

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 27th November 2018

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

PASSAGE OF BILLS BY THE SENATE

Hon. Speaker: Hon. Members, Standing Order No. 41(4) requires the Speaker to report to the House any Message received from the Senate at the first convenient opportunity. In this regard, I wish to report to the House that on Tuesday, 13th November 2018, I received three Messages from the Senate regarding the passage of three Bills.

The first Message relates to the passage of the Food Security Bill (Senate Bill No.12 of 2017). The Bill seeks to give effect to Article 43(1)(c) of the Constitution on the freedom from hunger and the right to adequate food of acceptable quality; Article 53(1)(c) of the Constitution on the right of every child to basic nutrition and Article 21 on the implementation of rights and fundamental freedoms under the Constitution. The Bill also seeks to provide a framework and mechanism for the national and county governments to fulfil their obligations in relation to food security.

The second Message relates to the passage of the County Statistics Bill (Senate Bill No.9 of 2018) that seeks to provide a framework for the collection, compilation, analysis and dissemination of statistical information and to establish the office of the county statistician.

The last message is conveying the passage of the Salaries and Remuneration Commission (Amendment) Bill (Senate Bill No.12 of 2018) as a Bill seeking to amend the Salaries and Remuneration Commission Act, to provide for notification of the expiry of term for commissioners and provide for timeliness for the filling of vacancies in the Commission upon expiry of their terms.

Hon. Members, Standing Order No.143 (1)(a) requires the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of a Message from Senate referring Bills to the National Assembly. Accordingly, I direct that the three Bills be read the First Time at the next sitting of this House.

Paragraph (2) of the Standing Order No. 143 provides that:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

The opinion envisioned under Standing Order 143 (2) is a pronouncement by the Speaker as to whether a Bill originating in the Senate is a money Bill in terms of Article 114 of

the Constitution. In this regard, I direct that, after the First Reading, the three Bills be referred to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated in Standing Order No.143(2). Thereafter, I shall guide the House accordingly on how to proceed with consideration of the said Bills.

I thank you.

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Annual Report of the Victim Protection Board for the Financial Year 2017/2018 from the Office of the Attorney-General and Department of Justice (pursuant to Section 33 of the Victim Protection Act No. 17 of 2014) .

Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2017 and the certificates therein:-

- a. Kisii University; and
- b. Jaramogi Oginga Odinga University of Science and Technology.

The Annual Report of the National Cohesion and Integration Commission for the Financial Year 2016/2017.

The Annual Reports of the National Land Commission on Land Governance in the counties for the Financial Year 2016/2017.

The Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year that ended on 30th June 2017 and the certificates therein:

- (a) Bonchari;
- (b) Suba South;
- (c) Budalangi;
- (d) Ikolomani;
- (e) Sabatia; and
- (f) Hamisi.

Hon. Speaker: The Vice Chairperson of the Select Committee on Regional Integration.

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Select Committee on Regional Integration on its consideration of:

The East African Community Customs Management (Amendment) (No. 2) Bill, 2018 and the Administration of the East African Legislative Assembly (Amendment) Bill, 2018.

The East African Community Protocol on Information and Communication Technology Network; and

The Reports of the Committee on General Purpose on the Budgetary Proposals for the Financial Year 2018/2019 and Supplementary Budget Proposal for the Financial Year 2017/2018 of the East African Community, EAC Supplementary Appropriation Bill 2018 and the EAC Appropriation Bill 2018.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairperson of the Departmental Committee on Administration and National Security.

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Administration and National Security on its consideration of the County Governments (Amendment) Bill (Senate Bill No. 11 of 2017:

Thank you, Hon. Speaker.
Hon. Speaker: Very well.
Next Order.

NOTICES OF MOTION

Hon. Speaker: Hon. Ruweida.

ADOPTION OF REPORT ON EAST AFRICAN COMMUNITY BILLS

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Hon. Speaker, I beg to give notice of the following Motions:

THAT, this House adopts the Report of the Committee on Regional Integration on the East African Community Customs Management (Amendment) (No. 2) Bill, 2018 and the Administration of the East African Legislative Assembly (Amendment) Bill, 2018, laid on the Table of the House on Tuesday, 27th November 2018.

RATIFICATION OF THE EAST AFRICAN COMMUNITY PROTOCOL ON INFORMATION AND COMMUNICATION

THAT, this House adopts the Report of the Committee on Regional Integration on the East African Community Protocol on Information and Communication Technology Network, laid on the Table of the House on Tuesday, 27th November 2018 and that pursuant to the provision of Section 8 of the Treaty Making and Ratification Act 2012 approves the ratification of the East African Community Protocol on Information and Communication.

ADOPTION OF REPORT ON BUDGETARY PROPOSALS FOR EAST AFRICAN COMMUNITY

THAT, this House adopts the Report of the Committee on Regional Integration on the Report of the Committee on General Purpose on the Budgetary Proposals for the Financial Year 2018/2019 and Supplementary Budget Proposals for the Financial Year 2017/2018 of the East African Community, EAC Supplementary Appropriation Bill 2018 and the EAC Appropriation Bill 2018, laid on the Table of the House on Tuesday, 27th November 2018.

INSTITUTIONALISATION OF DIAGNOSTIC TESTING FOR DIABETES IN WORK PLACES AND COMMUNITY SETTINGS

THAT, aware that the prevalence of diabetes in the country has been on the increase with approximately 458,900 cases reported in Kenya according to the International Diabetes Federation Report of 2017, representing two per cent of the total adult population; deeply concerned that many people with diabetes continue to lose their lives each year due to lack of awareness of the disease, inability to afford management of the condition and the expensive medication; noting that people living with diabetes can live longer and lead comfortable life if they receive the right medical care and support to help them manage the disease; further noting that there remains inadequate funding for the implementation of the effective strategy for the prevention, detection and management of diabetes thus hindering Kenya's achievement of the

Sustainable Development Goal 3 and Vision 2030; recognising the importance of early diagnosis of diabetes, aiding treatment, monitoring treatment progress, monitoring recovery and preventing life threatening and expensive complication, this House urges the Government to institutionalise diagnostic testing for diabetes in work places and community settings, provide for education, prevention and subsidised routine diabetes screening and treatment and put in place measures to ensure an effective diabetes care system at all levels of health care.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, before we proceed, allow me to recognise the presence, in the Public Gallery, of the following individuals:

Students from Mwerongundu High School, Igembe North Constituency, Meru County and, workers of St. Thomas Kabulwo Secondary School, Keiyo North Constituency, Elgeyo Marakwet County. They are welcome to observe proceedings in the National Assembly this afternoon.

(Applause)

Next Order.

QUESTIONS

Hon. Speaker: The first Question is by the Member for Kesses, Hon. Mishra.

Question No. 121/2018

STATUS REPORT ON ENFORCEMENT OF ANTI-CORRUPTION LAWS BY ETHICS AND ANTI-CORRUPTION COMMISSION

Hon. Swarup Mishra (Kesses, JP): Thank you, Hon. Speaker.

I would like to ask the Ethics and Anti-Corruption Commission (EACC):

- a) To provide a list of total number of persons and holders of public and private offices who have been prosecuted and proceeds of corruption recovered since 2003.
- b) What efforts are being made by the Commission in recovering, repatriation of proceeds of economic crimes in form of assets held both locally and in foreign countries?
- c) What are the challenges in enforcing anti-corruption laws during recovery of assets of economic crimes and the mitigation measures to address these challenges?
- d) How many persons have made application to surrender the ill-gotten wealth as stipulated by the Anti-Corruption and Economic Crimes Act?

There should be a written reply by the EACC. Thank you, Hon. Speaker.

Hon. Speaker: Very well. You have indicated that you want a written reply by the EACC. Therefore, the Question will be forwarded to the commission to write to you, through the Clerk, giving you that written reply. So, it is not for debate.

The next Question is by Member for Meru County, Hon. Bishop Kawira Mwangaza.

Question No. 161/2018

LICENSING OF TOYOTA PROBOX FOR USE AS PUBLIC SERVICE VEHICLES

Hon. (Ms.) Kawira Mwangaza (Meru CWR, Independent): Hon. Speaker, thank you for giving me the opportunity to ask Question No. 161 of 2018 to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development.

a) Is the Cabinet Secretary aware that the use of Toyota Probox is a popular and convenient means of public service transport in most parts of the country and further that public transport in the country, particularly Meru County had been inconvenienced by the enforcement of public transport regulations?

b) When will the Ministry regulate and license the use of Toyota Probox as Public Service Vehicles?

Hon. Speaker: Very well, the Question is referred to the Departmental Committee on Transport, Public Works and Housing to prioritise. I think there is great demand in this.

Next Question is by the Member for Kinangop Constituency, Hon. Kwenya Thuku. But before you do, I am informed that I had approved a supplementary question by the Member for Suna West, Hon. Masara.

Supplementary Question

Hon. Peter Masara (Suna West, Independent): I rise to ask Supplementary question to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development.

a) What are the requirements for vehicles to operate taxis in the country and in particular the popular Toyota Probox particularly in Suna West Constituency?

b) What measures is the Ministry putting in place to bridge the gap arising from the ongoing lack of means of transport where these Toyota Proboxes have been operating.

Hon. Speaker: You will appear alongside the Member for Meru County when the Cabinet Secretary is invited to come and respond to the Question.

Hon. Kwenya, proceed.

Question No. 214/2018

INVESTIGATION INTO DEATH OF MR. JOHN MWAURA KARANJA FROM KINANGOP

Hon. Kwenya Thuku (Kinangop, JP): Thank you, Hon. Speaker. I wish to ask the Cabinet Secretary for Interior and Coordination of National Government:-

(a) Is the Cabinet Secretary aware that the late John Mwaura Karanja, Identification Card number 24288120, went missing on 2nd September 2018 from Magumu in Kinangop Constituency, with the body later being found in Matungulu, Machakos County?

(b) Could the Cabinet Secretary provide details on how far the investigations have gone into this matter, and confirm whether any culprits involved in the murder of this young man have been arrested?

Hon. Speaker: The Question is referred to the Departmental Committee on Administration and National Security to prioritise. Member for Kamukunji Constituency, Hon. Yusuf Hassan.

Question No. 216/2018

OUTCOME OF INVESTIGATIONS INTO GIKOMBA MARKET FIRES

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Speaker for the opportunity to ask Question No. 216/216 to the Cabinet Secretary for Interior and Coordination of National Government: -

In the light of the many and frequent outbreaks of fires that have gutted Gikomba Market, which is the largest informal market in East and Central Africa found in my constituency;

a) What was the outcome of an investigation on the fire in Gikomba Market that destroyed goods and properties worth millions of shillings and claimed the lives of 15 people in Kamukunji Constituency on 28th June 2018 and when is this Report going to be made public?

b) How many people have been arrested, questioned and brought to book in relation to the outbreak of this fire?

c) What measures is the Ministry putting in place in providing and protecting traders, customers and properties in Gikomba Market and in particular on fire safety?

Thank you

Hon. Speaker: The Question is to be replied before the Departmental Committee on Administration and National Security.

Next Question by the Member from Mandera North, Hon. Major Retired, Bashir Abdillaih is deferred at his request and will be asked tomorrow afternoon.

The Next question is by the Member for Kabondo Kasipul Constituency, Hon. Eve Obara.

Question No. 217/2018

INVESTIGATIONS INTO DEATH OF MS. ABDIA OMAR ADAN FROM MANDERA
CONSTITUENCY

(Question deferred)

Question No. 233/2018

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you very much, Hon. Speaker for giving me this opportunity to ask the Cabinet Secretary for Education: -

a) Is the Cabinet Secretary aware that students who were admitted by Kenya Universities and Colleges Central Placement Service (KUCCPS) to TVET, TTI and national polytechnics for the August 2018 intake in the country received letters of admission but no capitation was released to the colleges to date?

b) Is the Cabinet Secretary further aware that most of these students have been sent home by the said institutions or have not reported due to lack of school fees?

c) What measures is the Ministry taking to ensure disbursement of initial capitation or letters of undertaking to the institutions to allow students attend classes?

Hon. Speaker: The Question is referred to the Departmental Committee on Education and Research to prioritise.

Question by the Member for Kandara, Hon. Alice Muthoni Wahome.

QUESTION BY PRIVATE NOTICE

Question No. 261/2018

CRACKDOWN OF CRIMINAL GANGS THAT TERRORISE YOUNG INITIATES

Hon. (Ms.) Alice Wahome (Kandara, JP): Hon. Speaker, I rise to ask Question No.261 of 2018 to Cabinet Secretary for Interior and Coordination of National Government: -

a) Is the Cabinet Secretary aware that a young boy, Master Juliano Kanyonyo Mbatha of 15 years from Gatitu Primary School lost his life through circumstances that indicate he was murdered during healing period after circumcision as a result of inability to produce an extortion bribe by mentors in Kandara Constituency?

b) Is the Cabinet Secretary further aware that Master Evans Wanyoike Ngaruiya of 14 years was admitted at Maragua Level 4 Hospital and Master Nelson Njuguna is currently hospitalized at Gaichanjiru Mission Hospital after undergoing circumcision in an environment suspected to be unhygienic and unprofessional?

c) Is the Cabinet Secretary further aware that young initiates are being recruited into organized criminal groups such as Gaza, *Mungiki*, 42 Brothers and Usiku SACCO which are exposing them to drugs and other criminal activities including recruitment into early sex at ages below 18 years?

d) What measures is the Ministry undertaking to ensure that this matter is investigated and culprits brought to book including cracking down of the resurgent criminal groups?

I am just from burying Master Juliano Kanyonyo in Gatitu Village. I have read the newspapers this morning and seen numerous other cases including a death in Limuru and other places that really need very serious attention of this House and the Cabinet Secretary, Ministry of Interior and Coordination of National Government and possibly the Cabinet Secretary for Health. There is also the case of demanding chicken from vulnerable women and vulnerable widows. They also have to cook for these small groups of young boys and men for seven to 21 days in the name of young boys passing into adulthood.

Hon. Speaker: Very well Members. I was consulting because the Member for Kandara had approached my office indicating that she requires an urgent answer and the Question was approved to be one by Private Notice. As you all know, in keeping with our Standing Orders, Questions by Private Notice require to be responded to within three days. Therefore, the Question will be forwarded immediately, if it has not already left, to the Cabinet Secretary for Interior and Coordination of National Government to appear before the Departmental Committee on Administration and National Security on Thursday to respond to this Question.

Next Order.

What is your intervention Member for Soy?

Hon. Caleb Kositany (Soy, JP): Thank you, Hon. Speaker for giving me this opportunity. I seek your guidance for the behaviour and statements made by Members of this House when performing their duties as MPs.

Last week, a Member of this House made very serious allegations against the House Business Committee (HBC) when he appeared on a live television interview. When he was asked whether he had prosecuted some of the matters he was prosecuting out there in the media through the HBC or through the channels in Parliament, his answer was that he had tried but the HBC did not approve claiming that the HBC is biased and would approve some statements...

Hon. Speaker: Sorry, what did you say?

Hon. Caleb Kositany (Soy, JP): He said that the HBC approves issues that would come to the Floor of the House based on their discretion.

Hon. Speaker, we seek clarification on this matter. Is that true and is it the way for MPs to go and make serious allegations against the HBC which you Chair? The Leader of the Majority Party, the Leader of the Minority Party and all the chief whips sit in that Committee. We would like to have that addressed because as Members, we need to respect the House and use the channels that we have before we go to the media.

Thank you, Hon. Speaker

Hon. Speaker: Hon. Mbadi, what is it?

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. How I wish that my friend just mentioned the name of the MP. This is a matter that ought to be dealt with: not to gag Members but just so that they can be factual. I saw Hon. Kutuny on the programme. Much as I may not have the information about what he is saying but something caught my attention. When he said that he has been bringing petitions over maize issues and these are killed at the HBC, I got concerned because I sit in the HBC and I may be put in a group of those who are frustrating such an important accountability effort.

First, the HBC does not deal with issues of petitions. Maybe Hon. Kutuny is not aware. I do not know if he has ever sat in the HBC. We probably need to rotate Members so that they get orientation on what issues the HBC deals with. To Kenyans out there who do not know what the HBC deals with, they would take it that Members of the HBC led by the Speaker and where the Leader of the Majority Party and Leader of the Minority Party sit, are sort of cartel to frustrate petitions which should go a long way in helping farmers. They were in that programme with Hon. Shollei. I was waiting for Hon. Shollei to correct him but she did not.

Hon. Speaker, I do not know what you are required to do here but mine is to make Kenyans understand that it is not true that petitions go through the HBC. If you want to bring a petition to this House, the only person whom you seek his authority is Hon. Speaker just to be aware of what you want to bring and see whether it is not violating any provisions of the Constitution or the law and then you read it here. Members of the HBC will hear you for the first time then.

So, I was a bit concerned because Kenyans know who Members of the HBC are and Hon. Kutuny made it clear that we are frustrating his efforts to interrogate this matter of the maize scandal. I would want Hon. Kutuny to bring this matter procedurally. If it is through a Motion then it will go through the HBC and I would be the first person to support such a Motion.

However, he should not scandalise us by making wild allegations before Kenyans and beyond this country because *NTV* is watched across the region. That was not fair. Members of this House need to be factual in what they say. They may end up making us look so bad when we walk around and are seen as Members who are trying to frustrate MPs from holding people to account. I would be one person who would want to see people held to account on issues of maize. If there is a Kenyan out there who is making maize farmers to suffer, we should deal with it but do not just make wild allegations.

If you are cornered and have no answer, we are politicians and should look for a better way of escaping. You know sometimes you are being interviewed and you have no answer. I have found myself in such circumstances before. Out of experience you find a way of manoeuvring and get away with it. I think Hon. Kutuny did not have an answer for that but that was very unfortunate.

Hon. Speaker: Leader of the Majority Party, you want to wade into it?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, some of us have never been and will never be maize farmers because we farm camels. There are Members who are coffee or tea farmers.

I also watched when Hon. Kutuny was challenged by the anchor and was asked what he has brought to the House on behalf of the people from North Rift. He said for everything that comes, there is a cartel at the HBC that you Chair. I want to say that there are facts at the HBC. The minutes are there even for the Tenth, Ninth Parliament and even Eighth Parliament. Any Member can go and get the minutes of not only the HBC but of every committee. This is my advice to MPs: when you are invited to a TV show, it is good to do some research. That way, you will improve the image of Parliament, yourself and of the people whom you want to protect because the anchors normally do research.

If you are invited tonight by Hussein for the *Big Question*, he will have done research the whole afternoon. So, even you as the MP must prepare yourself. If it is about the two-thirds gender Bill, you will have no choice but to read my Bill. You may have to go back and ask which other Bills are there or what was the difference between Duale I, II and II because you can be asked. I saw it. You cannot purport to blame Hon. Speaker or the HBC for your own weaknesses and shortcomings. It is very bad. There are too many Bills now in the media but when you look for them they are just a letter written to Hon. Speaker. You cheat your people that you are amending the National Hospital Insurance Fund (NHIF) Act yet there is no amendment before the House.

I want to remind Members that in the 10th Parliament, the Member for Likoni then Hon. Mwahima asked the Minister for Youth then, Hon. Otuoma a question on youth and polytechnics on a Thursday. On a Friday, I went to Mombasa for a Committee meeting and I heard in one of the FM stations, Hon. Mwahima saying, "I have tabled a Bill". He was with us in that Committee and I asked him, "My friend, why are you cheating people, you asked a Question?"

So, I think the onus is on us. If you want to appear before a talk show, you can even Google on your way to that place. We have very serious departments in Parliament that can help you. Again, Petitions are a matter of meeting the threshold. If it meets the threshold then the Member's Petition will be approved by the Speaker and after 60 days the Member gets a letter. In fact, Petitions are not even discussed on the Floor of the House. He was saying his Petition disappeared somewhere.

I think this is good advice to MPs who represent the sugarcane belt, the pastoralists, the fishermen and maize growers. Hon. Speaker, let me go on record because you have given me an opportunity. I want my *ugali* to be very cheap. You know what it costs. In the 2017 General Election we had to subsidise *unga* and we must live in a global world. Hon. Speaker, we will protect you, the way we protect each and every Committee of this House, the leadership and MPs.

We must be each other's protector. Let us cover each other's back and help protect our image. When in the village, do not use a Committee of the House, leadership or another MP in bad taste. Please, let us stand for integrity. There are very few people and when they come I really listen. You know we watch you, three-quarter of the MPs. The only problem is and I have seen this from MPs is when somebody invites you to a talk show at 5.00 a.m. One day, I asked

the media guy whether I was a shareholder in their business. Or, he tells you to come at 10.30 p.m. What if something happens to you when leaving there at 11.30 p.m. or midnight on your way home?

Sometimes, when you are called, you are not a shareholder of the media houses. You have to negotiate. Imagine waking up at 5.00 a.m., calling your driver to take you to Mombasa Road. Hon. Speaker, please forgive Hon. Kutuny, maybe he acted out of ignorance. As Hon. Mbadi has said, maybe the heat was too much. When the heat is too much, you retreat. You even retreat your constituency. However, when it is too much, do not push it to the Speaker, and the House Business Committee, but we will forgive him.

Hon. Speaker: Hon. Members, I think the Member for Soy sought clarification but as you know, I have no control over what Members say when they appear before television screens. It appears like when Members are faced with such situations, they feel easy to look for scapegoats. Just for avoidance of doubt, as has just been rightly pointed out, when a Member has a Petition, he presents it through the Clerk's Department. Who then in turn takes it to the Legal Department, just to confirm whether or not, it meets all the requirements and more particularly whether it is in violation of any of the provisions of the Constitution or any other written law.

Thereafter, there will be a recommendation presented to the Speaker. Who almost invariably approves such Petitions either for presentation by the Members or to be read out, if it is one that has come from the public. As you know, after presentation there is only a limited period of 30 minutes to debate. Again, it is only fair to look at Standing Order No.226 to appreciate that even those comments are not mandatory. It will depend on the business that is before the House. The Speaker may determine that there may be no time for those comments or clarifications to be made by anybody, especially on Petitions presented and or reported on.

More importantly in Standing Order No.227 the Committee to which a Petition is referred is required within 60 days to write to the Petitioner or Petitioners informing them of their findings after consideration by the Committee and the matter rests there. Nobody can come to the House to say that the House resolved. The House does not resolve on Petitions. I have seen not just from Members, but also from some activists, busy bodies who rush to court to challenge findings of Petitions. They invariably name the Speaker as one of the respondents. As you know, I have nothing to do with what the Committee does. It is a Report, which is supposed to be forwarded to the Petitioner or Petitioners.

I think in fairness, Hon. Kutuny should not find comfort in trying to hide under the HBC. The HBC does not consider Petitions. In fact, it does not prioritise Petitions. As I have said the Petition is referred here on the Floor of the House to the Committee and thereafter, the matter is set on motion. Sixty days thereafter, the Committee reports on the Petition to the Petitioners. However, because it looks like Hon. Kutuny represents people who grow some maize, then he is

at liberty to file any Petition, Question or seek a Statement, if he is able to come the House regularly.

Also, just to inform him, Article 103 of the Constitution says *inter alia* that if you fail to attend the House eight times within a Session without leave of the Speaker, you could find yourself being in some trouble and that trouble could even come from those whom you represent. It will only be fair if somebody informs him to be coming to the House regularly. Some of these things he will learn with time. He is encouraged for the time being to read the Standing Orders to understand what the HBC does.

Hon. Kositany, let us let this matter rest there. We do not want to deal with the issue of maize. I just approved earlier in the day, a Question by Private Notice, which is dealing with matters of maize, but it will be read on the Floor of the House tomorrow. Certainly not by that Member, because I think he may be dealing with his matter on television shows and not in the House.

Hon. Francis Waititu (Juja, JP): On a point of order, Hon. Speaker.

Hon. Speaker: Member for Juja, what is it?

Hon. Francis Waititu (Juja, JP): On a point of order, Hon. Speaker. I just want to remind you that you were the Speaker in the last Parliament and also the Leader of the Majority had the same position. I think in this Parliament, you have taken things very lightly yet, they are in the Constitution.

Hon. Speaker, you even used to throw us out. I think you are only being kind this time. I can remember, the Leader of the Minority at one time was thrown out but you are good friends now. I think what that Member is doing this time round is bringing information from other places instead of attending Committee sittings. Hon. Speaker, I want us to go back to where we were as a Parliament.

(Laughter)

Hon. Speaker: Well, those are statements made in quarters, other than the Floor of the House. So, when he makes them on the Floor of the House, you will obviously appreciate that you will be dealt with in accordance with the Standing Orders. However, when he makes them there, let it be with by those whom he is addressing, who think that he is telling them the truth. But for now, let us just do the business of the House.

Next Order!

REPORT AND RE-COMMITAL

THE WAREHOUSE RECEIPT SYSTEM BILL (SENATE BILL NO.10 OF 2017)

Hon. Speaker: Hon. Members, there is no time for *tete-a-tete* now. Debate on this Bill was concluded and the House was in Committee of the whole House.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Christopher Omulele) took the Chair]*

(Re-committal of Clause 3)

THE WAREHOUSE RECEIPT SYSTEM BILL

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Members, we are in Committee of the whole House. Let us make progress on this matter. I would like to notify you that this is a very short process. It will require your attendance so that we can put the Question.

Let us proceed.

Clause 3

Hon. Ali Adan (Mandera South, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended—

(a) by deleting sub-clause (3) and substituting therefor the following new sub-clause—

(3) The Council shall consist of—

- (a) a Chairperson, who shall be appointed by the President;
- (b) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
- (c) the Principal Secretary for the time being responsible for matters related to finance or a representative;
- (d) one person nominated by the Council of Governors;
- (e) the Director-General of Agriculture and Food Authority or a representative;
- (f) the chief executive officer of the Council who shall be an *ex-officio* member;
- (g) one person nominated by Financial Sectors Regulators Forum;
- (h) one person nominated by the Kenya Farmers Association;

- (i) one person nominated by Kenyan members of the Eastern Africa Grain Council;
 - (j) one person nominated by Consumer Federation of Kenya
 - (k) one person nominated by Kenya Bankers Association; and,
 - (l) one person nominated by the Kenya Warehouse Operators Association.”
- (b) by deleting sub-clause (5) and substituting thereof the following sub-clause—
- (5) A person shall be qualified for appointment as chairperson of the Council if such a person—
- (a) is a citizen of Kenya;
 - (b) meets the requirements of leadership and integrity set out in Chapter 6 of the Constitution;
 - (c) holds relevant academic and professional qualifications including a university degree in a relevant field; and,
 - (d) has at least eight years’ experience in—
 - (i) agriculture;
 - (ii) finance;
 - (iii) business;
 - (iv) law;
 - (v) procurement; or
 - (vi) administration.
- (c) in sub-clause (9) by—
- (i) inserting the words, “in contravention of the Public Officer Ethics Act and any other relevant law” immediately after the word “office” in paragraph (c);
 - (ii) deleting the words “in the opinion of the Council” in paragraph (e);
 - (iii) deleting paragraph (g) and substituting therefor the following paragraph—

“(g) conviction of an offence and sentenced to six months imprisonment without an option of a fine.”

I move the amendment in an amended form to exclude paragraphs (g) and (j). For avoidance of doubt, paragraph (g) states “one person nominated by Financial Sectors Regulators Forum;” We will delete that paragraph. We are also deleting paragraph (j), which says “one person nominated by Consumer Federation of Kenya;”

The rationale is to harmonise this provision and bring in diverse, independent and representative stakeholders in the management of the affairs of the Council. We are also avoiding a scenario where government agencies would, on their own, raise the quorum of five members and transact the Council’s business.

Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Oundo.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I think when this matter was concluded last time, we had some reservation about paragraph (l), which says “one person nominated by the Kenya Warehouse Operators Association.”

Looking through the Bill, and to the best of my knowledge, such kind of an association does not exist as we speak. I was just imagining how we legislate in anticipation or how we assume that it will ever exist. Where is the legal framework for its existence? That is why this is an issue on which we need clarification from the Chair. If there is no sufficient clarification, we can move a further amendment to omit paragraph (1) so that we remain within the law and deal with things that exist, and not things we imagine will ever exist.

Thank you.

The Temporary Deputy Chairman (Hon. Christopher Omulele): Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I support the amendment by the Chair of the Committee but we should also make sure that the number is consistent with the existing law such that we do not exceed a certain number. Therefore, some of the representatives are covered in other areas.

I support the amendment.

Hon. Members: Put the Question.

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

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

(Clause 3 as amended agreed to)

The Temporary Deputy Chairman (Hon. Christopher Omulele): Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

CONSIDERATION OF REPORT AND THIRD READING

THE WAREHOUSE RECEIPT SYSTEM BILL

Hon. Speaker: Chair of Committee of the whole House.

Hon. Christopher Omulele (Luanda, ODM): Hon. Speaker, I beg to report that a Committee of the whole House has considered the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017) and approved the same with amendments.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move that the House does agree with the Committee in the said Report.

I request the Chair of Departmental Committee on Agriculture and Livestock to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Ali Adan (Mandera South, JP): I second.

(Question proposed)

(Question put and agreed to)

Hon. Speaker: Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to move that the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) be now read the Third Time.

I request the Chair of the Departmental Committee on Agriculture and Livestock to second.

Hon. Ali Adan (Mandera South, JP): Thank you, Hon. Speaker. I beg to second.

Hon. Speaker: I do not know whether the Member for Kitutu Chache North has also gone to slumber-land.

(Question proposed)

Hon. Speaker: It is at this point that a few comments would suffice. Let us have the Mover.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I would like to thank the Committee and everybody here. I want to go on record with your permission that I have just received a text message from Mr. Mutoro of the Consumers Federation of Kenya (COFEK) trying to intimidate and threaten me. He said: "Thanks for removing us. I can assure you, you will not be a Member of Parliament forever." This is my third term as an MP. COFEK was removed by the Committee on the basis of being one of the many busybodies. He has just texted me. I assure him that Parliament does not legislate busybodies. Parliament legislates real institutions that represent Kenyans.

Hon. Mutoro, I am sure if you go to Garissa Township Constituency, you might not even be recognised. Forget about me.

I thank the Committee. Never again will individual institutions intimidate Hon. Members.

Hon. Speaker: Let us have the Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I did not want to contribute to this Bill because we have overcontributed to it.

The Leader of the Majority Party said something which caught my attention. He referred to COFEK and my friend, Mutoro, as busybodies. Mutoro is a very nice gentleman. He probably reacted that way out of anger. I have known him for long. He is a gentleman and a nice person. His interest has been to fight for the consumers in this country. He should have lobbied us more. I was not even aware that he had issues with this Bill. I wish that he had brought his issues before some of us because we are here to address matters of concern to Kenyans. Stephen is one of them.

What is your point of order, Hon. Angwenyi? You cannot make him my enemy. He is my friend.

Hon. Speaker: Hon. Angwenyi, there is an intervention button. I can see you fiddling with buttons.

(Laughter)

Now your name is on the intervention box.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, is Hon. Mbadi in order to call this busybody a gentleman when he has threatened a leader of Parliament? Is he in order?

Hon. Speaker: Obviously, Hon. John Mbadi is at liberty to refer to whomever as a gentleman or gentlelady. There is no point of order.

Hon. John Mbadi, have you finished your remarks?

Hon. John Mbadi (Suba South, ODM): Hon. Speaker, I was just about to finish.

I do not think Mutoro has threatened Hon. Duale. He has just stated the obvious that Hon. Duale will not be an MP forever. None of us will be MPs forever. Mutoro probably just stated the same. No one will be there forever. Even Mutoro will not live forever. He will also not be the head of COFEK forever. He was stating the obvious. I do not see any threat. If I was the Leader of the Majority Party, I would have ignored him. Saying that you will not be an MP forever is very obvious unless he threatened doing something out of anger. Where we are headed is shorter than where we have come from. Unless the Leader of the Majority Party changes his mind, we are soon exiting this Parliament.

Hon. Speaker: Let us have the Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker for this opportunity.

I applaud the fact that we are reading this Bill the Third Time and will soon pass it. I support that. I do not know whether we all realise how big the decision we are making is. With this Bill, remember we will have very many organisations or bodies storing grain and they will be regulated. We expect that a body like the National Cereals and Produce Board (NCPB) may not exist. We know the problem we have with it. If this regulatory body does not do its work, can you imagine the multiplicity of the problems we will have in the grain trade? People are worried about shortage but my worry is the toxins in grains because of storage. This body is extremely important.

I thank the Chair for including the Kenya Farmers Association. Last week, we wanted to establish this system without including the farmers whose grains will be stored. I am also thankful they included the East African Grain Council. It is those bodies that will keep the Government on its toes. It is a very important thing.

About Mr. Mutoro, last week, the issue was that...

Hon. Speaker: Hon. Nyikal, let us not begin debating. You mentioned his name. Let us not discuss persons who are not in the House. They have no capacity to defend themselves.

Hon. (Dr.) James Nyikal (Seme, ODM): As regards COFEK, it is unfortunate that somebody has sent a threat or what looks like a threat. That is not proper. As a country, we should start to accept and deal with COFEK. It is extremely important. When we were looking at the Health Act, we did not realise that people established guidelines for Bills but did not consider how they affect the general public. His sending a message is not in order but the concept of working with consumers in our organisation is something we should encourage and not discourage. This organisation is registered. I had to check whether it is registered. It pays taxes. It was not right that he sent the message but it is proper that we start accepting consumers' views with regard to regulation.

Hon. Speaker: Let us have the Member for Kipipiri.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. Hon. Nyikal took the words out of my mouth in terms of reemphasising the importance of what we have just done in creating this warehouse system. It is a major innovation that will change how we handle our agricultural commodities, the whole agricultural sector and trading in the agricultural sector. I must congratulate the Committee. We went through this. By the time we agreed on this recommittal, we had to consult and drop some of the names. None of the names were dropped because of the personality of the names. It was due to their relevance to the Bill. That needs to be the focus. COFEK was not dropped because of its Secretary-General. It is just not relevant at this point to this Bill. Similarly, the Financial Sector Regulatory Forum is a body that does not exist. If that body will exist in future and this House, in its wisdom, sees there is need to bring it on, there is obviously the route of the amendments. I believe nobody needs to feel he has been dropped because Parliament did not want him. I believe we sat through this and said that some of these bodies were not absolutely necessary at this formative point.

Hon. Speaker, with those words, I beg to support.

Hon. Speaker: Finally, Hon. Mbarire.

Hon. Cecily Mbarire (Nominated, JP): Thank you, Hon. Speaker. I am happy because we have got here in terms of this particular Bill. It is going to change the marketing of our agricultural produce. It is giving the right infrastructure for commodities exchange, so that we are able to do away with the middlemen who have misused farmers and taken advantage of the fact that farmers may not have direct access to markets. It will stabilise prices across the country, so that we will not deal with Government and insist that it must buy our maize because it must subsidise. We will now let market forces dictate the prices of our commodities across the board.

Let me just say one thing. As we went through the Committee of the whole House stage, I was extremely inspired by the kind of concern and debate that took place as we went through the various amendments and the understanding of Members on the importance of this particular Bill. Let me also appreciate the work that I saw of the Chairman and the Vice Chair of the Departmental Committee on Agriculture and Livestock during the whole process that we went through. It was a long day but their work and the fact that they were working together was really an aspiration. I hope that the various committee Chairs will follow suit and work closely with their Vice Chairs and the committee Members.

With those few remarks, I beg to support.

Hon. Speaker: Hon. Members, obviously, you debated this Bill in Second Reading and you dealt with it quite extensively during the Committee of the whole House. I have ascertained that there is quorum. That is part of the reason I sometimes cut short debates because if there is no quorum, we cannot complete a process. I have ascertained that we have quorum. It is not yet 4.00 p.m when I know we will have problems.

(Question put and agreed to)

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

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I stand under Standing Order No. 87. I ask the House, through you, that the time for discussion of Order Nos. 10, 12 and 13 be limited to one hour and each Member to speak for five minutes. The Calendar of this Session is

coming to an end next week and the business that is before the House is huge. I request that the debate of the Committee Reports in Order Nos. 10, 12 and 13 be limited to one hour each and each Member to speak for five minutes, if the House agrees with me.

Hon. Speaker: Clarify about the Movers.

Hon. Aden Duale (Garissa Township, JP): The Movers be accorded 10 minutes each.

Hon. Speaker: Who is seconding? Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. Considering the business before the House, I want to second that proposition by the Leader of the Majority Party that we limit the debate to one hour on the Committees Reports, the Mover 10 minutes, Seconded five minutes and other Members to speak for five minutes each.

(Hon. Members walked in the gang way)

Hon. Speaker: This Member who does not know where he is, please, take a seat. Look at that Member, is she in the House? Are you in the House?

(Question proposed)

(Question put and agreed to)

MOTION

REPORT ON CONSTITUENCY DIGITAL INNOVATION HUBS

Hon. Speaker: The Vice Chairperson, Select Committee on National Government Constituencies Development Fund (NG-CDF).

Hon. Omar Mohamed (Mandera East, EFP): Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Select Committee on National Government Constituencies Development Fund on Constituency Digital Innovation Hubs, laid on the Table of the House on Thursday, 25th October 2018.

I beg to state that this Committee is composed of the following able Hon. Members: Hon. Richard Maore Maoke, Chairman; Hon. Omar Mohamed Maalim, Vice Chairman; Hon. Mishi Mboko, Hon. Fred Ouda, Hon. Fred Kapondi, Hon. Sophia Abdi Noor, Hon. Emmanuel Wangwe, Hon. Johana Ngeno, Hon. Titus Khamala, Hon. Richard Tong'i, Hon. Moses Lessonet, Hon. Alpha Ondieki, Hon. Benjamin Gathiru, Hon. Janet Jepkemboi, Hon. Ferdinand Wanyonyi, Hon. Kassim Sawa Tandaza, Hon. Sharif Athma Ali, Hon. Joshua Mwalyo and Hon. Mary Waithira.

Hon. Speaker: Hon. Hassan, if you do not name the Committee Members, you will save yourself a lot of time. Remember you have only 10 minutes. Please move the Motion first.

Hon. Omar Mohamed (Mandera East, EFP): Hon. Speaker, following the Statement sought on the Floor on the House on Thursday, 12th April 2018...

Hon. Speaker: Move the Motion first.

Hon. Omar Mohamed (Mandera East, EFP): Hon. Speaker, following a Statement sought on the Floor of the House on Thursday, 12th April 2018 by Hon. Anthony Oluoch, Member for Mathare, regarding the requirement to establish Information and Communication

Technology (ICT) innovation hubs in every constituency through NG-CDF, the Select Committee on NG-CDF commenced deliberations on the matter.

During the deliberations on the matter which involved a visit to Pioneer Constituency Innovation Hubs Project in Limuru, a joint retreat with the ICT Ministry and the National Government Constituencies Development Fund (NG-CDF) Board, and during our normal committee sittings, Members observed that the framework of the agreement on implementation of the Constituency Innovation Hubs Projects requires the Ministry of Information, Communication and Technology to only do payments for recurrent monthly charges for bandwidth. The internet cover for Constituency Innovation Hubs is satellite-based and the Ministry assured the Committee that the coverage will be 100 per cent. However, the Constituency Innovation Hubs already in operation at Limuru cited weak signals of internet connectivity.

The Constituency Innovation Hubs Project was rushed and there was no public participation conducted. The Committee observed that the tendering process was already done way before allocation of monies and the NG-CDF Committee was not consulted during implementation. There was need to change the NG-CDF Act to allow incurring recurrent expenditure payment of hub managers. Tablets supplied to the already developed hubs are not working. The Ministry of ICT pushed everything to the Board to manage and run instead of them being the experts and the project falling under their mandate.

While appreciating the need to ensure our country needs to book its global position in digital revolution and to reap from the attendant gains, the Committee recommends that the implementation of the Constituency Digital Invention Hubs Programme should be an optional undertaking. The NG-CDF Board should come up with a proper mechanism of reallocating the funds set aside for Constituency Innovation Hubs to other priority projects in the Financial Year 2018/2019.

Noting the geographical differences in the country, the Committee also observed that this project is not viable in many constituencies and therefore other priority areas should have been considered for these funds.

With those remarks, I beg to move and request Hon. Kapondi to second. Thank you.

Hon. Speaker: Is Hon. Kapondi still in the House?

(Laughter)

Very well, Hon. Kapondi, I would be glad to hear your voice. We are almost going to finish one year and a half.

Hon. Fred Kapondi(Mt. Elgon, JP): Hon. Speaker, I beg to second the Motion on Constituency Digital Innovation Hubs.

As my Vice Chairman has expounded, we found this project to have very serious challenges which the Ministry could not adequately explain. Despite numerous meeting with them, it did not come out very clear to address the challenges that were raised by the Committee. We tried further to have joint sessions with the Departmental Committee on Communication, Information and Innovation, but they were not coming out very clearly.

As we know, public participation is a very critical component. It is a constitutional requirement that before you undertake any serious project, the public has to be involved. In this case, the project was conceptualised by the Ministry and thrown in the way of the NG-CDF Board. The Board passed the same to constituency committees. At that stage, they were told to allocate an amount of money for that function.

We are aware that a number of projects in this country, because of lack of public participation, have been lying idle or incomplete and of no use to members of the public they were initially meant to benefit.

As a Committee, we felt very strongly that it is not proper to misuse public resources where the public is not involved in terms of identifying the project and participating in the execution of the same project through oversight. So, as a Committee, we resolved that it is better we make it optional. In some areas like Limuru where the piloting was done, we resolved that Members that feel they should proceed with it, can proceed because areas differ. This is a project that requires further consultation so that when we start implementing it in the 290 constituencies, it is done in a proper way and further members of the public in those constituencies will stand to benefit.

It is also important for the NG-CDF Board to consider, as we adopt this Report today, that the money that was allocated for the hubs should go to other needy projects where members of the public have participated and identified the projects.

With those remarks, I beg to second.

(Question proposed)

Hon. Speaker: Member for Mathare.

Hon. Anthony Oluoch (Mathare, ODM): Thank you very much Hon. Speaker for giving me this opportunity. When this matter first came to this House, I raised it and the Committee has acknowledged that in the background. The manner in which the ICT hubs and the process of arriving at them was undertaken by the NG-CDF violated the clear provisions of Sections 24 and 27 of the NG-CDF Act. These issues speak to question of public participation which is now entrenched in our Constitution. These projects must also be beneficial to community members. Even though some of us appreciate the importance of the ICT Hubs, I am glad that the Committee found and recommended that they must be made optional so that as in the case of Limuru Constituency and any other constituency which decides that the community needs this project, it can prioritise it. In respect to constituencies which have pending projects, which are of higher priority, the funds should be released to the constituency and the NG-CDF so that they can proceed with them.

I would like this decision to be promptly communicated to the NG-CDF and that the balance of the money that is being held by the NG-CDF be released forthwith so that we are able to undertake other projects that are pending.

I support the Report and I thank the Committee for it.

Hon. Speaker: Member for Mogotio.

Hon. Daniel Tuitoek (Mogotio, JP): Thank you very much Hon. Speaker. I rise to support the Committee Report. The idea that the project should be optional is a good one. Development of ICT innovation hubs in constituencies is a great idea. However, from what we have heard from some constituencies, setting up the project has not gone well. There was also lack of public participation in terms of conceptualising the idea.

Some of us would like to start with one hub and make it function properly before opening other hubs. Therefore, the suggestion by the Committee that we reconsider the way the project had been initially conceptualised is a good one. It is important to properly plan and get at least one hub's function multiplying across the constituency.

It is better that we are allowed to prioritise projects in the constituencies. Therefore, the suggestion by the Committee is welcome.

I beg to support.

Hon. Speaker: Member for Kiminini.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. I rise to support and thank the Committee although I have some reservations. We have key priority projects that each constituency needs. The National Government Constituencies Development Fund (NG-CDF) has not been sufficiently resourced, particularly as regards bursary, school infrastructure development and roads. This originated from the Ministry. I wish it originated from a Member of Parliament. At times good ideas come. They are conceptualised by somebody with intention of making money from certain projects. The issue of public participation, as outlined here, is very critical.

Of course, we appreciate that the internet is very critical. In many advanced countries, you will find free internet everywhere. This will play a critical role as far as entrepreneurship is concerned, particularly for young people. At times the internet has some demerits. Instead of being innovative, some lazy young people use the internet to abuse Members of Parliament for no reason.

As they implement this, we need to have a clear framework. If the Ministry is going to provide this service for free in all the constituencies, it will be wonderful. However, if we are going to be forced to fund it through the NG-CDF, the way we were forced in other projects, it will be unfair. The Cabinet Secretary in charge should ensure that this is provided for free across the country.

We had the school laptop project. I do not know whether free laptops were offered in schools. I have been moving round but I have not seen them. Initially, they were to be free laptops but the programme was revised to tablets. We appropriated money for laptops. We do not know where that money went. We do not want to approve this only for us to see billions of shillings allocated to this project in next year's Budget. It might become another white elephant project. We know very well that at the constituency level, we have projects of priority. The NG-CDF, as we speak, has implemented wonderful projects but it is not yet enough.

Yesterday, we saw the Auditor-General making sweeping statements on television to the effect that a lot of NG-CDF resources across the country are being wasted. We must make sure that the public knows whether the audit queries that have been raised are cleared because he is sending the wrong signals. For example, in Kiminini Constituency, the Procurement Management Committee (PMC) members were trained. They called teachers and head teachers and taught them how to implement projects as well as on issues of public procurement. It is very

painful when the Auditor-General says that there was no invitation letter. They were invited through short text message. We know that the mode of communication that is cheap and quick is short text message. So, it leaves a lot to be desired if the Auditor-General goes to some constituencies and questions the mode of inviting participants for a training that is offered by the Government with facilitators from the Auditor-General's Office and the Public Procurement Office, just because they were invited through short text messages. I was surprised that he raised that one as an audit query, saying that there was no letter of invitation. It is high time the Auditor-General improved when it comes to reporting so that he sends the right signal to the people on the ground.

While I support these ICT hubs, I request the Government to offer them for free rather than pass the responsibility to the NG-CDF.

I support.

Hon. Speaker: Member for Kimilili.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker. I rise to support the Motion.

This is a very important Motion because you cannot take away the right of the people in the constituencies to decide whether they want a project or not. The proposal from the Ministry was taking away their right. These ICT hubs are very important but we have some basic things that need to be done, including but not limited to buildings that will house this kind of thing. Therefore, it should be made optional so that if you want to do it as a constituency, in consultation with the people and the NG-CDF Committee, you go ahead and do it. Even for those constituencies which are willing to implement the project, it should not be mandatory that the Ministry of ICT supplies the equipment. We should follow the available procurement procures through the NG-CDF Committee so that we get value for our money. We read mischief when somebody sits somewhere and decides that the Ministry will supply ICT equipment to all the constituencies – more so if money has already been set aside.

This Motion has bestowed the dignity of the people in terms of deciding what should be done. You cannot say that before the NG-CDF Committees forward the proposals to the Board, they must move round the constituencies to seek approval of the projects from the people and at the same time say that we are going to get directives from the Ministry to do it without consulting the people. I ask my colleagues to adopt this Report so that the Board can implement the project. We should go back to the recommendations contained in this Report so that the NG-CDFs that are willing to do it can do it and those which are not willing to do it, depending on how the people will decide, can go by the decision of the people.

I support his Motion.

Hon. Speaker: Member for Mosop.

Hon. Vincent Tuwei (Mosop, JP): Thank you, Hon. Speaker, for this opportunity to make my submission on the matter of ICT hubs.

This country is at a crossroads because most of the decisions being implemented are being made without public participation. What we are discussing is a case where individuals sat somewhere and decided what to do without subjecting their proposal to public participation. I find it very difficult to implement this project in my constituency because I do not have in place the prerequisite fibre optic network. We have passed a law that will soon be a problem to us and to the Executive. Some decisions have been hindering development in this country. Somebody comes up with a proposal and subjects it to ministerial approval process, causes it to be budgeted for and at end of the day, he knows what he is up to. An example is what we are dealing with

now - the ICT hub. To me, the intention was good but the procedure that was used may not give us the envisaged results soonest.

Lastly, I thank the Committee for recommending that this project be optional. I wish we could be allowed to implement it in our own ways in our respective constituencies.

Hon. Speaker: Member for Kibwezi West.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Speaker. I want to contribute to this Motion on the Report by the Committee.

I agree with the Committee as far as talking about option is concerned. But the backdrop of this initiative was that we are as a country still combated by a heavy load or challenge of unemployment among our youths. The digital dispensation is, indeed, a big reality for this Republic. Even now as we are going through the Blue Ocean Economy Conference, this is one of the realities in terms of geospatial planning. It must become a priority for the Committee as we move forward. That is to be able to steer our national development in a particular format, more importantly, the placement of the skill set for our people. It is very important to capture what aspirations lie within.

The same way, at the tail end of the last Parliament, this House sacrificed within itself and budgeted for the implementation of the free secondary education programme. We took a cut on our NG-CDF to bolster His Excellency the President's campaign on accessibility and transition from primary to secondary schools. This is still the basis of allowing constituencies to champion the broad connectivity programmes of the country. Kenya has already invested heavily in the provision of the fibre optic programme. It has gone throughout this country into every district hub. It is in a bid to, one, bring down the cost of connectivity associated with travel – one Hon. Member highlighted in his communication about what was captured by the Auditor-General (AG) from his constituency in terms of communicating information across to the relevant stakeholders who he was trying to reach out to.

At its very least, these connectivity hubs are cutting down the cost of communication and data provision for our people. It is for communicating, among other things, what we are doing in the constituencies. If you take Kibwezi West, for instance, it is 2100 square kilometres. It is quite a vast distance. Much will be achieved through the enablement of these hubs. We have already undertaken to do four which are already up and operational. We are doing another 10 in this financial year. I would have so much hoped that the Committee would have considered visiting our constituency as they are tabling this Report. Be that as it may, it is still open to Members to come and see the experience that these hubs have provided and will continue to provide, more importantly when we are targeting the Ajira Programme, which is a noble idea. As I said, employment remains a challenge amongst our youth. To mobilise them for formidable training that will result into getting them livelihoods is an odious task. We do not have that flexibility when it comes to NG-CDF. The Ajira Programme provides opportunity so that you have a possibility of having over 1,000 youths being trained within a constituency. With them trained, they immediately have access to the global economy which exists in the knowledge economy that will provide hard earned money. It becomes a new frontier, other than just Diaspora earnings or our traditional sectors such as coffee, tea and our other export values it brings in hard currency into this great Republic.

There are also questions of learning across our constituencies. We always talk about benchmarking. With the inception of these hubs, we can do digital tours and communication; point to point communication within ourselves and share experiences as to how we are conducting our trainings.

In a nutshell, we need to go broad. The world is at that. Part of the presentations I heard this afternoon were by His Excellency Hassan Joho who was saying that places for visitation in places as basic as in tourism need to be digital friendly. If you are not an *Instagram* friendly place which simply implies a place not friendly for people to take pictures, you will find it very difficult to attract tourists. So, there will be ease when we adopt these hubs and digital economies. It will grow this Republic of Kenya.

Thank you, Hon. Speaker.

Member for Kinangop.

Hon. Zachary Thuku (Kinangop, JP): Thank you Hon. Speaker for this opportunity to contribute to this Report by the NG-CDF. I congratulate them for such a wonderful Report.

I have had an issue with that money, the way it was set aside to do the innovation hubs. In fact, I was about to bring a Petition on the same. But, I want to thank this Committee for moving fast and giving us such a wonderful Report from which we are going to have the money reallocated to projects of our choice. I castigate the Ministry. Of late, they are giving unilateral decisions on how we are supposed to utilise our funds. They do not do public participation or feasibility studies to understand the dynamics of different constituencies. This project is then lost because for some constituencies like Kinangop where I do not have infrastructure and then I am told that some equipment was purchased that was supposed to be paid for, it defeats the purpose for which the project was conceptualised by the Ministry. I am so grateful that now we can reallocate our money to projects of our choice.

Secondly, I take issue with the NG-CDF Board on the way they are dictating that we have to complete stalled projects. Like in my constituency alone, if I am going to complete all the projects within one financial year, all my allocation is going to old projects whereas I have some which need immediate attention. I have schools that are mud-walled. I have toilets that are falling apart. So, it is not acceptable. It is not possible. The NG-CDF Board needs to revisit some of the decisions they are making and involve Members of Parliament from those areas. That is so that they can understand the dynamics of our individual constituencies.

With those few remarks, I support the recommendations of the NG-CDF Committee. I commend them for a job well done. Thank you, Hon. Speaker.

Hon. Speaker: Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you Hon. Speaker for giving me an opportunity to contribute on this very important Motion.

I support the Committee on Implementation of the Constituencies' Digital Innovation Hubs that the project be optional. Different constituencies in Kenya have different challenges. Some of them have classrooms which are still made of grass and mud. Others have already completed doing their classrooms and security installations such as in offices of chiefs. Therefore, they are very comfortable just doing the digital hubs or school buses and the like. Based on this, it is clear there was no sufficient consultation. It is a very good idea to have digital hubs. We already have the fibre optics in Makueni Constituency. We can do this very comfortably but the recommendation of four is not proper. I will be able to do only one. I have three districts in Makueni Constituency. Therefore, two districts will lose out but one will benefit because the two do not have fibre optic. Even to construct one building, where this equipment is going to be and its cost will be difficult. You will find that this allocation can only favour one spot, not four. So, it was just one out of the four in the budget. It is a very good idea, only if there could be public participation. It is better if the Ministry can implement this on its own budget. If it can make budgets, its work will be to consult with the local Hon. Members in every

constituency on where to place the hubs when they already have the finances. I am very familiar with how Government works and how its budgetary operations work. I challenge the Ministry in charge of information to, first and foremost, have this budget then partner with Hon. Members. Some of the requests made are not in conformity with the Finance Act. They are impossible. The moment there is an illegality, it begins wearing on the project. It has to be restructured.

For those Members of Parliament who are ready for this and it works for them, it is a very good idea. For those who are not, the monies can be reallocated to other priorities such as roofing of classrooms, replacing iron sheets that are full of rust and refurbishing classrooms which are unsafe for use of children. These are priorities to certain constituencies such that you do what is important depending on the needs of your constituency. In some places, ICT is important and urgent, while others are not even aware of it and the fibre optic will not get there soon, it may take a while before the Government installs that infrastructure. I believe even their own budget, which we usually pass here, can propose it for this year or next year or in the supplementary budget. It is through their monies and in partnering with Members of Parliament that this will work for most of us. I support the Committee that monies must be allocated with immediate effect. If it takes a long time to hold the Kshs 4 million or so per constituency, it will delay development within the constituencies.

We cannot blame the NG-CDF Board. We are aware there have been challenges in as far as the Chief Executive Officer (CEO) is concerned. This House has pronounced itself on the hiring of the substantive CEO. The current one is qualified. This House has also pronounced itself on filling up of board vacancies. In fact, they have been sued for failing to do so. Although we applied to strike out the matter, it is clear that we need to do something urgent about constituting the Board fully. I thank you, Hon. Speaker.

Hon. Speaker: Member for Igembe Central

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker for giving me this opportunity to comment on this Motion on the Constituency Digital Innovation Hubs. I rise to support the Committee on its findings and its conclusions because I was in a dilemma in my constituency. I thank the Committee for deciding to give leeway where each and every constituency gives its own idea of what they would like to have. It was perturbing when we were called by the Cabinet Secretary in charge of the Ministry of Information Communication and Technology in the 11th Parliament and a demonstration was done to us outside here telling us how the applications will work. We were then instructed by the Ministry that we needed to have at least four satellites for each and every constituency. This was arbitrarily done because if we divide the wards, there are constituencies with four wards, while others have about six or more, so there was no ground work that had been done.

The Ministry had put the cart before the horse by telling us that we had to put aside about Kshs 4 million. It was actually less than that but the figure kept growing. This could have been a very serious audit query in the constituencies. There are more demanding issues in each and every constituency which need to be addressed before the digital innovation hubs. In as much as I support digitization for our youths and even ourselves so that we can communicate easily, there are other priority areas. There are some students who attend classes which are made of timber, iron sheets and others are grass thatched. These are some of the schools that we should give priority to. If we are to get these hubs, we need to outsource across the board, not the Ministry to come and dictate it to us. Why do they dictate to us how we should use the NG-CDF whereas the Act itself is very clear that you have to go to the people who then decide what they need? The Ministry has its budget and they can budget for it and give the money to the schools. One of

my colleagues has just mentioned that in the last Parliament we gave Kshs 37 million to the Ministry of Education so that they can do classrooms for Standard Eight pupils. In Igembe Central, which is my constituency, if all these schools were given that money it could do more than 30 classrooms. They should also be audited. What happened to the money that they were given in the last Parliament? They also pledged to give Kshs 5 million to a school in my constituency to put up a dormitory, so that it could absorb more students. Unfortunately, that was not done. I would therefore urge Members to support this, let the money go back to the NG-CDF. Let us decide how many hubs we require in our constituencies or whether you have other pressing issues. Let the Ministry handle its issues differently. Let us outsource and get those people who can support this with better terms so that we are not cheated. I support the Report.

Hon. Speaker: Hon. Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Speaker for this opportunity to also contribute to this Report by our NG-CDF Committee on the Constituency Digital Innovation Hubs. The idea of these hubs is excellent. Ideally, they seek to mainstream ICT at the grassroots. For any country that seeks to develop and move into the future, which is actually digital this is an excellent idea. We also know that it will support entrepreneurship because it provides the youth with working spaces where they have free Wi-Fi so that they can communicate effectively.

However, the issue that my colleagues have raised and I want to raise too is the problem of implementation. The issue that we have in this country is that we come up with brilliant ideas but implementation is done wrongly many times. In this concept, for example, just like the Laptop project, there was no consultation. You cannot imagine how people sit at the Ministry and make decisions on how they will have four ICT hubs in every constituency in the country without consultations. On the expenditure of NG-CDF, consultation is a must. It is clear in our NG-CDF Act that we have to have consultations, we have to meet people and ask them for their priorities. How then does the Ministry in charge of ICT make a decision on behalf of the people of the constituencies? That is unfortunate. As a result in my constituency, we have a problem. We have a problem of infrastructure. In the beginning, we thought that we would be able to do these centres within our schools. The Ministry of Education came clearly and said that they do not want any interference and would not allow visitors in our schools in third term. We need to have places where we can put the equipment and that is not available.

Previously, we had attempted to build a youth social hall within the constituency, but the same NG-CDF Board rejected the proposal. The money that I intended to spend on that hall is still tied up as we were negotiating. The Ministry can make a decision and now I know the Board wants to allow the construction of that hall so that I can put the ICT equipment there. The other problem we have is the infrastructure of ICT. We have poor network coverage in most of our places, in fact, in some corners of my constituency you cannot receive or make a call. That is the infrastructure that is required for ICT to operate.

When these ICT hubs are put up, there have to be people to take care of the equipment, people who will ensure that they maintain the equipment, that will pay the bills for electricity and if there is any training to take place, those trainers have to be paid. The NG-CDF Act is very clear that you cannot spend money outside NG-CDF itself on recurrent budget. So, I am wondering how it was going to be implemented. You can set up the equipment or put up a hall, but after that, what does NG-CDF have to do with them? Will they be allowed through the administration kitty to pay trainers or pay people that will be taking care of these ICT hubs?

Hon. Speaker, this is something that needs to be thought through so that we can move forward. It is a brilliant idea but the implementation has to be changed. I support the Committee's recommendations to make it optional and have further consultations.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Member for Kiharu.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you, Hon. Speaker for this chance to contribute. I support the Committee and the Report.

This was a very noble idea. Currently we should be promoting innovation and anything around ICT. As we talk about jobs here in Kenya, especially blue-collar jobs, the world has already moved on and many jurisdictions are talking about basic universal income for their citizens basically because of the job disruptions that are caused by artificial intelligence, robotics and such novelties. Therefore, anything that is geared towards promoting innovation and ICT should be supported. We also have several merging programmes, for example, through the NG-CDF we have one for electricity through Rural Electrification Authority (REA). The coming up together of the Ministry and the NG-CDF was not a far-fetched idea. It is the right thing. However, what was alarming was the cost, especially the contribution from the NG-CDF compared to that of the Ministry for ICT. Generally speaking, if you contribute Kshs5million for buying equipment and stocking the hubs... The NG-CDF committees in our respective constituencies, I believe, can do much more than what the Ministry was doing with regard to buying gadgets, equipment and stocking the ICT hubs.

I side with the many Members who are suggesting that we should be given leeway to do it alone. It is because I believe the NG-CDF is one of the most efficient funds that we have in this country. The NG-CDF is one of the few funds that give taxpayers value for money. It is also because of the dynamics in our respective constituencies. For example, I come from Kiharu Constituency which has six wards and two sub- counties. You then tell me that we do three locations of hubs. I think that is an area that should be left for the MP to decide. In any case, there will be public participation given the dynamics in each constituency.

We may want to do it per ward. Some of us have fewer wards than others. I know other people would prefer to use different geographical jurisdictions. The NG-CDF Board should hasten the reallocation of these monies. We have so many needs in our constituencies that require these monies. I am talking about the Kshs4 million. Since this is a forthright matter, the NG-CDF Board should not take so long in reallocating these monies to projects that have gone through public participation to projects that need to be implemented.

Even as we talk about IT and merging our programmes with the ICT Ministry, we should look beyond IT because in our country the creation of jobs is not just purely on the basis of employment or ICT. We need to open up such kinds of partnerships in so far as promoting cottage industry is concerned because we were purely doing the hubs to create jobs. I believe we can also do the same and advance the same thing by partnering with other entities, especially Government ministries and organisations in so far as creating jobs within cottage industry and value addition of agricultural produce is concerned. Even as we do it, we need to commend the Government for investing in opening up the backbone fibre system and metro fibre in this

country. Going forward, I am sure we can do much more as MPs and as NG-CDF committees in advancing IT agenda in our localities instead of going through this very expensive route of partnering with...

Hon. Speaker: Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker. I support the Report of the Committee. As I do that, I have observations to make. Even though the Report is good, it is coming too late. In future, this being a Parliamentary Committee which takes care of our interests as MPs, we should do such reports in good time so that we do not waste time to implement.

Secondly, on the issue of the Digital Innovation Hubs, we all agree they are important. However, the implementation of the same should be properly structured so that it does not inconvenience Members. When we came to this 12th Parliament, there was a circular which came from the national board requesting all MPs to convene ward public meetings to discuss and agree on priority projects in every ward. The requirement was that there be minutes which then would be forwarded to the board. On that basis, the board demanded from MPs and their own committees at the constituency level to submit projects which are informed by the ward meetings. So, it was a very big surprise when we started seeing demands coming from the headquarters that we must have these innovation hubs. It is important that the board adheres to their own guidelines. Otherwise, we will think they have their own vested interests in some of these things. I do not think that will be the best way to go forward.

The other thing is, in every constituency, we have priorities in terms of needs. There are constituencies which require primary schools to be renovated. Some have issues with security and many other challenges which are in line with the national projects. So, when the board comes and says we must implement this, we ask ourselves, who between the board and MPs should know the needs of the people who elected us? Generally, the Report is good but procedural.

Secondly, if the Ministry thinks this is important and we agree it is, then there is an easier way of doing it. For instance, why can they not request for the money through the normal budgeting process? The money will be at the Ministry headquarters and then it will be channelled through the constituencies for implementation. It is money from national Government coming to that particular Ministry. My work will be to co-ordinate implementation. In that case, we will have the hubs but at the same time we will not jeopardise the local needs as presented by the people. Otherwise, if we go ahead to implement as suggested, we will cause conflict between us MPs and the people who elected us. Indeed, they will say we have ignored their requests.

So, even as I support this Report it is important that this Committee, in future, be in charge of what is being done. We should not let the board do things without any proper consultation. If it consulted properly, we would have implemented these projects a long time ago and we would be talking about completing classrooms, Administration Police (AP) lines and chiefs' offices.

With those remarks I support the Report.

Hon. Speaker: Hon. Members, as you will recall, we passed a Motion that this business on Order Nos.10, 12 and 13 will be limited to one hour. It is now 1640 hours and the business began at 1545 hours. Therefore, the Mover has five minutes within which to reply.

Hon. Omar Mohamed (Mandera East, EFP): Thank you, Hon. Speaker. I beg to donate one minute to Hon. Jonah Mburu of Lari Constituency before I reply.

Hon. Speaker: Member for Lari.

Hon. Jonah Mwangi (Lari, JP): Thank you, Member for Mandera East. I support your Motion although with reservations. I am in the Departmental Committee on Communication, Information and Innovation. I am looking at this as a big opportunity where our youths can get jobs.

We have the Ajira programme where the Ministry is training 200 people per constituency. In fact, if I am given a chance I will build around 20 ICT hubs in my constituency. This is because I believe this will be a game changer in terms of getting jobs for the youth. The problem is that in some areas in the country we do not have internet connection, like Mandera and Turkana. That is why I support the Report for this to be optional. But Members should not look at this from a negative perspective. We should not look at ICT hubs like a burden. We should not look at building a class as more important than offering the young men in your constituencies jobs.

Hon. Omar Mohamed (Mandera East, EFP): Hon. Speaker, I wish to thank all Hon. Members for supporting this Report. As a Committee we took all avenues possible to explore the importance of ICT in this country *vis-a-vis* the enormous needs in the constituencies. That is why after long deliberations, the Committee found it necessary for this to become optional. Therefore, I take this opportunity to thank all Hon. Members and reply to the Motion.

Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: Order Members! Including the two Members of Suba, let us clear with this Motion. I can see you are having heated consultation. This must be Homa Bay County. Hon. Members, is it that you do not know these procedures? The Mover has replied and I can see some of you still want to contribute.

(Question put and agreed to)

Next Order!

BILL

Second Reading

THE PARLIAMENTARY SERVICE BILL

(Hon. William Cheptumo on 22.11.2018)

(Resumption of Debate interrupted on 22.11.2018 – morning sitting)

Hon. Speaker: Hon. Keynan.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Speaker, for giving me an opportunity to contribute to this very important Bill. On the outset, I want to say this Bill has been subjected to a lot of misinformation, propaganda and misinterpretation of facts.

Before I make my informed contribution on this very important Bill, I want to refer Members to the Memorandum of Objects and Reasons on why this Bill is here, why it ought to be here and why we must pass it. The statement of Objects and Reasons of this Bill states that this Bill seeks to repeal and re-enact the Parliamentary Service Act, No.10 of 2000 for the following reasons - Those of us, who are not familiar with the Constitution, I just want them to listen to this.

First, the Parliamentary Service Act was enacted under the former Constitution to give effect to the provisions of Section 45A and 45B which established the Parliamentary Service and the Parliamentary Service Commission (PSC) respectively. These provisions of the former Constitution are no longer in force, and in their place is Article 127 of the Constitution 2010 which establishes a PSC and Article 128 of the Constitution which provides for the offices of the Clerks of the Houses of Parliament and offices of members of staff of the Clerks as offices in the Parliamentary Service.

In light of these and other changes in the constitutional regime, it has become necessary to review the Parliamentary Service Act in order to ensure that it complies with the provisions of the Constitution of Kenya, 2010.

In the Second Schedule, and this is why this particular Bill is so critical, it says the Fifth Schedule to the Constitution provided for a period of five years for implementation. We passed the current Constitution on 27th August 2010.

We ought to have aligned all laws relating to the new Constitution within five years. This is what it says, five years for any legislation required to implement the Constitution. Although this period was subsequently extended by the House, the Parliamentary Service Act, 2000, needs this review in order to comply with the requirement of the Fifth Schedule of the Constitution.

In this regard, this Act was first published in October, 2015 but was not enacted by the House leading to its lapsing at the end of that last Session. Indeed, the House has already reviewed all other statutes and this is what I want to bring to the attention of the Members. Under Chapter 15 of the Constitution, we have 15 constitutional commissions. Information is power and PSC is one of them.

From the promulgation of the new Constitution on 27th August 2010 on 30th August 2011 we passed the Commission on Revenue Allocation (CRA) Act, 2011 which commenced on 27th August 2011. Secondly, the Ethics and Anti-Corruption Commission (EACC) Act, 2011 was passed by this House on 27th August 2011 and the commencement date was 5th September 2011. Again, we passed the National Police Service Commission (NPSC) Act on 30th September 2011 and the commencement date was 10th October 2011. The National Gender and Equality Commission (NGEC) Act, 2011, was passed on 27th August 2011 and the commencement date was 30th August 2011.

I just want Members to know this because it is very important so that those who are opposed to this Bill understand why we must pass it and why we ought to have passed it many years ago. Equally, we have the Kenya National Commission on Human Rights Act, 2011, which we passed on 27th August 2011 and the commencement date was 30th August 2011. The Commission on Administrative Justice Act, 2011, was passed on 27th August 2011 and the commencement date was 30th September 2011. The Salaries and Remuneration Commission

(SRC) Act, 2011 was passed on 27th July 2011 and the commencement date was 27th July 2011, the same day. You can gauge the significance of this.

The Independent Electoral and Boundaries Commission (IEBC) Act, 2011, was passed on 5th July 2011 and the commencement date was 5th July 2011, the same day. You can also gauge the significance of this. The Judicial Service Commission (JSC) Act was passed on 21st March 2011 and the commencement date was 22nd March 2011.

The National Land Commission (NLC) Act was passed on 27th April and the commencement date was 2nd May 2011. The Teachers Service Commission (TSC) Act was passed on 27th August 2012, and the commencement date was 31st August 2012. There are 15 constitutional commissions and two independent offices, that is, the Controller of Budget Office and the Auditor-General. The Public Audit Act was passed on 18th December 2015 and the commencement date was 7th January 2016. The Controller of Budget Office Act was passed on 31st August 2016 and the commencement date was 21st September 2016. The last one, the Public Service Commission Act was passed on 7th April 2017 and the commencement date was 26th April 2017.

Ask yourself, this is a law-making House of the Republic of Kenya and the legislative arm of the Republic of Kenya. We have aligned the laws concerning all the other 15 constitutional commissions and the two independent offices except the Parliamentary Service which concerns Parliament. Is this not unfair to the people of Kenya? Is it not unfair to us? Today we have busy bodies maligning the names of the elected representatives of the people of Kenya and abusing us through the media with minimal information and twisted facts. This is unacceptable. For those Members who did not know the history of the PSC, I want at this juncture to appreciate the good work done by former Members of this House led by Hon. Castro Peter Oloo Aringo who assisted us in the 8th Parliament in the formation of the PSC under difficult circumstances. It was not a walk in the park. He was de-whipped, beaten, harassed and abused. We stood firm at the wee hours of the night. That was what gave birth to PSC. Who is any other body today under the current Constitution to purport to intimidate and blackmail Members of this House? It is unacceptable. You should not accept. We will pass this Bill. We ought to have passed it five years ago. We have been told that this Bill proposes an increment of salaries. I want to challenge those who are sponsoring this falsified information to tell us both in the proposed amendments by the Justice and Legal Affairs Committee and the Bill itself if there is anywhere where it purports to increase the salaries of Members of Parliament. This is perception. It is not true. I want the media to read this. It is not true. We will not allow Members of this House to be condemned unheard. We will not allow the elected representatives...

You need to appreciate that the framers of the current Constitution, under Article 1, equated representation to sovereignty. For those who are not familiar, Articles 93, 94 and 95 of the Constitution as read with Article 218 give you powers to legislate, play oversight role, do budget-making and all others that pertain to the interests of the electorate of the Republic of Kenya. Honestly speaking, when I see busy bodies... Today, our members of staff are some of the most privileged public officers in the Republic of Kenya. I want to say this as a commissioner without fear. I want the chairman of the Commission to hear. For any member of staff purporting to sponsor falsified information against Members of Parliament and yet you want to serve in this Parliament, no, we will not allow you. We know you. We will not allow you. We have taken care of your interest. Let me say this, I do not even want to go to the details. You know yourselves. We stood with you. Allow Members of Parliament to get their place as the

dignified representatives of the people of Kenya. I want to table this. If we pass this, which other person can purport to stand in the way of the passage of this Bill?

Hon. Speaker, to that extent, do not feel ashamed. We have been called pigs. We have been abused. I want to say this to even His Excellency the President. I want to really appreciate. For those who did not know, His Excellency the President was once a commissioner of the PSC and he stood with Members of Parliament. The forest is the same. It is only the monkeys who are different. I want to remind him, do not believe in what the media reports. Wait for the Bill so that you appreciate what Members of Parliament are going to pass. This is what he struggled for. In fact, at one time, I remember they were almost pushed to court and they were fined a huge amount of money. I do not want to say the figure. These are the same Members and this is the same House.

I have been touched. In the last Parliament, I brought a Bill called the Order of Precedence. These are the elected representatives of the people of Kenya. When busy bodies demean our existence or purport to usurp our functions... I want to remind you two things. Luckily, some of us have been around. When we passed the current Constitution, the framers had a proper and seamless governance structure for the people of Kenya. However, some have decided to give themselves holier than though status. On 3rd March 2013, the then Chair of SRC purportedly issued a gazette notice demeaning the very office of the Member of Parliament. That is one day to the election. Again, on 17th September 2017, two weeks to the election, she purportedly issued another gazette notice demeaning Members of Parliament. That is where she said Members of Parliament want sitting allowance, social allowance, sleeping allowance, parking allowance *et cetera*. It is an insult. We will not allow it. There is something shocking that came to my attention just two days ago. This is something that you Members must stand and defend jealously because to be elected is a very difficult job. You all know it, is it not? Many people would have loved to be elected. I know they are outside there and we represent them.

Hon. Speaker, when the Cabinet Secretaries (CSs) and Principal Secretaries (PSs) are appointed, that very evening they get a letter entitling them to a mortgage and a car grant. Are we less State officers? Why are we being abused? Are we less State officers? Let us have the Constitution say: "Members of Parliament are less State officers. The other State officers are unique and special." We are also State officers. More so, we are the legislative arm of the Republic of Kenya. In fact, in other jurisdictions, this is the first arm of government. Parliament is the first arm of government. The second is the Executive and the third is the Judiciary. That is why the framers of the current Constitution equated representation to sovereignty. You know what sovereignty is, don't you?

Hon. Speaker, I really want this to be addressed through your office. I saw a circular from one of the offices, which I will not name. The circular says: "Guidelines for use of government VIP lounges." This circular is in use and this is what it proposed. This is when you will really know where you are placed. This circular from one of the government offices says: "Use of government VIP lounges." The Member of Parliament is not recognised here. I will read to you. It says that those who are allowed to use the State pavilion are Heads of State and Heads of Government, including Prime Ministers, the Pope, His Excellency the Aga Khan and the United Nations Secretary-General.

This is a circular which is in use. Those who are allowed to use the VIP 3 lounges are the Deputy President, first ladies, prime ministers, crown princes and princesses, former Heads of State, the AU Commissioner and ceremonial president. VIP 2 lounge can be used by Cabinet Secretaries, Speaker of the National Assembly, Speaker of the Senate, Clerk of the Senate, Clerk

of the National Assembly, Chief Justice, Attorney-General, governors, Secretary to the Cabinet, Principal Secretaries, ambassadors and high commissioners, permanent representatives, heads of consular, heads of regional and international organisations, Kenya ambassadors and high commissioners, chairperson of Public Service Commission, Governor of the Central Bank of Kenya (CBK), chairman of the electoral commission, the Chief of Kenya Defence Forces (KDF), Inspector-General of the National Police Service and chairmen and chief executives of State corporations. Have you heard a Member of Parliament anywhere? This is official. Then they say for domestic use in domestic airports like Mombasa, Kisumu and Eldoret, those who are allowed to use are all those who have been mentioned in the above categories and county commissioners. Then they go ahead and say that the use of government VIP lounges is meant for signatories under the above categories. Over time, these facilities have been abused and in order to ensure that only those entitled to their use are authorised to use them, the following is proposed:

Hon. Members, listen. This is where you fall. The request for use of the lounges should be in writing to the Ministry of Foreign Affairs and International Trade. Protocol and Kenya Airports Authority (KAA) officers on duty should not accept direct request for VIP use. The request should be made at least two days in advance. The number of dignitaries must not be more than four people.

Where is the Member of Parliament? This is what is in circulation. Hon. Members, I will tell you for free. Gone are the days when we would be called “mpigs” or idiots. Nothing changes without us standing firm for our rights. In this Bill, the following are being proposed. I want anybody in the media to tell me where these proposed salary changes for Members of Parliament are. This is what is being proposed: That the SRC in the last two elections said they cannot properly evaluate the job description of a Member of Parliament. To that extent, they cannot place us anywhere.

If the SRC cannot do it, we propose that in this Bill, the PSC appraises Members of Parliament. We have no apologies to make. If you have an apology to make, you have no business being in this House.

Secondly, there is also the issue of the pecking order. We are the truly elected representatives of Kenyans. In the hierarchy, the President is first. We have no dispute with that. There is His Excellency the President, the Deputy President, the Speaker of the National Assembly, the Chief Justice and then the Speaker of the Senate. That is fine. The MP is No.46. Who are the 41 individuals falling between No.5 and No.46, who are above the Member of Parliament in the pecking order? Those are the things we must correct. In the pecking order, after the CJ, there is the governor. That is understandable but No.7 should be the MP.

There is also the issue of monitoring and evaluation. We play an oversight role and legislate. We oversee the budget-making process and provide parliamentary diplomacy yet we are told that we will not be accorded any opportunity or finances to undertake monitoring and evaluation. We do not want to be subject to a body other than Parliament. We also suggest in this Bill that Parliament shall provide mechanisms for both Members of the Senate and Members of the National Assembly to play an oversight role. There is no harm in doing so.

Article 127 (6) states - and I want to be guided unless I am a fool and I do not read – that the Commission shall provide facilities necessary for the well-being of MPs and staff. What are the facilities that are necessary for the well-being of MPs and staff? Those are realities we must talk about. The reason why almost eight years down the line we have been unable to align our own Act with the new Constitution is because of the fear of the unknown. We must pass this Bill. We know the details. I must say this in broad daylight.

There is also the issue of equity. Equal allocation of funds to Members is something we must all accept. There are 416 Members of Parliament. True or false? They must all get an equal share of the Budget. We will not allow an MP to operate at the discretion of a Clerk seated somewhere. We will make proposals during the budget-making process. The money is there. There are 33 Committees in the National Assembly and a number of Committees in the Senate. We will divide whatever resource is meant for Committees per Member. Committees will be allowed to manage their budgets. If somebody has a problem with that, they can come up with their own Parliament. Those are the changes we propose. Who are we offending?

Having diplomatic passports is our right. We are the truly elected representatives of Kenyans. We will not beg for it. We must have it. Every other State officer has it.

In conclusion, do not blame the Speaker. This Bill is not for the Speaker. There are some Members going round saying this Bill is for the Speaker or Keynan. It is not. This Bill has been generated by the PSC, through the legal team of Parliament. We are just the conveyors. Do not blame us. It is not mine. Those going round with their regional caucuses, shame on you! Those spreading falsehoods, shame on you! Those sponsoring falsehoods, misleading and sensational stories in the media, shame on you! We are not cowed. We will pass this Bill. I pray that His Excellency the President takes time to go through the different aspects of the Bill and assents to it.

I urge you all to support the Bill.

Hon. Speaker: Hon. Julius Melly, you have a balance of four minutes.

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Speaker. I salute and thank the Speaker, who is the Chair of the PSC, for the good work he has done.

The work that the present Speaker has placed before the Members of this House is outstanding in the sense that the Commission is coming out very clearly on the welfare of Members. It is coming out very clearly on the issues that face the representatives of the people. As Members, we represent our constituents. That is the quality of work that we need to do in our constituencies.

I reiterated the issues of research and legal departments last week. The number of employees in those units is not enough for Members to carry out their responsibilities very well. I remember cases where some Committees share research and legal officers. How will they dispense issues that affect them? I can even give an example of when we were coming up with a Bill and had to wait for our legal officer because he was working in another Committee. With such good reforms, all the Committees and Members in this House will carry out their responsibilities very well.

Secondly, there was an issue that I raised earlier on. I will table an amendment to the PSC Bill. The amendment is on the fact that staff should be employed from each and every constituency so that Parliament can have the face of the Republic of Kenya. I have the list of all the staff members and the constituencies they come from. You will realise that Parliament is skewed in terms of staff employment. Forty-one constituencies have the highest number of staff members serving in this Commission. A hundred and fifty-one constituencies have no single staff member serving in this Commission, which is very unfair. As I laud the Commission, this is the right way to go. We want to look into several issues coming up within the PSC and make the Parliament of Kenya one of the best in this region.

Lastly, looking at this Bill, especially on the issue of the pecking order, I want to point out one thing. Members of Parliament rank lowest on the pecking order. Even senior

Government officers rank higher. Members of Parliament do not appear anywhere. Of late, we are almost among the last. When we go for functions, we are not considered anywhere.

I support the Bill.

Hon. Speaker: Let us have the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. I rise to support the Bill. I do so as a first-timer. When I came to Parliament, I realised that my expectations were not met. The expectations of the public about Parliament are so exaggerated. They are unable to be met in terms of what we get in this place.

I would like to dwell on a few issues. We sit on various Committees that draft laws and consider regulations.

Hon. Speaker, one of the most overriding shortcomings that we have in this country is that the members of public are accorded adequate opportunities to comment on the Bills or to participate in the law-making process. When you talk to members of public, they say the mechanisms that exist now do not offer them adequate opportunity to contribute to the law-making process. A voter in the constituency does not have access to internet and newspapers. Very few have any chance to know that a certain Bill is being debated and due for enactment, so that they can give their views and opinions. Therefore, of all the strong things that I like about this Bill is the possibility that PSC will provide a framework in which we, Members of Parliament, can engage the ordinary people in the law-making process. I envisage a situation whereby when a Bill is published, before it goes to the Third Reading or the Second Reading, we create fora in our constituencies where we can take our members through the proposed legislations, so that they can give us their comments which can enrich debate here and find their way in the Committee of the whole House.

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

[The Temporary Deputy Speaker (Hon. Christopher Omulele) took the Chair]

The second point of support for this Bill is basically on the issue of Members' welfare. I want to put it very clearly that we serve the people of Kenya. We are State officers. I find it so amusing that the amount of discrimination and hatred directed towards Members of Parliament is simply because other State officers of junior rank or equal rank are better placed, rewarded, facilitated and remunerated compared to Members of Parliament. We vet and approve most of the members of the public service who hold senior positions. In essence, we are their employers. We make Budgets and appropriate funds which they use. In essence, we are their employers. It beats all logic that the employee is better remunerated and facilitated than the employer. We should not be ashamed as employers to make sure that we take care of our welfare. It is surprising that as a Member of Parliament, you are given a car loan which you pay throughout your five years. You use the vehicle to do State work and serve the constituents and after five years, that vehicle is a write off. Other State officers and employees of State, in addition to the car loans, are given Government vehicles which are fuelled and maintained by the Government. Why the discrimination against the Members of Parliament?

On the issue of welfare, we have been derided in the public media about the issue of medical cover. The law allows polygamy in this country. The Muslim faith allows polygamy in this country. The new Marriage Act allows polygamy in this country. Why should we discriminate against those who choose, by choice, to have as many spouses as they wish because

those are blessings from God? Why should you punish somebody for being blessed with very many spouses? Children are blessings from God. Why should you discriminate that you can only cover a number of kids and leave the others out? Why should we punish the work of God? Why should we disregard the work of God? We must make sure that this particular Act is in line with these other Acts.

The truth should be told that whatever little a Member of Parliament gets is shared with the rest of the constituents and sometimes people outside the constituencies. I want to pose and ask whether a Principal Secretary or Cabinet Secretary shares his or her income with the members of public. When you go to the gates of many of them, you find *Mbwa Kali*. You can never access their homes. However, Members of Parliament deal with people on daily basis. We know the cost of coffins and transporting bodies. We know all these things because as Members of Parliament, we are representatives of the people. We should therefore be facilitated such that we do not have to live in an unending strain to make both ends meet for simply doing the job that we were employed to do.

The issue of support staff in Parliament is becoming a big problem. We have inadequate members of staff to do research. Committees are now sharing legal staff. For example, we were unable to complete a Report in the Departmental Committee on Trade, Industry and Cooperatives today because the only legal staff who is allocated to us is allocated to three other committees. We were unable to move. We must give the PSC the powers and facilities to ensure that our members of staff do not get overworked and have adequate work to research, so that we enrich and improve the quality of the Bills and laws that we pass in this Parliament. It is important that as much as we make the laws, we need to be very careful that we do not victimise either some Members of Parliament or members of staff. We must make laws that entrench good governance, fairness, equity and ensure that all our members, be they Members of Parliament or members of staff, get what they deserve to get.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Odhiambo, what is out of order?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity. I stand under Standing Order No. 95. Going by the mood of the House, will I be in order to call upon the Mover to reply?

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

The Temporary Deputy Speaker (Hon. Christopher Omulele): Mover.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Temporary Deputy Speaker. I want to take this early opportunity to thank all the Members. This Bill is not coming from the air. It is one of the tools of domestication of the current Constitution because PSC is one of the 15 constitutional commissions under Chapter 15 of the Constitution.

Parliament is a unique institution. Many people outside there and inside here do not understand the workings of a Member of Parliament and member of staff. I also want to take this opportunity to sincerely thank our members of staff. At a time in 1999, we revolted at 3.00 a.m. History is sometimes very useful. You can imagine a *Kamukunji* of Parliament at 3.00 a.m. at the lounge. The next day, Hon. Jimmy Angwenyi was fired and Hon. Oloo Aringo was dewhipped. Hon. Leshore who was then the Whip and Hon. Shidiye were left out. So many

things happened. What I am trying to tell you is we will serve you as your commissioners. I am a true believer in my faith. I took the oath of office to stand firm for this. Therefore, I urge you to support this Bill. I can assure you that this Bill will give you value for your representation, money and presence here in a dignified manner that is consistent with our Constitution.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to reply.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

MOTIONS

REPORT ON THE JUDICIARY FUND REGULATIONS

The Temporary Deputy Speaker (Hon. Christopher Omulele): Chairperson, of the Committee on Delegated Legislation, Hon. Shollei.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Judiciary Fund Regulations, 2018 (Legal Notice No. 117 of 2018), laid on the Table of the House on Tuesday, 13th November 2018, and pursuant to the provisions of Section 15(1) of the Statutory Instruments Act, 2013 and Standing Order No. 210 (4) (b) annuls in entirety the said regulations.

Hon. Temporary Deputy Speaker, the Select Committee on Delegated Legislation is established pursuant to the provisions of Standing Order No.210(4)(b) and has the power to scrutinise and certify that all regulations submitted to the National Assembly are in compliance with the Constitution of Kenya and all other Acts of Parliament.

This is the 16th Report to the House recommending annulment of regulations. Contrary to popular believe that the Committee annuls most of the regulations referred to it, I would like to set the record straight. So far, the Committee has received 85 sets of regulations. Out of these, 25 are currently under consideration; 15 were annulled in their entirety; while, one was partly annulled. The rest were acceded to and communicated to the regulation-making authority pursuant to Standing Order No.210(4)(a) which provides that, if the Committee resolves that the statutory instrument be acceded to, the Clerk shall convey the resolution to the relevant State Department or the authority that published the statutory instrument. This is a track record the Committee is immensely proud of.

We have taken note that there is need for a round table forum with the Executive, the regulation-making authorities, in order to discuss the importance of adhering to the Statutory Instruments Act in preparation of the instruments and even in transmitting them to Parliament.

We hope this will result in annulment of less instruments for non-adherence to the relevant laws and procedures. We plan and hope that we shall have the support of your office to ensure we are able to begin this activity in the next Session of the House.

Back to the regulations before us, the Judiciary Fund Regulations were first brought before the House. They are established under Article 173 of the Constitution and they are supposed to be administered by the Chief Registrar of the Judiciary. Article 173(5) of the Constitution further gives an obligation to Parliament to enact legislation to provide for the regulation of the Fund. The Judiciary Fund Act, No.16 of 2016 which came into force on the 12th June 2016 revoked the Judiciary Fund Regulations of 2013 that were made under the Judicial Service Act. So, these new regulations are under the Judiciary Fund Act and not the Judicial Service Act which was repealed.

The Judiciary Fund Act, Section 14 empowers the Chief Justice in consultation with the Chief Registrar of the Judiciary to make regulations for proper management of the Fund. In exercise of these powers, the Chief Justice Published the Judiciary Fund Regulations on 31st May 2018 vide Legal Notice No.117 of 2018. The regulations were then submitted to the Clerk of the National Assembly on 13th July 2018 and tabled on the Floor of the House on 7th August 2018 and subsequently committed to the Committee on Delegated Legislation for review and scrutiny.

Briefly, I will highlight a few sections of the regulations that will form the basis of the recommendations of the Committee. As set out in Regulation 4, it seeks to provide for the management and operation of the Judiciary Fund to ensure accountability, transparency and the use of resources in the Judiciary among other desired tenets of the Public Finance Management Act. The objective of the Judiciary Fund is provided in the Judiciary Fund Act which is to safeguard the functional and operational independence of the Judiciary and ensure accountability of all resources allocated to the Judiciary as well as ensure that the Judiciary has adequate resources for its operations.

Regulation 5 provides for various sources of funds being among others, such monies as may be appropriated by the National Assembly out of the Consolidated Fund, any grants, gifts or donations or bequests, such monies as may be allocated for the purposes from investments, fees and levies administered by the Judiciary and monies accruing to or received by the Judiciary from any other source.

The other parts in summary deal with budget preparation, utilisation of the Fund, expenditure in relation to human resources and also sets out procedures and accounts for reporting and provides for internal audit of the Fund as well as risk management.

Upon review of the regulations against the Constitution, the Judiciary Fund Act No.16 of 2016, the Judiciary Service Act No.1 of 2011, the Public Finance Management Act, No.18 of 2012, the Statutory Instruments Act, No.23 of 2013 and the Interpretation and General Provisions Act, Chapter 2 which regulates the scrutiny and publication of regulations, the Committee observed as follows:

1. The regulations do not comply with the statutory timeline as per the Statutory Instruments Act.

2. The regulations from the Judiciary are not exempt from scrutiny as contemplated in the Statutory Instruments Act.
3. The regulations are inconsistent with the patent Act and the Constitution.
4. The regulations are inconsistent with the Unclaimed Financial Assets Act, No.10 of 2011.
5. Diversion of funds from the Consolidated Fund is a substantive matter that may require a statute and cannot be done under a subsidiary regulation as these regulations attempt to do.
6. The regulations are inconsistent with the Constitution, the Judiciary Fund Act, 2016 and the Public Finance Management Act.

I will briefly explain those reasons. The first one on the fact that they did not comply with the statutory timeline, the Statutory Instruments Act requires that every Cabinet Secretary responsible for regulation-making shall within seven days, meaning seven sitting days, after the publication of the statutory instrument ensure that a copy of that instrument is transmitted to the responsible Clerk for tabling before the relevant House.

The Judiciary Fund Regulations before us today were published on 31st May 2018 (Legal Notice No.117 of 2018) and submitted to the Clerk of the National Assembly on 31st July 2018, which was outside the statutory timeliness of seven sitting days as contemplated by the Statutory Instruments Act, Section 11. On that basis, the regulations started on a wrong footing.

Furthermore, the Statutory Instruments Act of 2013 indicates that if a copy of a statutory instrument that has been published is not brought before the relevant House within the statutory timeline, it shall cease to have effect immediately after the last day on which it was supposed to have been laid, but without prejudice to anything that has been done in the pursuance of that statutory instrument. These regulations stand to immediately have no effect and cannot be applied.

On the second point...

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Shollei, you may not have been in the House when directions were given that for this particular business, the time limit will be one hour and your time of moving will be 10 minutes, which you have already consumed. I will allow you a minute so that you can conclude.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Thank you. I had already outlined the basis upon which the regulations stand nullified. The most important one was that there was an attempt by the Judiciary, in a letter sent to the Committee to indicate that they are exempt from coming before the Committee, but the law clearly states, and this is what the Committee found, that only those regulations that emanate from court orders from courts of a competent jurisdiction are exempt. The Judiciary, when publishing these regulations, the Chief Justice is not sitting as a court of competent jurisdiction, but is sitting as an administrator of the Judiciary. Therefore, they are not exempt. Having looked at the regulations against all the laws that I had mentioned, the Committee recommends that we annul the regulations in their entirety.

I beg to move that these regulations be annulled in their entirety because of the reasons that I have outlined. As I sit, I would like to request Hon. Wilberforce Oundo, Member for Funyula, who is also a Member of the Committee, to second the Report.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Hon. Oundo?

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I must take this opportunity to congratulate my Chair for the good work we are doing as a Committee to strictly scrutinise statutory instruments to ensure they comply with the Constitution and the law.

The Constitution of Kenya is explicitly clear on the role of the Judiciary, the Judicial Service Commission and the Judiciary Fund. Specifically, Article 173 contemplates that the Judiciary Fund shall be a charge on the Consolidated Fund. Consequently, the funds that accrue to the Judiciary must come from the Consolidated Fund. If you look at the regulations, under Regulation 6, it purported indirectly to expect to use funds collected at source - fines, fees, levies and all those kinds of things. However, looking at the PFM Act, there are some things that do not constitute Appropriation-In-Aid, and therefore, must be provided for in the Consolidated Fund. When we reviewed the regulations, it became apparent that those regulations were in breach of Article 206 of the Constitution of Kenya that requires that all funds collected on behalf of the national Government must be surrendered to the Consolidated Fund. Thereafter, once Parliament approves the budget of the Judiciary, there can be a charge on the Consolidated Fund. On that ground alone, Regulation 6 and consequently the entire regulations were in breach of the Constitution and the PFM Act. On that score, we, the Members of the Committee on Delegated Legislation, proposed the annulment of the regulations in entirety.

Secondly, we have had a challenge. In many of the regulations that we have annulled, we have had a challenge on the question of public participation. The Constitution is explicitly clear that Members of Parliament or any State organ that purports to make laws do so on behalf of the people of Kenya. Consequently, the people of Kenya must be involved in law-making through their representatives and through their contribution in their own right as members of this country. When we looked at Judiciary Fund Regulations that were submitted to the Committee for review, there was no explanatory memorandum. So, we were unable to understand or appreciate the extent of public participation undertaking. When they came to present, a basic inquiry indicated that there was no public participation as understood in the spirit of the Constitution.

Consequently, as a Committee, we were unable to approve regulations where there was no manifest demonstration that members of public participated in the law-making process. We did not want to be part of the group that breaches the Constitution and preaches impunity. We must adhere to the law as stated.

With those few remarks, I second the Report of the Committee that calls for the annulment of the regulations in entirety.

Thank you.

(Question proposed)

The Temporary Deputy Speaker (Hon. Christopher Omulele): I will give the first go at it to Hon. Wanyonyi, Member for Westlands.

Hon. Tim Wanyonyi (Westlands, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance. First, let me declare that I am a Member of this Committee. We took our time to scrutinise this instrument. The decision that has been presented here is a collective decision of the Committee. We unanimously agreed that this instrument does not meet the threshold as set out in the Statutory Instruments Act. The JSC was contemplating to set up this

Fund and although they were usurping the powers of the court they sought to be exempted from scrutiny. They did so by the letter that forwarded the documents by the Registrar citing Section 12(3) of the Instruments Act, which sought to exempt the rules and regulations, orders and acting from courts of competent jurisdiction. When we looked at it, we noted that the JSC is not a competent court. It does not meet the threshold of exemption. We looked at it and decided that it had to be scrutinised by the Committee.

Therefore, we went through it. We invited them to present the document and we looked at every bit of it. Normally, when we deal with instruments, we look at the forwarding letter and any memorandum. If it does not meet the threshold, it sometimes just ends there. It means one has not explained themselves. This is one of the things that we deal with. It is citizen participation. If that has not been adhered to, we do not even move forward because it falls on its face.

I support the annulment of this instrument because it does not meet the threshold.

(Hon. (Ms.) Odhiambo-Mabona stood in her place)

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Wanyonyi, just one second. There is a Member standing right in front of you and he is blocking your view from the Speaker.

Proceed.

Hon. Tim Wanyonyi (Westlands, ODM): Thank you, Hon. Temporary Deputy Speaker. Sometimes I have the disadvantage of sitting right at the back, where *kamukunjis* are held. At times, I do not follow what the Speaker is saying while addressing the House. But I thank you for your protection.

I support the Committee. This is one of the Committees that has shown a lot of commitment. We have finished most of the instruments that have passed through the Committee. I was a Member of this Committee in the last Parliament, but the current one is the best. We have Members who are so committed. Every time, we are full house and we deal with issues. When we annul an instrument, it means it has not met the threshold. When we pass it, it means it has met all the requirements set down in the Statutory Instruments Act.

Therefore, I support the Committee's decision to annul this in entirety.

Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken. Hon. (Dr.) Makali.

Hon. (Dr.) Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. Let me also take this time to thank the Committee for the good work they seem to have done. Listening to the Chair of the Committee make his presentation, it is obvious that this instrument had to be rejected by the Committee.

The first point is on public participation. It is very clear that public participation is central to all that is being done by institutions including Parliament, in this country. I think the Judicial Service Commission (JSC) cannot be an exception. They need to note that for them to get their things done correctly and in line with the Constitution, it is important for them to involve the public. I get worried when I hear of a situation where public participation has not been considered. That is a good reason for this House to saying "No" to whatever they are proposing.

The other important point, which has been raised is the issue of the Consolidated Fund. When you hear of an institution which is thinking of using resources directly after collecting and

the money does not go through the Consolidated Fund, it is a clear signal that Kenyans need to be worried. That is why it is mandatory that all funds collected on behalf of the Government or the public must go through the Consolidated Fund. That paves way for the budget-making process, during which consideration is made on which activities are being proposed and how important they are to this country. The fact that they are trying to use money directly after collecting it without the money going through the Consolidated Fund, it means they want to bypass the budget-making process, which provides a chance for all of us to look at what has been proposed and how important it is. That is another area which is quite strong. On the basis of that, I think they have to go back and look at it again.

The third point is on what I hear about inconsistencies with the Constitution, the Public Finance Management (PFM) Act and the Statutory Instruments Act. It is very clear that in this country, any law or instrument which is not in consistence with the Constitution is null and void. That is very clear. As long as there are elements which are not consistent with the Constitution, it cannot go through this House. I really support the Committee.

As I conclude, there is one element which I want made clear to this House when the Chair replies. In terms of timelines, we allow seven days after the Act comes into operation to generate this regulation. But they submitted theirs late which was after the seven days. The truth of the matter is that even as we move forward, we are going to be in a situation where we can submit this instrument within seven days. Does it mean the Judicial Service Fund - which is very important - will never have regulations? If the rule is applied, it means that we will go to another one. Even if it is resubmitted, addressing all the other issues that have been raised, the seven-day limit will still be applicable. I want to hear what the Committee says about that. It means we might have challenges.

With those remarks, I support and thank the Committee for a job-well-done.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well. Those are valid issues raised. I hope the Chair has taken note of the concerns raised by Hon. Makali, so that she takes them up in her reply. Specifically, in regard to the timelines from the time of enactment of the law and presentation of the regulations.

The Hon. (Dr.) Emanikor, did you have something to say to this Motion?

Hon. Odhiambo, Member for Suba.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support. Even as I do so, I congratulate the Committee and the Chair, Hon. Gladys Boss Shollei. I hope she will be considered as one of the awardees when Parliament forwards names for awards. She has done an excellent job. I have been in this Parliament and I have seen the work Committee chairs do, but she has done an excellent job. At the same time, I congratulate Hon. Amina Abdalla for coming up with the Statutory Instruments Bill that produced this Act. It has ensured that Parliament has a say especially when other bodies are not following the regulations. As we are coming up with this potential vote on the two-thirds gender rule, somebody was challenging me that women come to Parliament and do not work. I do not know whether Hon. Gladys Boss Shollei is transgendered. Really, she is doing an excellent work and she is a woman. Hon. Amina Abdalla did an excellent work and she is a woman. I am here doing an excellent work and I am a woman. Prof. Oduol here is always doing excellent work and she is a woman. So, it is not true.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Millie Odhiambo, you know that you are doing an excellent job. You do. Proceed, I am just commenting.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): I just wanted to debunk the myth that women in this House are not doing an excellent job. There are women in this House doing excellent and terrific job. I hope her people will remember her for the excellent work she is doing in whatever she wants to go back for in the coming years.

I want to congratulate the Chair of the Committee because she has brought us to speed as a House in terms of the regulations they have dealt with. She has said they have done 85, if I heard her correctly. Fifteen have been annulled in entirety. They are still considering 25. That will leave about 45 that have been acceded to. That is excellent work. Unfortunately, because of the way the Act is structured, the House does not get to know the ones that are acceded to. What the Committee should do, perhaps, is to consider an amendment to the Statutory Instruments Act, so that even the ones that are acceded to are brought to the House for notification.

This is not necessarily for the House to approve or disapprove, but to note what the Committee has done, so that people do not just think that the only thing that the Committee does is to annul. When I was sitting with Hon. Shamalla and she said that they are bringing another one, I asked her if they are bringing another one to annul because it appears that is the only thing the Committee does. I am very happy that you are showing us that your work is not only to annul.

I want to say very clearly and very evidently that I know some Ministries may not be very happy with some Government agencies, but a child can never be greater than the parent. So, when you pass a regulation, the regulation must conform to the parent Act. Indeed, if the regulations especially Regulation Six contravene the Judiciary Fund Act, then the Judiciary should have brought an amendment. I agree with the Judiciary that when you talk about fines, miscellaneous receipts and forfeitures, the money should go to the Judiciary Fund because it comes from the work of the Judiciary, but the way it is structured and the way our law is structured, first all the money goes to the Consolidated Fund before it goes to the Judiciary. We know the story that when it comes back to Parliament through the Budget and Appropriations Committee for appropriation, I sometimes feel that we are not very kind to them. I want to agree, but on the issue of public participation, there is a higher standard that is expected of the Judiciary because they are the ones who ensure that the laws and regulations are effectively followed and should lead by example. If there is an issue of public participation, they should do it and if there is an issue of timelines, they must comply with the timelines.

Because of time, I may not say as much as I had wanted to, but I want to yet again congratulate the Committee.

I support. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I support the adoption of this Report. Like all my colleagues have said, I must appreciate the work that the Committee is doing under the chairmanship of Hon. Shollei. This is the Judiciary Fund Regulation and the Committee has stated very clearly why they had to annul the regulations. They have been very clear that they did not meet the statutory timelines. They thought they were exempt to the timelines and attempted to use the funds at the source, while that is Appropriations in Aid. It was more surprising that a whole institution would think that they can collect money and spend the funds at the source in spite of what is provided by the PFM Act. They did not conduct public participation. What worries me most is that this is not just another Government department. This is the Judicial Service Commission and the Chief Justice, who submitted this and supported by the Registrar. If they cannot get the law straight, who will?

That is my main concern. I, therefore, support the suggestion from the Committee that they need to have a round table meeting with the Executive. I am also worried that even if you are going to educate the rest of the Executive, you are also going to educate the Judiciary in the processes of law. We should look at it.

There is also an issue here. People are not taking these things seriously. It was probably slipped to some junior officer and quickly drafted and brought before us. I think the Executive must take this delegated authority very seriously.

As I end, the Committee should go ahead and have a round table meeting. Otherwise, we are going to have problems. There is need to amend the law to make it possible to meet the timelines.

With that, I support the adoption of the Report.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Very well spoken, Hon. Nyikal particularly on the point that it seems like a lot of these agencies seem to be clamouring for an opportunity to expend money that they collect without passing through the Consolidated Fund. This is a matter of concern. It is good that we have gate keepers who will point them out time and again. I will now give this opportunity to Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I wish to state that I support and to reiterate the Committee and the Chair's position that consultations are going to be very important going forward. We had consultations and round table meetings this morning with various parties and one of the things that surprised the Committee was that the Judiciary Fund attempted to seize unclaimed assets. I am using very bold language, but that is what it attempted to do and to usurp the authority of the Unclaimed Assets Authority and the Act that governs it. Had there been further consultations and public participation, it would have been made clearer to them that this was absolutely not right. The enabling legislation does not permit the Judiciary Fund to take over forfeiture assets that are unclaimed. Unclaimed assets include, for example, paid court fines or deposits in court and the persons who paid have passed on. These assets must first be forwarded to the Unclaimed Assets Authority. For these regulations to be purporting or attempting to take over these assets is something quite serious. If there had been further consultations with stakeholders, I am certain they would have realised that they were acting in outright contravention of existing legislation.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Oduol Adhiambo, you have something to say to this?

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker for the opportunity to speak to this Motion. From the outset, I like to congratulate the Committee. As we undertake our work, one of the key areas that we are not only keen to look at, and which the public suggests that we do not do so well, is confirmed to have been done well by this Committee. This is ensuring that as we come up with legislation, in particular as we look at the various regulations for the basis of managing public funds and would define operations and how we engage in administration, we are paying keen attention to the manner in which they relate or give reference from the Constitution; the supreme law, in particular the related Acts.

As I support, I want to highlight the Committee's very meticulous way of ensuring that as we set regulations for the management and operations of the Judiciary Fund, we do not seek to violate the very law which the Judiciary is mandated and stands to defend. Secondly, that when we are dealing with issues of funding and as Parliament seeking to enact legislation, we should

closely look at ways by which the funding is keeping with other existing laws. Finally, when we think of the representation angle and the number of times the public thinks that we do not take time to not only look at the detail, but to consider what affects them, the Committee was able to take note of the significant role that public participation plays. Therefore, with this, I would like to support and once again congratulate the Committee.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tuwei Kipkurui, Member for Mosop. Not in the House, I will have Hon. Maanzo Kitonga.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to support this very important Motion on consideration of the Judiciary Fund Regulation 2018, which came pursuant to Legal Notice No.117 of 2018. This is a very important Fund and our Committee has annulled the regulations for obvious reasons. First and foremost, the purpose of the Fund was not properly understood. If all court fines in the country went to a particular Fund, then it means the real purpose and objectivity would be lost. Court fines should remain as thus. They are part of the Appropriation in Aid of the Judiciary and there are proper procedures on how to collect the funds. On any other fund set up for the benefit of the Judiciary, first and foremost, there has to be public participation by the stakeholders. One of the biggest stakeholders in matters Judiciary is the Law Society of Kenya (LSK) because they represent many clients who particularly deal with the Judiciary on a day to day basis. That is a very important arm of the administration of justice for the lawyers in public participation. Also, any other person who feels affected in one way or the other should participate. First and foremost, there was no public participation and the Judiciary has made judgements and pronouncements which show what must happen in the event of public participation and in relation to this sort of funds.

We followed what the Judiciary has already pronounced itself on. It is important to stick by that principle because once a court decision has been made it operates as a law up to when another core decision is made or an Act of Parliament is passed. In these circumstances, following the pronouncements of the Judiciary, we have taken them to that rank. So, in the event this House annuls these regulations, the Judiciary will go back to the drawing board. We are not denying them this Fund at all. We want the Judiciary to be properly funded to do its functions. There is a lot to be done in the Judiciary. There are new courts coming up and we have seen the Chief Justice commission them all over the country. In Makueni Constituency, construction of a High Court, subordinate courts and quarters for judicial officers is going on and this requires money. It had a budget of Kshs400 million.

Therefore, it is important that the Judiciary gets funded, but we must ensure that when it is being funded, it is done within the law such that someone else will not go to the same courts and make an application to nullify what we are trying to do. So, in keeping with the law, our Committee on Delegated Legislation has a lot of practising lawyers of good standing who by their profession, are court officers. For that matter, we had to make sure that the law is followed. For the decision that we arrived at, we followed the law. For that matter, the Judiciary has to go back to the drawing board, get it right, do it in a proper manner as they have already ruled so that we do not go against their own judgement, then bring it back to this House and I am sure the House will be favourable.

I thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): We have not granted... Hon. Okello has something to say to this.

Hon. Jared Okelo (Nyando, ODM): Thank you. I congratulate the Committee for coming up with this Report on the Judiciary Fund Regulations. It is quite absurd that I can count endless court decisions that have gone against matters legislated before this House for lack of public participation or gender parity in certain sectors. It then becomes quite ironical that the Judiciary can move forward to carry out an activity without involving the tenets of public participation. So, I applaud the Report of this Committee because it has delved into matters of the law that have been very costly to members of the public and certain Government agencies. So, being the interpreters of law, they must interpret the law as it ought to be. The flipside would have been that if this matter ended up in court and judges were to sit to make a decision on what they have done, perhaps we would have asked all the judges to recuse themselves and let the public make a decision on this kind of thing. So, it puts them in some state of quandary that may take forever to be resolved.

Just last Friday, we commissioned a new court of law in Ahero; one of the state-of-the-art courts. We understand that our Judiciary still needs lots of funding so that they can take the dispensation of justice closer to the people. Even as we do all these things and a lot of money is involved, every undertaking must have the face of constitutionalism. We will not operate like the rule of the jungle. Even when the Executive has punished the Judiciary by way of Executive fiat by denying them what is due to them and at the same time the Budget and Appropriations Committee has also employed certain caveats on funds meant for the Judiciary, we have to ask ourselves why there are certain misgivings and perpetuations of illegalities and irregularities within our courts and the Judiciary has necessitated all this. So, being the interpreters of the law, they must be the right example to this country.

We have three arms of Government and Judiciary is one of them. There is absolute independence, but they have to remember that there is interdependence. You cannot operate in limbo. There is no lacuna in operations and you are not going to eat your cake and have it. They have to take cognisance of the other arms of the Government that play pivotal roles towards their operations.

So, I thank the Committee once again for a job well done. I support the adoption of this Report. Thank you.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Okelo, the courts must interpret the law as it is, not as it ought to be. Let us have the Mover. Hon. Hulufu, you have just pressed the button when I was calling the Mover, but you have been here. Do you really have something pressing to say to this? Very well, let me allow the Mover to reply.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Thank you. Even as I reply, I thank all the Members who have contributed. I am amazed at how they quickly grasped the points and supported the Motion. I appreciate the Members of my Committee who have worked hard and are very meticulous. Hon. Timothy Wanyonyi. Hon. Daniel Maanzo Hon. Shamalla and Hon. (Dr.) Oundo have been very instrumental in looking at these key issues and I appreciate that they have taken this to heart. The Committee on Delegated Legislation touches people's lives.

Sometimes Acts of Parliament can be abstract, but the Committee on Delegated Legislation is for their implementation. I always refer to the example which many people will understand. The Solar Energy Regulations were going to cost poor Kenyans a lot of money and they would be fined Kshs 1 million and yet the houses they live in do not cost that much. So, regulations are important. I appreciate that Members are beginning to be active on this to ensure that Kenyans are protected. All points have been mentioned by the Members and I only

want to emphasize that it is necessary for the regulation-making authorities to ensure that they familiarise themselves with the Statutory Instruments Act, also the Speakers' rulings from the previous Parliaments and the 12th Parliament, so that they can know what is required of them. They should also read Committees' reports.

I request the House to adopt this Report that annuls the Judicial Regulations in their entirety. Thank you, Hon. Temporary Deputy Speaker.

With those remarks, I move this Motion.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Shollei, I think you should speak to Standing Order No.53(6), so that I can give the necessary directions for the deferment of putting of the Question.

Hon. (Ms.) Gladys Boss Shollei (UasinGichu CWR, JP): Hon. Temporary Deputy Speaker, I wish to move in accordance to Standing Order No.53, that we defer the putting of the Question to a later sitting.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Thank you very much. In accordance with Standing Order No.53(6), I defer putting of the Question to such a time that the relevant Committee will set it down for the same. I direct that we move on to the next business on the Order Paper.

(Putting of the Question deferred)

RATIFICATION OF PROTOCOL TO ELIMINATE
ILLCIT TRADE IN TOBACCO PRODUCTS

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Health on the Ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products, laid on the Table of the House on Tuesday, 13th November 2018, and pursuant to the provisions of Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products.

The Memoranda to Parliament on the ratification of the protocol to eliminate illicit trade in tobacco products was committed to the Departmental Committee on Health on 30th August 2018 in accordance with Section 8 of the Treaty Making Ratification Act, 2012 and Standing Order No.216(fa) for consideration of the Report by the House.

[The Temporary Deputy Speaker (Hon. Christopher Omulele)

left the Chair]

[The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu)

took the Chair]

Once ratified, the agreement shall become part of our Kenyan laws as provided in Article 26 of the Constitution, which provides that any treaty or convention ratified by Kenya shall form part of the laws of Kenya under the Constitution. I will, at this earliest opportunity, say that the submission of the Cabinet Memoranda on the Protocol to Parliament came after the Committee had on its motion prodded the Ministry to hasten the process through a letter dated 16th April 2016. This was in recognition of the importance of the Protocol towards curbing illicit trade and combating non-communicable diseases towards attainment of the universal health coverage.

The Committee had received communication from the World Health Organisation (WHO). In the run-up of this, the Committee constituted part of the Kenya delegation to the meeting of State parties held in Geneva, Switzerland, in October 2018 due to non-ratification of the Protocol at the time. The delegation attended as observers and was not allowed in the meeting and only shared experiences in co-ordination meetings. This was quite embarrassing for them.

The meeting resolution was to call upon all State parties to ratify the Protocol which Kenya had not ratified. Tobacco use and exposure is one of the leading causes of chronic non-communicable disease including cardio-vascular diseases, cancer, diabetes and chronic obstructive lung diseases. These diseases are the leading causes of obesity and mortality globally causing more deaths than all other causes combined. In consideration of the Protocol, the Committee held a briefing meeting with the Ministry of Health, which is the implementing agency of the agreement.

The Committee also invited and received memoranda from various members of the public including the civil society, academia and other stakeholders. All submissions are incorporated in the Report. The Committee received a total of 14 submissions with 13 of them calling for the ratification of the Protocol. The Committee was particularly impressed by the civil society who have worked in unison with the Ministry of Health and made submissions in support.

Illicit trade practices are illicit manufacture, while what is commonly known as counterfeits, produce illegal facilities and do not declare to the tax authorities. They also include illicit importation, which is smuggling of products produced in other jurisdictions, illegally transported to avoid applicable taxes. The impact of this trade is that it increases access, affordability and consumption of tobacco products. It undermines tax policies, leads to loss of revenue, promotes corruption and undermines the legal and health regulations.

The Protocol had three broad provisions. One, prevention of illicit trade by securing the supply chain through legislation and licensing of all manufacturers, requiring record keeping and reports from them of the products produced and their destinations. The other one is tracking and tracing, banning the sale of tobacco products by the internet, regulating free zones and international transit and banning duty free sales on tobacco products.

Part two was on law enforcement, which looked at the Protocol establishing unlawful conduct and it does not contain a catalogue of criminal offences. However, parties have discretion in determining which conduct is criminal offence, including manufacture, sale and

transport of tobacco products contrary to the provisions of the Protocol, for example, without a licence. Manufacture, sale and transport of tobacco products without payment of duties, taxes and other levies or without bearing the applicable fee cost stamp and mis-declaring on official forms, description, quantity or value of the tobacco products to evade payments of duties or taxes and establishment of liability of legal persons, seizure payments, effective and dissuasive sanctions and special investigative techniques.

Part three is on international cooperation, exchange of enforcement information including providing technical assistance and cooperation in scientific technical and technological matters, law enforcement cooperation, mutual administrative assistance, mutual legal assistance and extradition. The Protocol makes specific reference to enhance cooperation between the Convention Secretariat at the United Nations (UN) office on drugs and crime, the World Customs Organisation and other bodies as appropriate.

Kenya has actively participated in the development of the WHO Framework Convention on Tobacco Control (FCTC) as well as the implementation guidelines. This participation has led to Kenya implementing the FCTC hence becoming a global leader with various best practices at a reference point of the regional and global levels. Article 15 of the FCTC deals with combating illicit trade and hence required a protocol to facilitate its implementation across national and international borders.

Kenya signed and ratified the FCTC on 24th June 2001, and the Tobacco Control Act was passed in 2007 and developed from the FCTC as a blue print. Following the recent co-judgement in favour of Tobacco Control Regulation, 2014, the regulations for the implementation of the Act took effect on 24th August, 2016. The Protocol came into force in 2018 after 40 parties ratified it.

I want to appreciate the efforts taken by the Ministry of Health, including our very own Hon. (Dr.) James Nyikal who was the then Director of Medical Services. I also appreciate the Kenya Revenue Authority (KRA). The country has its own internal mechanism and enacted the Tobacco Control Act and the KRA implemented stringent measures on movement of tobacco products. In fact, Kenya has received a WHO Director-General Award for the exemplary efforts in implementation of the Protocol.

The country is already fully implementing the Protocol and it is a reference point for the best practice. Indeed, we have hosted numerous foreign delegations on benchmarking. Furthermore, Kenya has been the bureau member for the Afro Region in two consecutive terms demonstrating the region's confidence in Kenya's performance and leadership. As a country, that is the manufacturing hub for tobacco products and exporting to more than 22 countries in Africa and beyond. Kenya is at a high risk of illicit trade in tobacco products. Kenya is surrounded by porous borders making it prone to illicit trade. Moreover, Kenya has the highest tobacco tax rate in the region further raising the vulnerability to illicit trade in tobacco products.

It is based on this that I move that the House adopts the Report of the Departmental Committee on Health on the Ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products. I thank the Members of the Departmental Committee on Health for their continued support to the Committee and their dedication to make sure that we pass the laws that are required to govern this country, especially on health matters. As I thank them, I would like to call upon Hon. (Dr.) Nyikal to second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. (Dr.) Nyikal for seconding.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion on the Ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products. There is need for us as a country to sign this. The problem of tobacco is, to a large extent, a health problem. In fact, tobacco use and diseases associated with it cause the largest number of non-communicable diseases like heart diseases, vesicular lymph and cancer. Some people think it only causes cancer of the lungs, but any cancer can be associated with this. Others are diabetes and chronic lung diseases. It even affects new born children or children whose mothers smoke during pregnancy. They will be born with these effects. In Kenya, up to 23 per cent of males use cigarettes. In females, it is 4 per cent. Even children between the ages of 13 to 19, up to nearly 10 per cent use cigarettes. Cigarettes are the most commonly used product. If you look at the deaths due to non-communicable diseases, 50 per cent of them are associated with tobacco use. Illicit trade really needs to be controlled because it increases access and once you have access, everybody can get it easily, the prices are low and even children can get tobacco. Tobacco is addictive and so once children start using it, it is very difficult to stop the use.

As the Chair has said, Kenya has been in the leadership in the fight against tobacco use. From 2003 when the Framework Convention on Tobacco Use was started by the WHO, Kenya was an active part. We had membership in that group throughout. By 2005, we actually had signed the Framework Convention on Tobacco Control when it came into being. We followed closely to get the Tobacco Control Act passed in this Parliament and it is one of the most tedious legal frameworks I did when I was at the Ministry. The fight against this industry is always a huge fight and unless we strengthen these instruments, this will go on. In 2007 to 2012, Kenya led the FCTC Conference of Parties and we were very instrumental. All the parties, including the Attorney-General and the KRA were involved. In 2013, we signed the treaty. So, why would we be the last or be late in ratifying it? Unfortunately, as our Chair said, our delegation went to a meeting and could not attend the meeting. They were in the precincts of the meeting and yet were the leading country in Africa. If you go to Brazzaville, where the WHO regional office is situated, Kenya will always be, certainly, the country to look at if you are looking at control of tobacco. We have an Act and a board which is funded. We are one of the few countries where there is an Act and a board that is funded on this issue.

With that, I second the Motion for ratification.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have Hon. Oduol Odhiambo.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity. From the outset, I would like to support the Motion for the ratification of the Protocol.

When we consider the impact of illicit trade, as has been clearly indicated by the Committee, and look at a context of the illicit tobacco trade, we can see that we are going not only to be dealing with material that has potential to cause damage, but also material that could be counterfeit and could have been brought through avenues that are not correct such as

smuggling. The material could also not have provided opportunity for Kenya and the public to get taxes because there is tax evasion.

So, as I support the Motion for the ratification of the Protocol, I do it on the premise that it is, indeed, an opportunity that will ensure that we are able to block and reduce access to those who are vulnerable. With the illicit tobacco trade, there will be greater accessibility. The tobacco will be cheap to be accessed by children, expectant and lactating mothers. We know the impact that tobacco would have even to those who are experiencing challenges.

So, as I support, I want to particularly commend the fact that when we look at the Report, we can see that there was, indeed, extremely good participation and consultation with key groups such as the civil society, academia and other key stakeholders including the Kenya Network of Cancer Organisations. The information that we put here confirms that it would be important to ensure that we do not allow loopholes for the illicit trade on tobacco.

With this, I support the Motion for ratification.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Next on my request list is the Member for Suba North, Hon. Millie Odhiambo Akoth.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. From the outset, I support and congratulate the Committee for a good job. Yet again, I congratulate Hon. Sabina Chege for doing an excellent job as the Chair of the Committee. I want to repeat that women are doing excellent work in the House. Even now as I speak, the person on the Chair is a female Member.

Mr. Speaker, that is evidence that even when women are given an opportunity, they do excellent work.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): But now you are calling me “Mr. Speaker”.

Hon. (Ms.) Odhiambo-Mabona(Suba North, ODM): Sorry. I meant Madam Temporary Deputy Speaker.

Hon. Temporary Deputy Speaker, you have reached a level where you can qualify to be both Mr. and Madam Speaker. You have done an excellent job such that you qualify to be both.

During the constitutional review process, the church opposed the Constitution partly because of Article 2(6) that provides that international laws and treaties that are ratified by Kenya shall automatically become part of the laws of Kenya. To correct that, I tabled the Treaty-Making and Ratification Act and through that Act, we now see so many treaties coming before the Floor of the House. It is because of that, that we now have this Protocol coming before the Floor of the House. It is an excellent practice because it enables Parliament to be involved in agreements that Kenya undertakes out of the country. This, therefore, precludes the things that the church was scared of which is that we might be entering into agreements on things that Kenya is not very comfortable with. Once you ratify a treaty, it becomes part of the laws of Kenya. Now that Parliament is part of the legislative process, we are also involved in the ratification process.

It also gives the public a chance to participate through public participation. I am very happy because I have looked at all the organisations that came before the Committee. There were organisations dealing with children’s issues, cancer and several organisations that give warnings about the effect of tobacco on the lives of Kenyans.

The Protocol to Eliminate Illicit Trade in Tobacco Products is based on the Framework Convention on Tobacco Control, which Kenya has already ratified and domesticated through the Tobacco Control Act. What remains for us as a country, therefore, is to ratify and domesticate

the Protocol. I want to thank the Ministry because even as we wait to ratify the Protocol, they have already started taking measures to ensure that they follow the provisions of the Protocol.

Part of the issues this Protocol deals with is to control illicit trade and practices, including manufacturing of counterfeit products, tax evasion and smuggling. I am sure one of the driving forces for many countries is to make sure that revenue goes to the right place. If we leave this illicit trade to continue, it increases accessibility and affordability, which results in consumption of tobacco going up. I agree with different Members, including Prof. Oduol, who have said that when consumption goes up, it becomes very dangerous to pregnant and lactating mothers. It becomes very dangerous to children and it also increases cases of cancer. I am very glad that today, I saw before the Budget and Appropriations Committee a Bill on radiographers, which has been proposed by Hon. Sabina. We have a big challenge in this country in terms of dealing with cancer.

I only want to encourage the Government that in the same way we are moving speedily to ratify this Protocol, I wish they bring the Protocol on small arms to control small arms because we see a lot of misuse of small arms.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You only had five minutes.

Hon. (Ms.) Odhiambo-Mabona(Suba North, ODM): There was no warning, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Did they not warn you?

Hon. (Ms.) Odhiambo-Mabona(Suba North, ODM): No.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I agree with you. Give her one minute because you did not warn her.

Hon. (Ms.) Odhiambo-Mabona(Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for indulging me because I was not warned.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The machines had an issue.

Hon. (Ms.) Odhiambo-Mabona(Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. Finally, because you have been gracious to give me one minute, I would like to encourage our male colleagues to understand. Some of them have said that when we table the gender Bill, there will be no formula for nomination. The same way that we passed the Treaty-Making and Ratification Act as an enabling legislation to give effect to a constitutional provision, we can also table an enabling legislation under Article 100 of the Constitution. It is Members who will decide how they will nominate whoever they want, to Parliament.

With those few remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Ndhiwa, Hon. Martin Owino.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. From the outset, I declare that I am a Member of the Committee. I want to thank our Chair, Hon. Sabina Chege, who has been working so hard on this and all the Members.

We are in a global village and Kenya is very much esteemed and ranks high when it comes to tobacco control. All of us saluted the late Matiba when he outlawed smoking in buildings. Right now, even on the streets, there are designated areas where you can smoke. That means that we have done well when it comes to tobacco control. It is a pity for us when we are sent out to meetings yet we have not ratified the relevant Protocols. As I support this Motion, I

urge the House to adopt the Report so that we can be on the right side when it comes to the Protocol to outlaw illicit trade of tobacco.

It should be on record that almost 11 per cent of the trade of tobacco - which is 460 billion cigarettes - across the globe is through illicit trade. That is denying countries over US\$40 billion dollars. That is a lot of money. It is elusive to control structures which we have put in place as a nation to prevent this. As we all know, the burden of ill health on Kenyans, especially with regard to non-communicable diseases, is from this illicit trade. If the manufacturing, distribution and sale of tobacco products is not structured, even the underage children will have access to cigarettes. We should control the age of buying cigarettes as well.

Also, when the illicit trade is going on, we lose revenue as has been said by other Members. Taxes are being undermined. You will also remember that other countries, including the European Union (EU), have signed this Protocol. These are big countries, which have showed the way. We cannot afford to be left behind.

I urge the House to move fast since we have done our part as a Committee to ratify this Protocol to eliminate illicit trade on tobacco.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Makueni, Hon. Maanzo Kitonga.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to participate and support this very important Motion on the ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products.

Kenya is leading in legislation dealing with tobacco. Many other parts of the world have legislated on tobacco. There are regulations and practices such as advertisements on the dangers of tobacco. Because of nicotine, tobacco is one of the most dangerous products used in the world, especially when used by young children. It affects human lungs and has a lot of consequences. In some cases, according to research, cancer has developed in people who take tobacco. The worst of it is when it is due to illicit trade.

In our circumstances, illicit trade takes place through companies which are not authorised to transact or process tobacco, and thus do not do it in the right way such that cigarettes have no filters. Some of them are fake products.

A few Kenyans harvest raw tobacco, process it illegally and use it for chewing, smoking or making illicit cigarettes. They smash leaves of tobacco and use newspaper cuttings to roll and smoke it. It has devastating health effects since it is not processed and purified. Even worse, there is loss of revenue because that person ordinarily would have smoked a cigarette which would have been bought and taxes paid. The Government loses revenue when you process and consume it directly as an individual.

The United States of America (USA) advertises very well. According to the Protocol of the Americans, they advertise very well the dangers of snuff taking or tobacco chewing. It is clearly written on that particular product that you are likely to get throat cancer or mouth cancer. With regulations like that, the person consuming that product assumes the danger having known very well what is likely to happen to his health. Therefore, regulation is very important. Purification of this product is very important. Some of the cigarettes have something which filters out some of the bad things like nicotine and some carbons. Other cigarettes are added a scent which makes the cigarette smell nice when somebody is smoking. Their regulation is on how you brand or blend. You make sure that cigarettes are branded in a certain way and make sure notices are given in a certain way. When you blend it with other products, there are also regulations to that effect. This is what is captured in the Protocol such that countries have a

common system of dealing with this particular product which is very addictive. Children are not supposed to smoke or to buy cigarettes. These are the things that we want to regulate, so that the health of our young people is taken care of such that by the time one assumes the danger of smoking, he knows very well what he is doing and what it is going to do to his health. It affects the reproductive systems and they are likely to be very miserable in their marriages. Therefore, this Protocol is very important. I support it and encourage many Kenyans not to smoke and to read the signs and warnings.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Ainamoi, Hon. Maritim Sylvanus.

Hon. Sylvanus Maritim (Ainamoi, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Motion. I want to congratulate the Departmental Committee on Health under the leadership of Hon. Sabina Chege, for the work well done.

By ratifying the Protocol, we are assisting to kill the growing black market that has led to production of counterfeit cigarettes. We are also ensuring that we protect the lives of our young ones. We are not only coming up with preventive tools for production of cigarettes, but also putting in place proper legislation to avoid selling of cigarettes to underage Kenyans. By ratifying the Protocol, we will also be complying with the WHO regulations by ensuring a safe working environment.

Therefore, I support the Motion. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Turkana County, Hon. Emanikor Akai.

Hon. (Ms.) Joyce Emanikor (Turkana CWR, JP): I thank you, Hon. Temporary Deputy Speaker for giving me this chance. I first want to appreciate the Committee, led by the able Chair. I want to echo the words of Hon. Millie on the capacity of women when it comes to legislation.

This Protocol is the first from the WHO FCTC, which is an international Treaty in its own right with an objective to eliminate all forms of illicit trade according to Article 15 of the WHO FCTC. I see three critical issues. One is health, which has already been spoken to. A person consuming tobacco products can get lung cancer, throat cancer, chronic bronchitis and asthma. Nicotine that is produced in tobacco is what causes addiction. More often than not, we think it is the smokers who are at danger. We are also at danger when we sit near smokers because we breathe in more nicotine than the smokers.

The other critical issue is security. Some of the proceeds from this illicit trade finance criminal activities. So, we have all reasons to support the ratification of this Protocol. Finally, there is tax evasion. Definitely, it is an issue of revenue loss for our country. The Protocol is very timely. It comes at a time when Kenya is fighting corruption and theft. This should be a driving force on this. Illicit trade on tobacco products increases accessibility and affordability of tobacco products. Anybody can access them including children. The Protocol will bring in good controls.

Finally, Kenya needs to be at par with other progressive parties that have ratified this Protocol, so that together, we can fight the illicit trade even across borders.

With those few remarks, I wish to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Vihiga County, Hon. Adagala.

Hon. (Ms.) Beatrice Adagala (Vihiga CWR, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to add my voice on the Motion on the Ratification of

the Protocol to Eliminate Illicit Trade in Tobacco Products. First, I would like to congratulate the Chair of the Committee, Hon. Sabina Chege. I echo the sentiments of Hon. Millie Odhiambo who has said here that when women are given opportunity, they do excellent work. Therefore, I want to congratulate Hon. Sabina for the good work she has done concerning this Motion. This comes at a time like this when we are fighting diseases like cancer. I lost an uncle to tobacco related diseases. It has come at the right time. The 2012 Treaty approved the elimination of illicit trade in tobacco.

These tobacco products may be a loss to the farmers and the traders. If they are misused, they bring a lot of damage to people's lungs and other inner parts of the body. You also find some people smoking in public places. We thank God because in Parliament, we have designated places for smoking. You find people smoking all over and it affects those who are not smoking. This Protocol is good. It will do good to our people. Cigarettes make people inactive. For example, smoking affects libido in men. A woman came to me complaining that her husband had decreased libido because of tobacco smoking.

I support this programme because illicit trade in tobacco products has brought problems in families. I support the Protocol to eliminate illicit trade in tobacco products because it will make sure that counterfeits and poor products will not be brought into our country through our borders by corrupt traders from other countries.

Hon. Temporary Deputy Speaker, I support the adoption of the Report. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, there being no other request to speak to the Report, I, therefore, call upon the Mover to reply.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Speaker. From the outset, I would like to thank Members of my Committee for the commitment they have shown. We have considered several amendments, Bills and this Protocol. We have even visited facilities under the national Government. We have always had a quorum and Members have shown a lot of commitment. I thank them for the support they have given me as the Chair. That is why we were able to submit this Report to the House.

We have several reports like the one on Kenyatta University and another one about an investigation on a person who was charged a lot of money. We have submitted them to the House. We hope before we go on recess, we will address them by moving the Motions so that our work is fruitful.

As I thank the Members, I want to thank you, Hon. Temporary Deputy Speaker, for your patience and for giving us an opportunity to express what is in this Protocol on issues to do with tobacco and people who use it. Members have expressed themselves on non-communicable diseases, health matters, performance and marriages breaking. I am sure Kenyans see photos on magazine covers of tobacco products. When they see the photos, let them not assume that they are just there to threaten them. It is the reality because that is happening.

I beg to reply.

Hon. Temporary Deputy Speaker, pursuant to the provisions of Standing Order No.53(3), I request that we defer putting the Question to another day.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the Report having been debated and replied to and Hon. Sabina Chege having risen on Standing Order No.53(3) on deferring of putting the Question, I order that the Question on Motion on the Ratification of the Protocol to Eliminate Illicit Trade in Tobacco Products be moved to tomorrow as it will appear on the Order Paper.

(Putting of the Question deferred)

Next Order

BILLS

Second Reading

THE CAPITAL MARKETS (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Chairperson of the Departmental Committee on Finance and National Planning. I do not see him in the House. I am sure his absence is because of anticipation that there would have been a long debate on the previous Order.

I defer Order No.14.

(Bill deferred)

Next Order.

Second Reading

THE INSURANCE (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Chairperson of the Departmental Committee on Finance and National Planning. I order that Order No.15 be deferred.

(Bill deferred)

Next Order.

Second Reading

THE SACCO SOCIETIES (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The same case applies to this Bill. The Chairperson of the Departmental Committee on Finance and National Planning is absent.

Hon. Members, I order that Order No.16 be deferred.

(Bill deferred)

Next Order.

Second Reading

THE GOVERNMENT CONTRACTS BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Leader of the Majority Party. I do not see him. I am sure this is because of anticipation of the other three Orders.

Hon. Members, I order that Order No.17 be stood down.

(Bill deferred)

Next Order.

Second Reading

THE ASSUMPTION OF OFFICE OF THE COUNTY
GOVERNOR BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Chairperson of the Departmental Committee on Administration and National Security. I am sure he is not in due to the same reasons.

(Bill deferred)

Second Reading

THE NATIONAL FLAG, EMBLEMS AND NAMES
(AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I call upon the Chair of Departmental Committee on Administration and National Security on this Order. Now that he is not in the House, I order that Order No.19 on the Order Paper be deferred.

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, there being no other business and the time being 6.57 p.m., the House stands adjourned until Wednesday, 28th November 2018 at 9.30 a.m.

The House rose at 6.57 p.m.