, has not benefitted the taxpayers. Telkom Kenya is struggling. Is it by design? In the past there have been a number of entities that we privatised at a throw-away price and they were eventually bought by the same cartels that engineered this privatisation at a throw-away price. This is the trend in Kenya and I want to ask the hon. Members here to tell me which privatisation has succeeded in Kenya since Independence. I want to jog your minds and ask you to state even one. The only one which we celebrated was the Kenya Airways. It is now on its knees. Is there any other privatisation that has fully taken place and succeeded? There is none simply because the planners do not plan. They plan with an insight that they must benefit. The process is flawed, corrupt and the planners aim to benefit. Eventually, the same cartels use the proceeds of what they get through the corrupt means to buy the same struggling institution. That is why today, Telkom Kenya is on sale. It has been in the media that they have been all over the world asking for partners



and individuals to buy it. Is that the state we want Telkom Kenya to find itself and yet it is a giant entity? Today, it is struggling behind some of the privately owned telecommunication companies that were recently incorporated in Kenya. Is that something we can accept to happen to Telkom Kenya? This happened because it was by design. The privatisation is done in an opaque manner with anonymous individuals who eventually come around to use the proceeds and claim that they are revamping it. That is the trend in Kenya. Is that really what we want? Today, Telkom Kenya is almost, I will not call it a dead institution, a struggling institution.

The Attorney-General of the Republic of Kenya is the chief Government legal advisor. Why was he not in the know? Why was he not in the picture? Why did he not participate in this? The answer is that the Attorney-General would have raised some fundamental legal issues on this key privatisation. This was not done. How do you privatise a key security entity to companies and individuals whose identities are not known? This Alcazar Capital Limited, who owns it? We had asked the Treasury, CCK, the Privatisation Commission and Telkom Kenya and what we were told is that they exited and gathered their shares and a local Kenyan took over their shareholding. We were told nobody knows their identity. This is something that we found suspect and I hope the recommendations we will be making at the end of this will help us get leads and unearth who these individuals are.

Today, statistics from the Communication Authority of Kenya indicate that Orange Kenya has the lowest number of subscribers. Even before I knew mobile telecommunication, Telkom Kenya existed in my village. Today, I am told that Telkom Kenya has the lowest subscriber base. Was this not by design? This is the state of things and the issue that the Eleventh Parliament must be prepared to call a spade a spade and cure it.

Hon. Temporary Deputy Speaker, having made those observations, the Committee considered a number of issues and realised that we must take drastic measures. This Report took a bit of time. Maybe if it had been debated earlier - the Report was tabled in April last year, it is almost a year - some of the things that might have happened to Telkom Kenya would have been prevented. In future, when an investigative committee brings a serious report like this one, we plead with the House to fast-track such reports so that we can prevent some of the ill activities that are going on.

Another observation we noted was that the lead financial consultant was an employee of the Treasury. We realised there was a conflict of interest. How do you have your employee - some of you are fiduciary experts - providing financial consultancy to an entity that you want to privatise? In the evening you wear a hat as a consultant for Telkom Kenya while during the day you sit in the Treasury. This is something we could not understand and so we realised that there was an apparent conflict of interest which was by design so that the cartels who were engaged in the privatisation process could prevent any other person from participating in the process.

The timing was suspect as it was done on 21<sup>st</sup> December, 2007 and 31<sup>st</sup> December, 2012. The consultant was the Treasury. The Communication Commission of Kenya (CCK), the Attorney-General, the Privatisation Commission and the Auditor-General were not involved. This was a process that to date, we cannot tell you who initiated it and who it is likely to benefit. It is because of this today that Telkom Kenya

and the entire privatisation process is a waste to the taxpayers. We have lost the brand name “Telkom Kenya” to entities whose tax returns, I am sure, must be below zero simply because they do not have subscribers. This is something we would have avoided if the privatisation process would have been undertaken through a transparent, prudent and fair process. Since this did not happen, we have a former giant entity called “Telkom Kenya” struggling. This is a sorry state and as Parliament, we must be prepared to cure but I do not know how we are going to cure it because we have already wasted billion of shillings.

One thing that shocked us is that nobody could tell us where the asset registry was. In all the villages we come from, the old Kenya Posts and Telecommunications Corporation used to have structures. They used to own plots. If you go here to Milimani or walk next to the Central Bank of Kenya (CBK), all those prime properties were either owned by the Postal Corporation of Kenya, Telkom Kenya or a provident fund which is an off-shoot of the old Kenya Posts and Telecommunications Corporation. Nobody could give us the list of any of the properties. We wanted to put a scale of the assets, the valuation and the price of the restructuring. Nobody was willing to do that because the cartel did not want to have this process carried out in a transparent manner and eventually the taxpayers lost a critical entity.

I want to emphasize that in this era of serious security threats, telecommunication is one of the means of ensuring that a sovereign republic like Kenya is secure. Since we have privatised and given Telkom Kenya to individuals whose identities are not known, how sure are we that we are protected? How sure are we that the key lines Telkom Kenya provides like the hotlines among others are not being interfered with by these corrupt individuals who purportedly crafted a method that gave them Telkom Kenya without spending a penny? This is the reality. As the leadership of the Republic of Kenya, we must call a spade a spade and deal with it.

Hon. Temporary Deputy Speaker, shockingly, when we reflected on this and compared it with all the other past privatisation processes, the only conclusion we could draw as Members is that all the privatisation that has taken place over the last two decades was oriented, centered or choreographed in such a way to benefit a clique. This clique has amassed so much wealth in the Republic of Kenya that today, to some extent, is a security threat to the survival of the 40 million Kenyans. This clique must be named. It must be shamed so that it does not repeat this. This is why today even some of the key privatisation attempts that have been made over the last two or three years, very few reputable international entities were willing to participate simply because the whole privatisation process was either corruptly driven or completely flawed. Nobody wants to participate in the process. The Telkom Kenya is an entity that if it had been properly privatised, it would have generated many job opportunities, created income and made huge returns to the taxpayers and eventually we would have been proud of. I am not sure whether there is any one of you here who is a Telkom Kenya subscriber. I am not sure. If I would ask you, you are either in Safaricom or Airtel. The reason they do not have subscribers is that their services are wanting. They do not have the facilities. What happened? This is the question everybody is asking.

The other shocking observation we made is this thing called “frequency”. Frequency is a tool that the communication industry uses first to regulate the industry and

two to bring income generation to both the investors and the taxpayers. This did not happen with Telkom Kenya. The frequency that Telkom Kenya was given was done without the knowledge of the CCK. This is a serious observation and because of this, the Committee has decided--- I have a serious cold and so I do not want to proceed with all the other observations. I know that some of the other able Members of the Committee will raise them.

These are the recommendations that we are asking this House and other investigative agencies to take seriously. First, the Ethics and Anti-Corruption Commission (EACC) to investigate the officials in the Ministry of Finance or the National Treasury and in the Ministry of Information and Communication Technology, as it used to be called, who were involved in the entire privatisation, recapitalisation and restructuring of the balance sheet of Telkom Kenya from 2007 to date because the whole process is suspect.

Secondly, the EACC should investigate the National Treasury for committing the Government of Kenya to sign a recapitalisation programme and a restructuring agreement without making sure that there was adequate budgetary provision contrary to Section 26(6) of the Public Procurement and Disposal Act of 2005.

Hon. Temporary Deputy Speaker, how do you commit the taxpayers into an agreement that you know is not supported by budgetary provision? This is exactly what happened. They committed on behalf of our people what they could not honour. Eventually, that is why the taxpayers lost their shareholding from 49 per cent to 40 per cent and eventually to 30 per cent. In the process, we have lost shares worth over Kshs66 billion. If 9 per cent of the shareholding of Telkom Kenya is equivalent to Kshs30 billion, you can compute what 100 per cent would be. You can compute what 49 per cent would be and what 30 per cent would be. Therefore, our conclusion is that taxpayers lost shares worth over Kshs66 billion through this fraudulent process.

Therefore, we are asking that those who committed the taxpayers into this fraudulent agreement without a budgetary support must be brought to book. These individuals are known. They should be named and shamed. So, we expect the EACC to bring these individuals to book as soon as possible so that they can serve as a lesson to any other future participants in future privatisation processes.

Thirdly, we are recommending that the EACC should investigate the ownership, identity, the legal existence and location of this mysterious entity called the Alcazar Capital LLC and determine its role in the privatisation process.

It should be determined if it is an entity which is recognised in law and whether it is registered in Kenya or anywhere else in any civilised nation. This company must be duly registered, have an identity and a base. One week we were told that it was in Dubai; the other week we were told that it was in South Africa; and the other week we were told that it was in London. Eventually, we could not identify its base. Today we cannot tell you who Alcazar is. Nobody knows. Therefore, we want the EACC to investigate.

Fourth, we want the EACC to also investigate the true identity and the legal existence to the Orange participation; that is Orange SA and Orange East Africa. We eventually became a bit suspicious that even the consortium might have been our usual cartels. Therefore, what we are asking the EACC is to tell us the true faces of the individuals behind the Orange group of companies.

Fifth, we recommend that the Government should reconsider its privatisation of Telkom Kenya Limited and its recapitalisation and restructuring, in light of the loss-making trend by Telkom Kenya; and in light of the serious security challenges that privatisation has brought to this country. Communication is a quasi-security function. Those who do understand should know that the challenge that the world is facing today is as a result of poorly coordinated communication industry. Are we safe that today Telkom Kenya is in the hands of individuals whose identity and face is not known? Because of this and the fact that the process was flawed, we are saying that the Government of Kenya should reconsider the entire process.

Sixth, the EACC should also investigate the assets of Telkom Kenya before and after privatisation so that we have an idea of how much the value of Telkom Kenya was before and after it was privatised. This is because we suspected that huge chunks of land belonging to this entity might have disappeared alongside the privatisation process. This is information we could not get. That is why somebody did not find it fit to keep an asset registry. Therefore, we are asking the EACC to give us a list of the assets of Telkom Kenya before and after its privatisation, so that we can compare.

Seventh, the National Treasury engaged private legal and financial consultants, instead of engaging the Office of the Auditor-General or the Office of the Attorney-General, without the approval of the key institutions required to oversee the process. The law is very clear. Since it was not followed; since the consultant was an employee of the National Treasury and since the legal process was also provided by somebody who is not even recognised and the Attorney-General was not involved; we are saying that the Government of Kenya, through the National Treasury, which was the key agent, uses this means. Therefore, the EACC must also find the ownership or the true faces of the people who provided financial consultancy and the other companies that provided legal services.

Equally, we are also saying that the Government never sought the Communications Commission of Kenya's (CCK) approval or authorisation when it came to ceding further shares in Telkom Kenya. In this era, we have created entities that use taxpayers' funds, including the CCK, the Privatisation Commission, the Office of the Auditor-General, the Office of the Attorney-General, the Inspectorate of State Corporations and the Efficiency Monitoring Unit, yet the Government did not find the latitude to refer or ask these entities to be involved in the privatisation process of Telkom Kenya. We are, therefore, saying that those individuals who failed to play their role as required by the law in this key institution, should also be found culpable. Therefore, the EACC should investigate the individuals and bring a Report.

The ceding of shares by the Government of Kenya to Orange Telkom was illegal. Therefore, since the process was illegal, the Government has a right to reclaim the entire shareholding of Telkom Kenya. This is the only way we can shame the corrupt, fight corruption and end impunity. This is the only way we can send a very strong message that you can connive in an illegal process, just when people are going for election or on 31<sup>st</sup> December, when everybody is holidaying; but eventually, Kenyans have the will to determine how that process was done. It is not an accident that this thing was connived on 21<sup>st</sup> December, 2007 and on 31<sup>st</sup> December, 2012, when everybody was busy. You ask yourself: "Who was in office on 31<sup>st</sup> December, engaging in a process worth billions of shillings?" Because that process was illegal, we recommend that the Government of

Kenya is duty-bound to reclaim the entire shareholding of Telkom Kenya because the process was flawed.

There is also clear lack of clarity about the market valuation. When we asked how much Telkom Kenya was worth, nobody could tell us. Eventually, we had to struggle and we were told it was worth Kshs50.98 billion. We were told that, everything included, Telkom Kenya was worth about Kshs50 billion. That is unbelievable. Therefore, we are asking again that the Government must engage experts to validate and give the true value of Telkom Kenya. Otherwise, the value given is suspect; it is meant to hoodwink and mislead the public.

Hon. Temporary Deputy Speaker, the EACC should also undertake investigations and determine the circumstances that led to the drastic and suspicious investment by Alcazar. The ownership and location of the company that participated in the consortium that won the tender is not known. They do not have an office. Eventually, we are told that it exited and somebody was paid billions of shillings. Nobody knows who that person is. Do we not have the right to know who the person who participated in the privatisation is? Do we not have the right to know who owns Alcazar? Who is Alcazar Capital Kenya Limited? This is something that the Registrar in Kenya, the authorities in Dubai and London could not tell us yet we are told that this is the company that won a part of the consortium that participated in this critical restructuring process. This is something that we would want the EACC to investigate and give us their findings.

Equally, the EACC should also investigate the rationale and the role of the entity called "Orange". As I earlier explained, after going through the entire process and evaluating it, we became suspicious that the whole thing might be something that was cartel-driven, cartel-cantered and cartel-blessed. Therefore, even the issue of invoking Orange's name became suspicious. We were told that the company was Orange East Africa. At one time we were told that it was Orange East Africa. At another time, we were told that it was Orange SA. At another time, we were told that it was Orange France. The names are confusing. The only common denominator is "Orange". The EACC should tell us who is the true Orange and who the true shareholders are. That is why we are asking them to find out.

Because the process was fraudulent, we are also asking the Government to urgently renegotiate. We lost about Kshs2.5 billion. On 31<sup>st</sup> December 2012, they went into an agreement to recapitalise Telkom Kenya because the new owners said that the company was not doing well and, therefore, they wanted to inject resources. Can the Government of Kenya play its role as a shareholder? Somebody signed an agreement. That agreement was not honoured because it was neither backed by the law nor backed by a budgetary provision. We paid Kshs2.5 billion. Up to now, nobody knows the whereabouts of the Kshs2.5 billion. It is not even factored in the shareholding. It is part of the money we lost. Therefore, the Government should immediately renegotiate with the aim of recovering the shareholding and the amount that was purportedly contributed without being factored in the Budget. Once we do this, we will be in a position to properly sit down with the individuals who initially got 51 per cent shareholding of Telkom Kenya. This is an urgent thing. This House is not a rubber stamp.

This Parliament is the true representative of the people of Kenya. Therefore, our recommendations should be considered. I want to urge the Chairperson of the Committee

on Implementation to act because for the last two years, I am yet to see a report originating from that Committee of this House. I was in the last Parliament and one of the reasons we decided to have a Committee called the Committee on Implementation is to look at the reports generated by this House and ensure that they are implemented. I will want to ask my good brothers and sisters who sit in that Committee to invoke the provisions of the Standing Orders and the Constitution and ensure that the reports we generate are implemented to the letter. Unless we do that, we will be reduced just to a rubber stamp. I am sure with the struggle we have gone through, none of us came to this august House to be part of a group that just rubber stamps issues that will haunt and project you in very bad light in ten or five years when the elections come. That is my belief.

We are also asking the Ethics and Anti-Corruption Commission (EACC) to investigate the circumstances under which one person called Ashif Kassam and another one called Mohammed Nyaoga were appointed as directors of Telkom Kenya. Whose interests were they representing? We want somebody to unmask Ashif Kassam. Who is this Ashif Kassam? Whose interests does Mohammed Nyaoga represent in Telkom Kenya? We were unable to determine and verify.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, there is a point of order from hon. Ferdinand Wanyonyi.

**Hon. F. K. Wanyonyi:** Hon. Temporary Deputy Speaker, I am a member of the Committee on Implementation which the Mover is referring to. First of all, they have put some reports here. I want to know what role the Committee on Implementation is supposed to play so that I can pass the information to others. It is not very clear.

**Hon. Keynan:** Thank you. I want to enlighten you on what the Standing Orders say. Having participated in the drafting of the current Standing Orders, the work of the Committee on Implementation is to look at all reports adopted by this House and ensure that the contents of those reports are implemented to the letter. If this is passed today, we expect you to be seized of it tomorrow and ensure that it is implemented to the letter. Thank you.

So, hon. Temporary Deputy Speaker, whose interests does Mohammed Nyaoga represent in Telkom Kenya? Whose interests? What of Ashif Kassam? Let me tell you something a bit about him. Ashif Kassam was an employee of the Treasury. Ashif Kassam was their financial consultant. Ashif Kassam ended up being a director of Telkom Kenya. Can you look at the linkage? An employee of Telkom Kenya, a financial consultant to the privatisation process and eventually a director in Telkom Kenya. That person must be special. We want to know how special that person is. Whose interests does he represent? Mohammed Nyaoga is one of the key legal minds in the Republic of Kenya and he is somebody that I really respect but we will want to know who he represents. He could not tell us whose interests he represents in the board when he appeared before us. Certainly as a lawyer, he has a client. Therefore, one of the things that we are asking EACC is to investigate, unearth and tell the Kenyan taxpayers whose interests Mohammed Nyaoga represents in Telkom Kenya. This is one thing that we expect EACC to unearth because they have the capacity.

We are also recommending that all future Government of Kenya privatisations must be guided by the Privatisation Act, any other relevant law, the Office of the

Attorney-General and other relevant recognised institutions. We are saying they must participate. Any process that does not take into account the provisions of the Privatisation Act, the role of the Office of the Auditor-General, the role of the Chief Government Legal Advisor who is the Attorney-General of the Republic of Kenya, the role of the Inspectorate of State Corporations, is a nullity and must be declared void. The reason we fund these agencies is to allow them oversee some of these processes. Why do we have a fully fledged Privatisation Commission? Why do we have a fully fledged Communication Commission of Kenya? Why do we have a whole department called “Office of the Chief Government Legal Advisor”? Why do we have an independent office called “Office of the Auditor General” (AG)? These offices are expected to provide services and oversight on behalf of the taxpayers whom we represent in this House. Any future privatisations must allow these entities to play their rightful roles.

Equally, we are recommending that any future engagement between the Government of Kenya and firms for instance with Telkom, Orange South Africa and Orange East Africa should be scrutinised thoroughly. In this era of globalisation, the global village and fate, you cannot just allow brand names. You know you can fictitiously say you are called so and so who ventures in anything and later on people realise that the name and your activities do not match. It will be too late and you will have done a lot of damage. This is why we are saying can we ascertain whether the names “France Telecom,” “The Orange participants”, others called “SA” or “East Africa” and “Orange East Africa” which were involved in this process are genuine? We need to be made to understand what these names represent and whose interest they represent. This is one thing we are asking the Government to be careful – be careful with these names when you see them in any future privatisation process. We are also recommending that the Government should relook into the policy of privatisation of key and strategic public investments with a view to ensuring that due diligence is properly carried out and that public interest is fully protected at all times.

We have seen so many privatisations. The latest one is of the Kenya Wine Agencies (KWA). Recently, my Committee had an opportunity to look at the entire privatisation process. We are not persuaded and we will be bringing a report very soon on how the entire privatisation of KWA was predetermined by an entity that had an interest and you will be shocked. It is the latest privatisation that took place. Why do we engage in a privatisation that is not meant to benefit the taxpayers? This is why we are recommending that we do not need to privatise some of the key institutions. These are national assets belonging to our children and every Kenyan. It is not fair when we allow few crooks to sit and operate under their tables as they exchange gifts and other benefits and purport to give our national heritage to entities and individuals whose origin, whereabouts and location is suspect. This is something we cannot expect in this modern Kenya.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, you have two more minutes.

**Hon. Keynan:** How many more minutes?

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Two more minutes.

**Hon. Keynan:** Okay. I thought you will put the signal on. That is what I was waiting for. Because you did not put it on, you will have to give me the benefit of the doubt.

*(Laughter)*

Yes. I was waiting for the light. I plead, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Go ahead. Go ahead, hon. Member.

**Hon. Keynan:** So, you give me five or ten more minutes to conclude. Give me five more minutes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): No. Go ahead and stop eating into your time.

**Hon. Keynan:** Thank you, hon. Temporary Deputy Speaker. That is why I was looking at this side throughout.

We are also saying that the Government, the National Treasury and the AG should ensure that Telkom Kenya recovers all salaries of employees of Mobicom Kenya Limited who were paid by Telkom Kenya. Mobicom is one of the private companies and we did not have an issue with that. We became suspicious because salaries of employees of that company were for a certain period being paid by Telkom Kenya. That tells you that there must be a special relationship which must be unearthed by EACC.

We are also recommending that the Cabinet Secretary (CS) for Information, Communication and Technology (ICT) should, with immediate effect, terminate the contract between Telkom Kenya and the National Optic Fibre Network. This is to protect the national interests. Because we did not know the ownership and the shareholding, we feel this is a threat to the lives and security of the people of Kenya and any other person who lives in this country.

Finally, the Competition Authority should investigate claims of uncompetitive and protectionist behaviour by some of the operators in the industry that has maybe contributed to the lacklustre performance of this once critical entity called Telkom Kenya.

In conclusion, Part III of the Public Audit Act of 2003 and Part IV of the State Corporations Act should be amended to comply with Article 229(5) of the Constitution of Kenya. Equally, the Companies Act, Cap. 486 be amended to make it mandatory for all shareholders and registered companies in Kenya, whether privately or publicly owned, to have the names and identities on the records for the Government.

With this, I beg to move and ask hon. Serem to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, please press the intervention button.

**Hon. Serem:** Thank you, hon. Temporary Deputy Speaker. Let me thank the Chairman for the wonderful presentation on how Telkom Kenya was siphoned by these crooks in this country. If anyone could go through the whole process on how Telkom was privatised, you will realise that it was designed in a way that would benefit a few who were interested in that institution. One, there was no valuation for properties found in the entire country in prime areas. You cannot imagine how much it is worth but these guys



were not interested in the business of telecommunication. They were interested in properties in this country. To prove the fact that these guys were interested in the properties, they have not injected anything to move their business. They are busy moving the ownership from one individual to the other in a way that you cannot tell who the owners are. These same crooks who were after this company have perfected their way of looting in this country in a way that if you look at it, you wonder who earns the dividends. You can say you are hiding but who earns dividends? Who are the owners? I am telling you, they are not strangers but Kenyans who are interested in eating this country. I am not ashamed to say that some of them sit in this House. As they hide, history has always been that most of the guys who steal the most end up coming to this House because of their loot. I am happy that Kenyans are now seeing sense that most of the guys who come to this House are clean Members like---

**Hon. Kipyegon:** On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, there is a point of order from hon. Kipyegon.

**Hon. Kipyegon:** On a point of order, hon. Temporary Deputy Speaker. I sit in the Public Investments Committee (PIC). With a lot of respect to my friend who is my colleague in the Committee, I would have wished that he substantiates his claims that some of the people who looted---

*(Hon. Serem stood up in his place)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, please take your seat as the other Member is on his feet.

**Hon. Kipyegon:** I would have wished the hon. Member to substantiate because the rules which were spelt out by the Speaker last week were that whenever you make allegations against any Member of this House, you must be in a position to substantiate. The fact that somebody mentioned that some of the Members who have looted or who looted Telkom sit in this House, I would wish that the Member substantiates.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Serem, are you in a position to substantiate? Otherwise, you would have to withdraw.

**Hon. Serem:** Before I withdraw, I said these guys are hiding. When I say they are hiding, if they were in this House and I was able to name them, then I would not be using the word "hiding." Two, I never said that there are individuals here. I said I am suspecting that some are even here. It is possible they could be here because most of the guys who loot this country use their loot to come and protect their loot and the best place to protect the loot is in this House.

**An hon. Member:** Those are very serious allegations.

**Hon. Serem:** If hon. Ng'eno is not happy, I withdraw.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): He has withdrawn, go ahead.

**Hon. Serem:** I proceed. I know some are not comfortable with my statement but let me proceed.

**Hon. Letimalo:** On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Letimalo, what is your point of order?

**Hon. Letimalo:** On a point of order, hon. Temporary Deputy Speaker. The hon. Member is perfectly in order. He has nothing to withdraw because he has not named any particular Member of this Parliament. So, he has nothing to withdraw. He just talked in general. It is perfectly in order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Serem, please go on.

**Hon. Serem:** I agree hon. Temporary Deputy Speaker that I have not named anybody. I said some could be hiding. That was my statement and I do not have to withdraw because it is also possible that---Not only in this Parliament, we could have Members of County Assemblies (MCAs), the Cabinet or the Executive. It is possible that we have these characters who have looted this country. If we can look back and see the history and how institutions in this country have been looted, there is no difference between what happened with Telkom Kenya. There is no difference between other institutions that were looted with what happened here. But I believe the few---

**Hon. King'ola:** On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Patrick Makau, what is your point of order. Please, let us try and minimize point of orders.

**Hon. King'ola:** Thank you, hon. Temporary Deputy Speaker. It is public knowledge that I deal in Telkom products. The hon. Member is talking looking at me. Is he insinuating that I am one of them? He went ahead and called those people crooks.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): You are out of order. Hon. Member, we finished with that issue. The Member had not mentioned anybody by name.

**Hon. King'ola:** It was paining me because he knows what I do. I am just worried, my constituents are watching. Is he in order?

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): You are the one who is raising aspersions on yourself because he did not mention you by name. Go ahead hon. Member.

**Hon. Serem:** Hon. Temporary Deputy Speaker, I did not even know that he was one of them. But if he is, he should apologise for interfering with my presentation. If he is coming out of the hiding areas, well and good. I want to urge the Government, before we engage our service to any investor, we should do due diligence. Some characters may not even own any similar business in their home countries. If you look at the entire process, it was designed so that these owners can take over. Technically, it was meant to benefit individuals in the system. Just before the financial year 2012, there was indication that Telkom Kenya required about Kshs2.5 billion for restructuring. There was no provision at the National Treasury. So, it was designed in a way that the National Treasury would fail to pay so that Telkom Kenya could proceed to own 10 per cent. It was 10 per cent of a company that we did not even know how much it was worth. There was no valuation in the first place. So, you wonder how these guys would arrive at 10 per cent out of failure to pay Kshs2.5 billion.

I beg to second. Thank you.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Nyamweya.

**Hon. Member:** He is not in.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Jonah Kipyegon.

**Hon. Kipyegon:** Thank you, Temporary Deputy Speaker. Like I said during the point of order, I sit in this Committee. I am a Member of the Committee that looked at and perused these facts which we are discussing today. Let me say that I have no interest. I have never worked before in this particular company which was privatised. Therefore, when we claimed that most of the Members who robbed this particular company hide in this House, I was worried. Otherwise, I wish to say that I support the Committee. I support the Chairman and I am happy with the way the Chairman presented the issues.

Telkom Kenya was one of the most powerful companies in this country. We know everywhere in the world that communication is the most important asset of the Government. It is like transport. Privatising the communication sector is like privatising the transport system in the country and that is tantamount to scuttling security of the nation.

Hon. Temporary Deputy Speaker, looking at the process of privatising this particular company it leaves a lot to be desired. Last week, we were discussing about the privatisation of some of the sugar companies in this country. We supported it because we know these are assets that belong to the people and people can run them the way they want. They can manage them properly and can inject a lot of money because when it is privatised, it will help farmers.

It is good to allow other companies to come up with other means of communication but the telecommunication company was a Government company which was raking in millions and billions of money in this country. Employees of this company were in thousands. When we talk about the Kenya Posts and Telecommunication Corporation, we equate it with most of the employees we have in this country. I remember the chief executive officers (CEOs), one of them came from South Rift and he went ahead to become a Member of Parliament. When you talk about him, you talk about the many people he employed while he was working in this particular sector. So many people who were working in this particular company were laid off but our bone of contention is how this particular company was privatised. We sat in the Committee, looked at it and we called so many witnesses who gave us evidence but what was perplexing was the company called Alcazar Capital LLC and some other companies. The Ethics and Anti-Corruption Commission (EACC) investigated some other companies which have been doing business with the Government. The most important move that the EACC should take is to investigate Alcazar Capital LLC Company and other companies that were involved in tendering, procuring and taking Telkom Kenya Ltd.

I also wish to clarify that when we looked at the questions the Chair asked, they were genuine because they were questions which most of us were looking at when we were sitting in the Committee. When you look at the procedures of the Public Procurement Oversight Authority (PPOA), it was flawed. It was kind of dismissed and nobody took serious consideration of the fact that there was an Act in place indicating the right procedure to be followed.

Hon. Temporary Deputy Speaker, we also looked at how it was possible that most of those actions were undertaken before consultations were done. Why was the Attorney-General not consulted? Why was the Auditor-General not consulted? Why were all these people who are supposed to advise the Government on the process of privatisation not involved in the privatisation of this particular company? We realized a lot of underhand dealings and under-cutting dealings took place and that is why, in our recommendation, we thought it would be prudent for this country to investigate this matter because billions of shillings were lost.

We were also shocked to realize that the process of privatisation was done in December when the country was in the electioneering mood, when everybody else had resigned; everybody else was not in office and when many parts of the Government were focusing on the process of elections. Why was it done at that particular moment? We believe some crooks who are hell bent on looting this country took the advantage of the lacuna at that particular period to steal and misuse the procedures which were to be followed properly and privatised this company.

The other issue which was very pertinent in our interrogation was the fact that Telkom Kenya owned a lot of assets in this country. These were the most vital parts of this privatisation process.

The Telkom Kenya company---

### QUORUM

**Hon. Wekesa:** On a point of order, hon. Temporary Deputy Speaker. You realize that the report before us is very important. I am standing pursuant to Standing Order No.35 to say that there is no quorum.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Let the Quorum Bell be rung for 10 minutes.

*(The Division Bell was rung)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Stop the Division Bell. Hon. Members, there being no quorum, this House stands adjourned until tomorrow, Wednesday, 22<sup>nd</sup> April, 2015 at 9.30 a.m.

The House rose at 5.57 p.m.