

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 24<sup>th</sup> July 2019

The House met at 2.30 p.m.

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

### PRAYERS

### MESSAGE

#### PASSAGE OF BILLS BY THE SENATE

**Hon. Speaker:** Hon. Members, pursuant to the provisions of Standing Order 41(4), I wish to report to the House that I have received five Messages from the Senate regarding its decision on the following Bills:

- (i) The Personal Data Protection Bill (Senate Bill No.16 of 2018).
- (ii) The County Statutory Bill (Senate Bill No.21 of 2018).
- (iii) The Determination of the Nature of Bill (Procedure) Bill (Senate Bill No. 30 of 2018).
- (iv) The County Oversight and Accountability Bill (Senate Bill No. 28 of 2018), and
- (v) The Statutory Instruments (Amendment) Bill (Senate Bill No. 24 of 2018).

Hon. Members, the first Message is in respect of the Personal Data Protection Bill (Senate Bills No.16 of 2018). The Bill seeks “to give effect to Article 31(c) and (d) of the Constitution; to promote the protection of personal data; regulate the manner in which personal data may be processed; provide persons with rights and remedies to protect their personal data; and to regulate the flow of personal information across the borders of the country.”

The second Message is in respect of the County Statutory Bill (Senate Bill No.21 of 2018) which seeks “to provide for the making, scrutiny, publication and operation of county statutory instruments.”

Hon. Members, the third Message is in respect of the Determination of the Nature of Bills (Procedure) Bill (Senate Bill No. 30 of 2018) which seeks “to give effect to Articles 109(5), 110(3) and 114 of the Constitution; to provide the procedure for the Speakers of the National Assembly and the Senate to determine the nature of a Bill.”

The fourth Message is in respect of the County Oversight and Accountability Bill (Senate Bill No. 28 of 2018) which seeks “to give effect to Article 96(1) and (3) of the Constitution, and to enhance public financial accountability by the county governments.”

Further, the fifth Message is in respect of the Statutory Instruments (Amendment) Bill (Senate Bill No. 24 of 2018) which seeks “to amend the Statutory Instruments Act in order to expressly include the Senate in the scrutiny process of statutory instruments.”

Hon. Members, the five Messages read “that the Senate considered and passed the Bills on Wednesday, 10<sup>th</sup> July 2019 and now seeks the concurrence of the National Assembly.” Three of the Bills were passed with amendments and two Bills were passed without amendments.

Hon. Members, Standing Order 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 the Senate. Accordingly, I direct that the five (5) Bills be read a First Time during the next sitting.

Hon. Members, Paragraph (2) of Standing Order 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 the terms of Article 114 of the Constitution. In this regard, I direct that, after First Reading, the Bills be referred to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion as contemplated under Standing Order 143(2). Thereafter, I shall guide the House accordingly on how to proceed with consideration of the said Bills.

I thank you.

Next Order.

### PAPER LAID

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

The Report of the Auditor- General on the Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2018 and the certificate therein:

1. Igembe South.
2. Isiolo South.
3. Central Imenti.
4. Moiben.
5. Turkana South.
6. Tharaka.
7. Igembe North.
8. Mbeere North.
9. Moyale.
10. Makadara.
11. Kinango.
12. Isiolo North.
13. Kitui Rural.
14. Laisamis.
15. Tigania East.
16. Kacheliba.
17. Seme.
18. Kisumu Central.
19. Gatundu North, and
20. Laikipia East.

**Hon. Speaker:** Very well, before we go to the next Order, allow me to recognise the presence in the Public Gallery of students and pupils from the following institutions: Kikaso

Secondary School, Mwala Constituency, Machakos County and those from Joram G.M Academy, Kajiado North Constituency, Kajiado County. They are welcome to observe the proceedings of the National Assembly, this afternoon.

Next Order.

### NOTICE OF MOTION

#### FORMULATION OF POLICY ON DIASPORA RESOURCES FOR NATIONAL DEVELOPMENT

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that the existing Kenya Diaspora Policy provides for the mainstreaming of the Kenya Diaspora into national development process in line with aspirations and goals of Kenya Vision 2030; noting that formal remittance from the Kenya Diaspora accounts for over three per cent of the country's GDP channeled by an estimated three million Kenyans; noting that the contribution by the Kenya Diaspora to the country's development goes much beyond the personal remittance to include increased trade links, better access to foreign capital markets, skills and technology transfer, diaspora investment fund, knowledge exchange among other enormous potential benefits; acknowledging that the diaspora community continues to contribute immensely to national development and economy through increased household investment in education, entrepreneurship, health, finance and housing; concerned that Kenya ought to formulate a practical and incentive-driven policy to harness existing and future diaspora resources for socio-economic development; cognisant that Kenya has an obligation to counter the challenges hindering diaspora contribution to national development; this House resolves that the Government reviews and formulates a comprehensive policy and structure to harness the ever increasing diaspora resources for national development and that the said policy be presented to the National Assembly within one year for consideration.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. The next Order is Questions. Member for Kirinyaga.

### ORDINARY QUESTIONS

*Question No. 328/2019*

#### STEPS TO END LAND CONFLICT IN SOUTH NGARIAMA

**Hon. Speaker:** The first Question is by the Member for Kirinyaga, Hon. Purity Ngirici.

*(Hon. (Ms.) Purity Ngirici consulted with several Members)*

**Hon. Speaker:** The Member is busy. What are you campaigning for? You are already the Member for Kirinyaga. If you need to campaign, you just need to campaign that your Question should be put.

**Hon. (Ms.) Purity Ngirici** (Kirinyaga CWR, JP): Thank you, Hon. Speaker. My Question goes to the Cabinet Secretary for Lands and Physical Planning:

(i) Is the Ministry taking any steps to bring to an end the longstanding conflict surrounding South Ngariama 17,000 hectares of land in Mwea Subcounty, Kirinyaga County, which led to clashes that resulted in the killing of four persons on 26<sup>th</sup> March 2019, and which has continued to cause rising tension among residents?

(ii) When will the occupants be issued with title deeds?

(iii) Are there any measures by the Ministry to expedite compensation of the 6,000 people who face the risk of eviction?

Thank you, Hon. Speaker.

**Hon. Speaker:** Since I can see similarities between this Question and the last Question, can I therefore rearrange them? Member for Mwea, do you want to ask yours?

Hon. Kabinga Wachira.

**Hon. Josphat Kabinga** (Mwea, JP): Hon. Speaker, I would just like to comment that the two lands referenced by the two Questions are different and therefore, both of them are relevant.

*Question No. 343/2019*

DELAYED ISSUANCE OF TITLE DEEDS TO BENEFICIARIES OF  
SOUTH NGARIAMA RANCHING SCHEME

**Hon. Josphat Kabinga** (Mwea, JP): My Question is directed to the Cabinet Secretary for Lands:

(i) Could the Cabinet Secretary state the size of South Ngariama Ranching Scheme land and provide copies of the original sub-division plan, indicate the total number of beneficiaries of the sub-division and the respective acreage for each beneficiary, details of parcels of land set aside for public use and the current status of the land?

(ii) What has caused the delays in the issuance of title deeds to beneficiaries following the sub-divisions of the scheme in respect of the part of the scheme falling within Mwea Constituency?

(iii) What measures has the Ministry put in place to ensure that the intended beneficiaries of the said ranching scheme are issued with title deeds without further delay?

Thank you, Hon. Speaker.

**Hon. Speaker:** Both Questions will be responded to before the Departmental Committee on Lands, notwithstanding their similarities. There could be some slight differences. Hon. Ngirici's states that the acreage is 17,000 but you are asking about the actual size. So, it will be responded to, Hon. Kabinga. There is no confusion. Hon. Ngirici, I think Hon. Beatrice Adagala seems to be giving you some very interesting stories so that you cannot hear. I am saying that the Questions will be responded to. They are okay.

Let us get the next Question by the Member for Teso North, Hon. Kaunya.

*Question No. 340/2019*

PROVISION OF HELB LOANS TO STUDENTS UNDER 18 YEARS

**Hon. Oku Kaunya** (Teso North, ANC): Hon. Speaker, I rise to ask the Cabinet Secretary for Education:

(i) What measures the Ministry has put in place to ensure that the high number of students admitted or set to join universities and who have not attained the age of 18 years will obtain funding from the Higher Education Loans Board (HELB) even without the National Identification Card which is a prerequisite for loan applications?

(ii) Could the Cabinet Secretary consider the use of birth certificates as an alternative for identification cards for students who wish to apply for HELB loans but have not attained the age of majority?

Thank you, Hon. Speaker.

**Hon. Speaker:** To be responded to before the Departmental Committee on Education and Research.

Next Question is by the Member for Kilome, Eng. Nzambia.

*Question No.321/2019*

PROVISION OF POWER SUPPLY TO KONZA TECHNOPSIS

**Hon. Thuddeus Nzambia** (Kilome, WDM-K): Hon. Speaker, I rise to ask the Cabinet Secretary for Energy:

(i) What measures has the Ministry put in place to ensure that the Konza Technopolis and its environs are supplied with efficient power supply?

(ii) Are there plans to construct a transmission line and power sub-station within the Konza Technopolis to support and spur development in the area and has the project, if any, been budgeted for?

(iii) What measures has the Ministry put in place to ensure that the expected development of the Konza Technopolis including the development of the projected auxiliary industries and institutions is realised without further delays?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is to be responded to before the Departmental Committee on Energy.

Next Order.

**MOTIONS**

INQUIRY INTO ALLOCATION OF LAND IN KAMITI ANMER FOREST

THAT, this House adopts the Report of the Departmental Committee on Lands on the Inquiry into a Complaint by Kamiti Anmer Forest Squatters Association regarding allocation of Land LR. No. 8390 in Kamiti Anmer Forest, laid on the Table of the House on Tuesday, 18<sup>th</sup> June 2019.

*(Hon. (Ms.) Rachael Nyamai on 27.6.2019)*

*(Debate concluded on 23.7.2019)*

**Hon. Speaker:** Hon. Members, please settle down. Is the Member for Seme seated or standing? Sorry, he appeared like he was sitting.

Hon. Members, I have some comments to make before I direct on how to deal with this Motion. I have listened to contributions by a number of you relating to this Motion, which is for the adoption of the report by the Departmental Committee on Lands on the inquiry into a complaint by Kamiti Anmer Forest Squatters Association regarding allocation of land LR. No.8390 in Kamiti Anmer Forest, laid on the Table of the House on 18<sup>th</sup> June 2019. Having listened to some of the comments and contributions by some of the Members, my attention has been drawn to the provisions of the Forest Conservation and Management Act (No. 34 of 2016). Section 34 relates to variation of boundaries or revocation of public forests. It reads as follows:

“(1) Any person may petition the National Assembly or the Senate, for the variation of boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest.

(2) A petition under subsection (1) shall demonstrate that the variation of boundaries or revocation of the registration of a public forest or a portion of a public forest does not—

(a) endanger any rare, threatened or endangered species; or

(b) adversely affect its value as a water catchment area; and prejudice biodiversity conservation, cultural and site protection of the forest or its use for educational, recreational, health or research purposes.

(3) A petition made under subsection (1) shall be considered in accordance with the provisions of the Petitions to Parliament (Procedure) Act and the Standing Orders of the relevant House.

(4) The Cabinet Secretary shall, within thirty days of the petition being committed to the relevant committee, submit a recommendation on whether the petition should be approved subject to—

(a) the petition being subjected to an independent Environmental Impact Assessment; and

(b) public consultation being undertaken in accordance with the Second Schedule.

(5) If the relevant committee reports that it finds that the petition—

(a) does not disclose a ground for variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, no further proceedings shall be taken; or

(b) discloses a ground for variation of the boundaries of a public forest or the revocation of the registration of a public forest or a portion of a public forest, the National Assembly or the Senate shall vote on whether to approve the recommendation.

(6) If the resolution under sub-section (5)(b) is supported by a majority of the members of the National Assembly or the Senate, present and voting, the Cabinet Secretary shall publish a notice in the Gazette.”

My attention has been drawn to the fact that it is mandatory that the CS, as provided for in sub-section (4) must make some recommendation on whether or not the petition should be approved, only being subjected to those two conditions. From the report, no such recommendation has come from the CS. Therefore, the House, in either approving or not approving this resolution, will be proceeding without the input of the CS as provided for in

Section 34 of the Act. It is, therefore, necessary that before I put the Question on this Motion, the Clerk's office seeks from the CS his or her opinion regarding this petition, because that is a mandatory requirement of the law.

In future, it is important that Committees dealing with such matters apprise themselves of the provisions of this Act and more particularly Section 34 so that whatever recommendations they make, the House is not seen to act in vain. This is because, if the House were to approve and the Cabinet Secretary were to then write back and say that they have not been consulted, it would mean that a vital step which you put in the law yourselves in the last Parliament will have been omitted. Therefore, the resolution may not be implementable for lack of compliance with this relevant provision of the Act. Therefore, I am deferring putting of the Question and directing the Clerk of the National Assembly to write to the relevant CS to seek his or her opinion or recommendation, which has been omitted. Depending on what the recommendation the CS will give, then I will guide the House on how to proceed with the Motion, which has been fully debated but only remains for the Question to be put. I do not want to put the Question as it may put the House in an embarrassing situation whereby its own resolution becomes unimplementable for failure to observe some of the procedural requirements of the Act; not just our Standing Orders, but that particular Act.

Therefore, Hon. Members, allow me to defer putting the Question on the Motion appearing as Order No.8.

I thank you.

**Hon. Jude Njomo** (Kiambu, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Hon. Jude Njomo Kang'ethe.

**Hon. Jude Njomo** (Kiambu, JP): Thank you, Hon. Speaker. I support what you have said. I appreciate the wisdom in your words. Kamiti Anmer is an area in my constituency. It is no longer a forest as people have occupied it. It is over 400 acres and people have built permanent houses in that area. The squatters have settled there. The Forestry Department has been adamant about de-gazetting the forest. I, therefore, support what you are saying; that, we should follow every procedure of the law. If we skip one step, the Forestry Department will go ahead and frustrate the effort towards de-gazetting this forest. That is why we would rather take a longer period and ensure that we have followed every step, including what the law stipulates. An impact assessment report be prepared about this matter. The Committee must tell us, like the law requires, that there is no water catchment in that area, and that there are no endangered species. The only 'endangered species' in that forest are the thieves, who were stealing and dismembering vehicles in the forest. They were using the forest as their hideout. The thieves are the only 'endangered species' in that forest. There is no other endangered species in that area. That area has been inhabited by the people of Kiambu. There is need for that forest to be de-gazetted so that they get title deeds and settle down in their properties without any fear that the following day forest guards would chase them away. The land has been rightfully given to them. All that remains is for the award to be regularised by formally de-gazetting the parcel of land and changing its user from forest land to settlement land.

Hon. Speaker, I support your recommendations.

**Hon. Speaker:** Well, if thieves are the only 'species' to be endangered, it is better for the country and the environment.

Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. Indeed, I had my own reservation about the Motion and the Report that was brought here due to

procedural and land management issues. At least your guidance will enable the Committee and the relevant persons to do a little more due diligence and comply with all the laws that relate to donation of public forest land for private settlement.

I must mention at the outset that any title deed acquired fraudulently cannot stand the test of time no matter how long it takes. Even the so-called 'adverse possession' cannot hold in respect of public land. So, in this matter, it is important that our colleague advises his people properly because in this country, we have a dwindling forest cover and any chance that we have to protect the forest cover must be seized and guarded jealously.

Hon. Speaker, probably, the clerks dealing with these kinds of sensitive matters need adequate capacity building so that we do not find ourselves in an unfortunate situation where we have to retrack what we have more or less completed.

I thank you.

**Hon. Speaker:** Member for Nakuru Town East.

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Speaker, I rise to seek direction not on what has just been discussed but on a matter that was before the House yesterday regarding consideration of the agreement between the Government of Kenya and that of Italy on the Luigi Broglio-Malindi Space Centre. The Treaty Making and Ratification Act of 2012 gives directions on how we, as Parliament, should look at an agreement. It talks about reservations. According to this Act, Parliament can only give reservation. Now, at what point? Is the reservation supposed to be considered in the agreement?

As it is, the agreement will lapse after 15 years. Do we wait for 15 years to give our reservations? Maybe, you will give us direction on matters to do with this aspect. We were discussing it somewhere in the morning, but we did not get a clear answer. So, we are seeking your direction so that, as Parliament, we can move. I do not want to say that those are my views; that, the agreements disadvantage the Kenya Government holistically in terms of who calls the shots. There is a CEO who is appointed by the Italian Government while our deputy is also restricted. I do not want to debate the matter but, please, give us direction as to how this reservation should be considered. Is it before the agreement is done? Is it after the 15 years lapse? So, I am seeking your direction on this very important aspect regarding this important institution.

I thank you, Hon. Speaker.

**Hon. Speaker:** On the intervention section, I see the Member for Emuhaya.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. I wanted to support and congratulate the guidance you have given to the House, especially on the laws that concern land that was about to be put to question.

I was here partly yesterday and I saw the way Hon. Members were discussing this Question. I noticed that there is much research because a lot of land issues, apart from being emotive, are composite in nature. One issue leads to another. I heard Members say that even if you occupy land and live there for a while but you do not have a title deed, you can just be moved from that land. The land question concerns so many issues, such as who occupied it first. There are issues that concern the length of time people have been living there. There are some that go to times of the colonial rule when we had Land Ordinances and settlement of squatters. When we deal with such issues, we have to be very concerned and comb every area of law so that by the time we make a resolution, as Parliament, we do not do so in vain.



In conclusion, this is a wake-up call by you to the House and the Committees, and especially the Chairmen and the clerks; that Parliament is on focus currently and every Kenyan is watching what we are doing.

Therefore, we need to do everything in a way that is extremely concrete so that it cannot be doubted at any given time. So, I congratulate that ruling.

Thank you.

**Hon. Speaker:** Member for Lungalunga, the Vice-Chair Departmental Committee on Lands.

**Hon. Khatib Mwashetani** (Lungalunga, JP): Thank you, Hon. Speaker. We stand guided because the fact is that land issues are emotive. As a Committee we know this was an oversight. But otherwise, this is an issue that has really taken our time and we have a lot on our table. So, we pledge that the House understands that it is not easy to come up with a recommendation. Degazettement of this forest is very unique. This is the first case we are recommending degazettement. For those coming after this we will ensure we go through the laws properly.

Just for clarification, I was going through a certain sub-section stating that the Cabinet Secretary shall, within 30 days of the petition being committed to the relevant committee, submit a recommendation on whether the petition should be approved subject to the petition being subjected to an independent environmental impact assessment. Hon. Speaker, we just want a clarification on who is going to undertake this environmental impact assessment. Is it at the Committee or Ministry level?

**Hon. Speaker:** We have a national body that does this and it should not be problematic. The CS should be the one to initiate the move because it will be difficult for the Committee to do so. Looking through the process which was followed, I think there was either failure or neglect to communicate this particular Petition to the responsible CS. I am not saying the Committee did not follow the law it is just that there appears to have been an administrative or procedural failure to undertake that requirement of Section 34.

So, the Committee is not supposed to undertake this, but the CS because in making his or her recommendation he will indicate that the environmental impact assessment examination has revealed “a,” “b”, and “c”. Therefore, approving or disapproving. Are we on the same topic? I just wanted to respond to one...

Hon. Members, before I do that allow me to recognise the presence of students from the following institutions in the Public Gallery: Students from Bukuria Schools, Kuria West Constituency, Migori County and those from St. Vincent De Paul, Igembe Central Constituency, Meru County. They too are welcome to observe the proceedings. I will allow the Member for Seme to say what he wants because the other one is a different issue.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker. I wish to thank you for the advice you have given on this matter. When we discussed this matter on land it was clear that there were many omissions. I think from what the Hon. Member has said, earlier there were cases where it was clear that an officer broke the law.

As you have said, this was forest land and the forest laws were not abided by because an officer gave title deeds. Going forward, I think Clerks should advise a Committee when going through a process which is not clear. Like the current Petition did not ask for action to be taken on illegal matters found therein. So, this should be drawn and action taken. By doing this, I think the works of the Committees will be more fruitful.

Hon. Speaker, I just wanted to thank you for the advice you have given us.

**Hon. Speaker:** Thank you, Hon. Nyikal. Hon. Members, I wanted to get some clarification from the Member for Nakuru Town East. Did you talk about an agreement or treaty?

**Hon. David Gikaria** (Nakuru Town East, JP): Thank you, Hon. Speaker. The Motion that was before the House was on agreement because it raised consideration of an agreement between Kenya and the Italian Government. It was not a treaty. So, I do not know whether it falls under the Treaty Making and Ratification Act. Therefore, Hon. Speaker, I need your guidance.

**Hon. Speaker:** The Report talked about an agreement?

**Hon. David Gikaria** (Nakuru Town East, JP): Yes, it is about an agreement as was indicated. Actually, it talks of consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi Broglio-Malindi Space Centre.

**Hon. Speaker:** What are you asking about it?

**Hon. David Gikaria** (Nakuru Town East, JP): It was before Parliament for discussion. The question is whether Parliament is in agreement or we can amend that Agreement and give our input. For example, Kenya is supposed to be paid Kshs25 million a year according to the Agreement, from an institution that is making around Kshs2 billion. When I was the Vice-Chair of the Implementation Committee in the 11<sup>th</sup> Parliament we visited the Space Centre. The information we were given then was that they were making over Kshs1 billion. Is it worth to receive only Kshs25 million from an institution that is earning over Kshs1 billion from selling data to various countries? Can we increase the amount from Kshs25 million? Can Parliament amend that Agreement or we should just reject or approve it?

**Hon. Speaker:** But the matter is not before the House.

**Hon. David Gikaria** (Nakuru Town East, JP): It was yesterday and I thought it would be in today's Order Paper.

**Hon. Speaker:** It is not in today's Order Paper?

**Hon. David Gikaria** (Nakuru Town East, JP): Yes! But it was there yesterday and I contributed to it.

**Hon. Speaker:** I think my direct answer to that would be you look at the treaty and ratification law so that you can appreciate what ratification means. This is because the House is not involved in the process of making a treaty, but if it ratifies then it means it is not just a rubber stamp. I think this is particularly more important because this aspect forms part of Article 2 of the Constitution dealing with the supremacy of the Constitution and specifically Clause 6 which states as follows:

“(6) Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

Ratification is done by this House even in as much as others feel they should be involved. But, for now this is a function of this House.

So, in ratifying is the House expected to just rubber stamp? I do not think that is conceivable of any House of Parliament worth its salt. Once you ratify, it becomes part of the law of Kenya and it is important. In fact, those going around talking about doing something about this Constitution should look at some of these things because Article 2(5) of the Constitution states:

“(5) The general rules of international law shall form part of the law of Kenya”.  
It emphasises the word “general”.

It is put in the article dealing with the supremacy of the Constitution. I think there is a lot that needs to be dealt with but I think once the Report is back on the Floor of the House, perhaps,

Hon. Gikaria, as a legislator... The role of making law or even unmaking it has been invested in you. Please, do not go and tell other people to help you unmake law, including going to tell others, "I do not like this law" and you are in Parliament and you are the one who has been told you can make or unmake laws. So, when you go out there in the streets to seek help from somebody to unmake a law and you have the power, you are surrendering your role. Maybe you should resign from being a member of a legislative house. Perhaps, that is subject for another day when we deal with what exactly it means to enact and what it means to participate in law making. Maybe that is debate for another day.

Those of you who have been following that debate will appreciate that the National Assembly enacts legislation. Maybe those who only are participants could go to seek assistance but those of you who enact... Remember you can even propose to repeal a whole Act of Parliament or delete any clauses or repeal them. So, there is no need for you to walk to some other place to go and seek assistance. You already have the power. Just make the proposition and convince your colleagues. Do not go to convince other people whatever the arm of Government you may be seeking solace from.

Hon. Gikaria, that will be addressed when the business is brought back to the Floor of the House and you are at liberty to propose any changes that you think are desirable in your view and then hope to convince or persuade your colleagues. Hon. Jude Njomo, do you still want to say something on this one? I thought we had finished.

**Hon. Jude Njomo** (Kiambu, JP): Hon. Speaker, I wanted to support what Hon. Gikaria said about ratifying treaties. In this particular one, it was like we have only two options of either accepting it or rejecting it. We have no legal situation where we can do any adjustment to the treaty yet today most of the business that the Government does relies on treaties that they sign with other countries. We know that when the colonialists came to the country with chips, they signed treaties that affected our country until we had to go and fight. Through these treaties we are signing, we are giving opportunities to other countries to make billions of shillings from our country and we sit back and say that we do not have the capacity to run them. These kinds of treaties should be subjected to competitive bidding like any other business in the country. We do not want to have the Italians come here, they do business for decades, our country is not making any money and then we are told we do not have the capacity. Let us subject this treaty and this business to competitive bidding like any other business and then we will get the best bidder and get the best benefit for our country and for our people because that is how business is done in other sections of the world. Why should we do it differently? Thank you, Hon. Speaker.

**Hon. Speaker:** That should be when the Motion is on the Floor, but I also think it is not right for any Member of the House to argue that there is nothing they can do yet you say you are either required to reject or approve. So, if you are not happy with it, you know what to do. You actually have the answers at your fingertips, Hon. Jude Njomo. Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I think the matter raised by Hon. Gikaria is important for the future. We need to amend the Treaty Making and Ratification Act but as you well said it, now you have an option of either approving or rejecting it. I agree with Members that it is a bit frustrating. It will be better if we can amend the treaty. Members do now know that this thing was called San Marco in the 10<sup>th</sup> and 11<sup>th</sup> Parliaments. The Chair of Departmental Committee on Defence and Foreign Relations has given it another Italian name. I do not know how the name changed. People were waiting for San Marco, but it came with another name. I am sure right now, because it is not in the Order Paper, when it comes in the

Order Paper, as you have said, we will debate it and we want value for money. In fact, it should be 50-50 between us and our partners. There is no way you give us Kshs25 million and you get Kshs30 billion.

*(Hon. (Ms.) Odhiambo-Mabona spoke off record)*

**Hon. Speaker:** You see the Member who is shouting in her place has already pressed the intervention button and, therefore, I can see. Hon. Odhiambo Akoth.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. The reason I am projecting my voice is because I am dressed like a priest and so you might think I am bishop somebody. Having said so, I just wanted to add my voice to this. I was the one who moved the Treaty Making and Ratification Act and I am listening to the Members. I think perhaps what we might need to amend is our memory or our knowledge. The reason I brought the Treaty Making and Ratification Act is when the Constitution was being passed, the judge opposed it based on the fact that they were saying that we will be ratifying treaties without the parliamentary stamp of approval. So, Parliament actually plays a very significant role in treaty making. There is no treaty before it passes the Parliament of Kenya. You cannot talk of a treaty until it passes the Parliament of Kenya according to the Treaty Making and Ratification Act.

When it comes here, you have the option to accept, reject or accept with reservations. Therefore, that means that when the relevant Ministry goes back, it will deal according to how Parliament has passed it. If they go against it, it is unlawful, if you go back to Article 2(6) of the Constitution. Sometimes I am shocked. I think the challenge we have in Parliament is that we are passing so many treaties of grave importance to the country but most times there are no people in the House and we are the ones who complain that there are treaties that will be passed in the House without the stamp of approval of Parliament. So, I think what is required of us it to be vigilant as a House. We have a greater role. There are two things that we now have a greater role, according to the Constitution of 2010 which we did not have. These are the budgetary process and the Treaty Making and Ratification Act. Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Millie, you now have assumed another name, Akoth. I hope when the Report is back on the Order Paper, you should be available to offer your insight. Until ratified, it remains some wish list in the minds of the parties that may have brought their minds together in that endeavour. However, Hon. Members, I hope you appreciate that it is important to pay attention to what it is that you are passing. I am also aware that a lot of times I see or observe Members during weekends telling their constituents the laws they have passed. Even when I am not on the Chair, I am always in my office.

I watch to see how many of you are present. A lot of you who go out there saying that they have passed pieces of legislation are never around. It is a collective responsibility. So, you are still right in saying that we have done this. Once you say that, please, do not come back and complain because you know you did it and your colleagues did it. It is only that, perhaps, you were not present to give your particular input. It is important that when you debate that Report, you give it your best. The Report was removed from the Order Paper for some further consultations, which were requested by those responsible.

Let us have the Member for Mandera North.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Hon. Speaker, mine was just an intervention on the advisory that Hon. Odhiambo gave us. It is just about rejecting or approving the Report with reservations. I just want to remind my colleague, Hon. Gikaria, that if

we reject the Report then we will revert to the Agreement that was signed and agreed upon in 1995 where we have almost zero benefits. We must be cognisant of the fact that if we reject the Report, we revert to the 1995 Agreement where we have almost zero benefit. We can deal with reservations because we looked at it as a Committee and compared what we had in 1995 to what we have now. The new Agreement is beneficial to our country. Reservations are important but if you reject the Report, we will lose more.

**Hon. Speaker:** That is not to say that whatever was there was to operate in perpetuity. Parliament still has the power to call for it, bring it here and repeal it. It may well be that the Agreement was not very good, or was worse than this one. That should not be the reason for Kenya to get a bad deal. We should, at all times, aim to give the country the best deal that is available out there.

Member for Rarieda, do you want to weigh in?

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Speaker, I was restraining myself from commenting on this matter given your observations that we will comment substantively when it comes back. However, the remarks by the Hon. Member of the Committee bear some comment. Perhaps, when we begin debating it, we will then understand. It is not my understanding in law that any agreement that is superseded can be reinstated by a subsequent rejection. I doubt that very much. We will debate that when it comes to us.

**Hon. Speaker:** Absolutely. I encourage as many of you as possible to look at that Report. Part of the reason it was withdrawn from the Order Paper is so that as many of you as possible have an opportunity to go through it with a fine-tooth comb so that you give the country the very best that you are able to. Hon. Otiende Amollo will further elucidate the observations he has made during the debate on the Motion. I request as many of you as possible to get copies of that Report and go through it. I have noticed that Members just came from recess. It was an important Report and it appeared that as Members arrived from their villages, not many had read it. You have the opportunity to now go through the Report and make what you may of it when it is next on the Order Paper, particularly Hon. Millie Odhiambo. Let me refer to you by the name that I find easy to refer to you by, not the other one. The Member for Suba North.

Very well. Let us go to the next Order.

*(Putting of the Question deferred)*

PROMOTION AND POPULARISATION OF RATIFICATION  
OF PROTOCOL ON FREE MOVEMENT OF PERSONS

THAT, this House notes the Report of the Departmental Committee on Defence and Foreign Relations on a Meeting with the Member States and Secretaries of the Economic Community of West African States and East African Community to Promote and Popularise the Ratification of the Protocol on the Free Movement of Persons and its Implementation Roadmap, laid on the Table of the House on Wednesday, 21<sup>st</sup> November 2018.

*(Hon. Katoo ole Metito on 19.3.2019)*

*(Debate concluded on 23.7.2019)*

**Hon. Speaker:** Hon. Members, debate on this Report by the same Committee was concluded and I am satisfied that I can put the Question.

*(Question put and agreed to)*

Next Order.

REPORT ON INQUIRY INTO LAND ACQUISITION BY KENYA DEFENCE FORCES  
FOR FOB IN NAROK COUNTY

**Hon. Speaker:** Let us have the Chair of the Committee, Hon. Katoo ole Metito.

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the Inquiry into Land Acquisition by the Kenya Defence Forces for the Establishment of Forward Operating Base (FOB) in Narok County, laid on the Table of the House on Tuesday, 2<sup>nd</sup> April 2019.

The Committee, pursuant to Standing Order No.216 (5), resolved to conduct an inquiry into the military land acquisition for establishment of the FOB in Narok County and our Terms of Reference were as follows:

- (1) Establish the location, size and use of land;
- (2) Establish the amount of money set aside for the project and the budgetary allocation for the project;
- (3) Find out whether or not an environmental impact assessment has been carried out and the details of the report on the exercise;
- (4) Establish whether or not there was any agreement entered into with any individual(s) or firm(s) regarding the purchase of the land; and
- (5) Report to the House on the Committee's observations, findings and recommendations for consideration and adoption.

We did all that. As I have said, we tabled the Report on 2<sup>nd</sup> April this year.

The Committee also undertook several activities, including requesting for written submissions and analyses on the various aspects. We also conducted meetings with various stakeholders and received oral submissions among other things.

Let me apprise the House a little bit on what this Forward Operating Base is all about. It is part of the Kenya Airforce modernisation programme. It started in the 2013/2014 Financial Year. This programme entails deployment of modernised radars. I will attempt to talk in the military way. It is an attempt because I do not have that background. I know there are colleagues here who are well-versed in the issue of modernised radars. These radars are to be deployed into the Kenyan airspace in several locations. New locations that have been identified by KDF include Mariakani, Narok County and Lodwar. Those are for new installations. These are meant for effective monitoring of our airspace and also to react to airspace threats. The KDF has always continued to set up bases for air defence. I said that I will talk a lot about military. They have air defence regiments which are in various strategic locations within the country. This air defence is a measure taken to deny an enemy the use of airspace. This use of air defence is done in a

layered system which is a modern way of air defence that significantly increases the possibility of losses to the enemy. The layered air defence system usually consists of three tiers. They have the wide area defence, the area defence and the point defence.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD –K): On a point of order, Hon. Speaker.

**Hon. Speaker:** There is a point of order from the Member for Tongaren.

**Hon. Katoo ole Metito** (Kajiado South, JP): That is an expert.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD –K): Hon. Speaker, I am sorry to interrupt my good friend but is it in order for him to enumerate quite a number of things after he has said he does not have a military background? So, he does not know how far he can go in the technological revelations that he is making in the House. I think it is wise for him to skip some of the technological things that he is revealing. It is important for our security.

**Hon. Speaker:** The Report was published. Therefore, I suppose there is nothing secretive about it. I know Hon. (Rtd. Major) (Dr.) Eseli Simiyu may have felt a little uncomfortable. I can see Hon. Ali Rasso is also on the other side and maybe a few others. They can consult and tell you how far you can go. If what you are saying is already in the Report, then there is really nothing that you should not say.

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, I started by saying that I will attempt to talk like a person with a military background. I know my good friend, Hon. (Dr.) Eseli, has a military background. When you meet good friends like Dr. Eseli, they give very minimal information for security reasons. This is also what I encountered when I was trying to interrogate the military. They give you very minimal information in the name of security reasons. Because our Constitution requires that we do public participation, we got some information. That is the far I will go. I will not go beyond what is in the Report. I am also next to a Major who is from that background and a Member of my Committee, and Hon. (Col.) Rasso will second this Motion. You can see that they do not want us to say more about it.

I will not say much for security reasons but, I will say what is in the Report because it is already public. These radars are meant to minimise space threats. I said that our Kenya Air Force has strategically put some locations in the country. What my good friend did not want me to say is about the air defence systems. I will not go into the details. There is also the issue of the wide area defence, area defence and point defence. These are very important because these are the things we were taking as parameters with respect to their budget. How much will it cost to do this programme? Let me say that the area defence always covers short distances, points or sites and they protect the vital areas and points.

*(Loud consultations)*

I am distracted. I am jumping so many things but they are in the Report. Narok County was identified as an ideal location to put up one of these bases for several reasons. The other facilities such as those in Wajir County and Mariakani will be a good boost for our country's air space security. Before this was done, a team of senior officers composed of representatives from the KDF headquarters and the Kenya Air Force visited Narok County on 22<sup>nd</sup> November 2017. The purpose of the visit was to engage the Narok County Government officials to allocate land to the KDF to build this Kenya Air Force Forward Operating Base. During that visit, the team held several meetings and they discussed the possible areas where land could be acquired, taking into consideration the Standard Gauge Railway (SGR), accessibility, radar specification requirements and the runway equipment because they wanted a runway of about 1.5km which will

accommodate a Dash 8 Aircraft which is normally used by the Kenya Air Force and the average acreage which was required.

After meeting the Narok County Government officials who were led by their Governor, Hon. Samuel Kuntai Tunai, the Ministry was informed that the land in the county is privately owned. This would therefore force the Ministry of Defence to acquire the land from private owners who will be the willing seller-willing buyer or sometimes by compulsory acquisition as it is in law. There was no public land owned by the Narok County Government which could be offered to the Ministry of Defence, especially taking into consideration the specification they had been given. The area they found suitable is privately owned. In order to select that most optimal and ideal location, ground recce was of essence. I should be forgiven for using the word “recce” which is another military observation. It means looking for an area that has certain strategic features that will suit the purpose. They like using the phrase, “to locate the enemy”. Those of us who do not come from that background do not like to use the word “enemy” but that is the meaning. It is the short word for what is always called reconnaissance. From the layman’s point of view, we can just say that it is a familiarisation tour.

Between 27<sup>th</sup> and 29<sup>th</sup> December 2017, a team of senior officers which composed of representative from the headquarters of the Ministry, Kenya Army and Kenya Air Force visited Narok County again and they took that reconnaissance or recce exercise to establish the most suitable area to locate the radar site and also a military camp. This is the time they resolved that the land to be acquired should be about 5000 acres which will accommodate the squadron of the air base, the regiment and the runway which could be used for a fixed wing aircraft, the Dash 8 Aircraft, that they have and other facilities critical to the FOB.

The process of selecting a suitable site was done in stages. There was preliminary aerial reconnaissance, which was conducted to identify the general area of interest. From the aerial view, the general area that was found to be suitable is around areas like Maji Moto in Narok County, Lemek, Ngore Ngore and Ewaso Nyiro. They were identified as ideal for this purpose. Another thorough ground reconnaissance was undertaken by a team of officers from the Ministry Headquarters, the Airforce and the Army and the suitable site they settled on is Okinyei within the initial general area of interest. It was selected as the most ideal for the intended purpose.

The Ministry of Defence requested the National Land Commission (NLC) to facilitate the valuation process to ensure the proper value of the land was determined – the NLC has been facing several accusations of overvaluing land – and furnish the Ministry with a valuation report on the general area of interest for planning purposes. That was done. It has been determined that the total size of land adequate for the Kenya Airforce Forward Operating Base, the radar site, the military camp and the training area is about 5,000 acres but it is to be acquired in phases due to inadequacy of funds. The land to be used in Phase I will be 570 acres, which was for immediately radar use. Later on, I will explain because the acreage went up to 876. This is because the parcel was owned by an individual and the whole parcel was 876 acres. For the Ministry, 570 acres was enough for phase one. According to the Kenya Air Force timelines, the modernisation of radars and its accessories was to be installed by June 2018. However, it was not possible. The decision to acquire the entire parcel was based on the Kenya Air Force initial requirement of 5,000 acres on an elevated plot. The plot numbers are CIS/Mara/Lemek/243 and the adjoining area to be acquired first was to become 570 acres. The remainder of 4,430 acres can be acquired gradually. This is very critical in our Report, in concurrence with the community that owns the land. The NLC also gazetted the plots that may be affected during the initial acquisition.



The Ministry of Defence later on appointed a negotiating committee in accordance with the Public Procurement and Asset Disposal Act, 2015 to enter into negotiation on the Narok land issue. Currently, the Ministry is in the process of acquiring 876 acres for the FOB. The increase from 570 acres to 876 acres is due to the size of the individual parcel of land which will be purchased as whole. The owner of the parcel said he would sell it all instead of the 570 acres because he would not know what to do with the remainder with the military as a neighbour.

As we speak, the Ministry of Defence has released the money to the NLC to pay the two affected individuals. I am informed that they have paid. The Committee observed the following:

(i) The size of land required for the installation of the radar and the setting up of the FOB in Narok is 876 acres and the identified land is privately owned.

(ii) The initial budget set aside for Phase I of the project in the Financial Year 2017/2018 was Kshs400 million and a total of Kshs175,866,730 will be used to compensate the projected affected person and the balance will be re-allocated to the modernisation projects at the FOB.

(iii) In accordance with our terms of reference, we have established that an environmental social impact assessment was undertaken from 19<sup>th</sup> to 21<sup>st</sup> December 2018 and Certificate No. NEMA/EIA/PSL/7320 was duly issued on 8<sup>th</sup> February 2019.

(iv) In accordance with our terms of reference, we established that the Ministry of Defence has not entered into agreement for the acquisition of the land for the FOB.

(v) The ownership of the neighbouring parcels of land – the land neighbouring the 876 acres – is in dispute in terms of ownership.

(vii) The setting up of the FOB and the installation of the radar is behind schedule and this has been affected by the expiry of the term of office of the NLC.

The recommendations of the Committee are as follows:

(i) The Ministry of Defence should carry out due diligence on the ownership of the land proposed to be acquired and expedite the compensation of the *bona fide* owners of the land as well as the projected affected persons. I am told that has been done. The money has been released by the Ministry of Defence to the NLC. Therefore, the NLC should have compensated the owner of the 876 acres parcel of land.

(ii) In the event of future expansion of the FOB and related project, the Ministry of Defence should carry out diligence to authenticate the ownership of the parcels of land whose ownership is currently disputed before acquisition. If the Ministry wants to extend from the 876 acres, which is privately owned, to the neighbouring parcels of land, whose ownership status is disputed, there is need to carry out due diligence and not to put public funds in land whose ownership is disputed.

Hon. Speaker, with those observations and recommendations, the Committee seeks the approval of the House to give an okay to the Ministry of Defence to acquire that land and start setting up the FOB for the benefit and interest of the country.

With those remarks, I beg to move and request Hon. Dido Rasso to second.

**Hon. Speaker:** Hon. Rasso, you can now use all those terminologies.

**Hon. Ali Rasso (Saku, JP):** Thank you very much, Hon. Speaker. I beg to second this Report. I really want to confirm to the House that there are no classified materials or whatever it is in this Report that may be considered classified or a threat to our national security.

The purpose of this Report is to bring to the House the difficulties public institutions like the military are facing today in acquiring land to protect this country. While visiting Narok, the Committee was trying to evaluate the land that was identified by the military, its location, its

suitability, the value for money, if the environmental impact assessment had been done and if due diligence had been done by the Military; that it does not really affect the community that lives in Narok.

Terminologies which were used by the Chairman of the Departmental Committee on Defence and Foreign Relations are also not classified because they can be found on the World Wide Web as things which are very common.

Radars in this country are located in almost five or six places to provide coverage to the Kenyan airspace. This one has been located in Narok to cover an existing radar gap that exists within our air space to establish aircraft or aerial platforms that move within our airspace. For that reason, as the Departmental Committee on Defence and Foreign Relations, when seized of this matter, we were convinced about installing this radar station and air defence regiment and a runway that in totality will form a Forward Operating Base (FOB). An FOB is a base that the military establishes to give it a forward horizon. As you operate, if your base is in Nairobi and you want to reach the shores of Lake Victoria, then your FOB will be possibly in Nakuru, Kericho or Eldoret. It gives you a forward edge so that the turnaround time for aircraft and aerial platforms that you use, including remotely piloted vehicles, is quick.

The Kenyan Airspace Management, although we are just looking at the military in this Report, also involves the use or coordination with the Kenya Civil Aviation (KCA). They must operate together to find whether an FOB that is eventually located in Narok interferes with the air traffic of the normal carriers that enter the Kenyan airspace or whether it gives us an opportunity to intercept a foreign aircraft that transgresses through our airspace. For that reason, we have come up with this Report to confirm to the House that it is necessary for the military to have this FOB in Narok.

The questions that arise are on acquiring land for public use. One of the difficulties that the Committee was seeing through this process is that this land belongs to individuals. Individuals are put together to come up with those 5,000 acres. Individuals are put together to come up with a runway that measures 1.5 kilometres. Also, individuals are put together to come up with a location where you are going to put up an air defence regiment. All this is going to be a big challenge because certain individuals might not be willing to sell their land, and yet it falls within this area that has been identified by the military to be suitable.

During their reconnaissance, the Military was fully aware that this area falls very close to the Maasai Mara ecosystem that houses the major wildlife heritage for this country. For that reason, the Committee talked to Defence on whether the environmental impact assessment had been done. If that has not been done, it might interfere with the free flow of wildlife in the Mara ecosystem.

Finally, the Report was to establish whether there was an agreement entered into with individuals or firms that were going to give out this land to the military. Our Constitution is very clear that in acquiring public land or land for public utility, the NLC, under Article 63 of our Constitution, must play a major role in confirming, verifying and paying those who are affected through excision of the parcels of land.

With those remarks, I beg to second.

*(Question proposed)*

**Hon. Speaker:** Is it a point of order, Hon. Wanyonyi? You placed your card in the intervention box. The first person on the request list is... I think he also has some military background. He is the Member for Kimilili.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Speaker for giving me this opportunity. I support this Report which is good. Kenya, as a country, needs to secure its air space. The fact that we have had a peaceful coexistence with our neighbouring countries does not mean that we do not want to observe our airspace. We do not know when a misunderstanding will arise. As we say it in the military, it is better for us to be overprepared than to be underprepared. That is important. I had a few reservations that were cleared when I went through the Committee's proceedings. I had thought that this is community land that had been acquired forcefully having understood the attachment the Maa Community had on that land. I am happy the land was purchased from an individual. This House should organise a seminar with other State agencies. I want to bring to your attention that I am aware that the Kenya Defence Forces (KDF) has already paid money for the purchase of this land even before this House approves this Report. This House can either approve or reject the Report. So, for the KDF to have gone ahead to pay for the land is jumping the gun. Nonetheless, this is a good Report.

We need to protect our airspace and monitor what is happening along the border lines. This should not be in Narok alone. I would encourage them, in future, to prioritise setting up a establishment of a FOB in Pokot, so that they can monitor the airspace between Kenya and the neighbouring countries to the western parts of this country. The Report is thorough. I want to commend the Chairperson of the Committee and his team for having visited the site and doing a thorough investigation particularly to ensure that the land that the KDF will acquire for installation of FOB is not community land, but public land.

With those few remarks, I urge this House to approve the Report. It is important that this FOB is established. It will come with other benefits to that particular area like ground security because of the presence of the armed military personnel.

I support.

**Hon. Speaker:** The next speaker has a military background by lineage. The Member for Kathiani, you have the Floor.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Speaker for this opportunity. It is true that I grew up in a military home and I am familiar with military terms. The defence of any nation is important. Obviously, it is one of the things that we must all take seriously. Our defence is on land, water and air. From this Report, I can tell that it is a good strategy by our Kenya Airforce to come up with FOBs. They will help us deal with our enemies in case of any external threats long before they get to us. In the Report, they have mentioned three tiers, namely, the long range defence, medium and close quarters.

As we discuss this issue, I am wondering, if my grandfather was around, he would be shocked. Discussing issues on military locations and bases, including the names of the areas, would be shocking to him. However, it is unfortunate that we have to do this. If we allow any State corporation or State organ to operate without the involvement of Parliament, you will see the kind of scandals that we will end up with. We have to move on because there is no other option.

The Committee's observations are what I would like to dwell on. They have made serious observations. The first one is that the size of the land required for the installation of this FOB is 878 acres and the identified land is privately owned. Fortunately, I have read this Report keenly and it says that the minimum requirement for this base to be properly operational is 5,000 acres.

We are now talking about 878 acres and what has already been negotiated is 500 plus acres. I am asking myself: What happens after the acquisition of this land yet there is still over 4,000 acres that is required? In this Report, there are individuals - one has been named as Mr. Njoroge - who are already in the process of acquiring land from their neighbours. Obviously, these are persons purchasing land. It is easy for them to purchase land for speculation, then later on, probably, sell it to the military at a premium. These are the kind of things that we need to deal with. How I wish the military would have negotiated for the 5,000 acres from the beginning, so that there are no middle men who will come to interfere with their requirements moving forward.

On the budget of Kshs400 million that has been set aside, apparently if you look at it, you will find that the military made a move by setting aside some money. What happened is that that money was eventually used on other modernisation programmes other than the acquisition of land which was critical. That means they will require more money in future to acquire more land. So, the valuation of this land by the NLC has to be fast-tracked. This is one of the recommendations that the Committee should have made. We should fast-track the valuation and negotiation so that we can enter into an agreement and then organise for the payments in future.

The third observation that the Committee made was on Environmental and Social Impact Assessment (ESIA). Interestingly, according to the Committee, they are saying that it was undertaken and a certificate was issued. However, Mr. David Ongare from the National Environment Management Authority (NEMA), who is reported in this Report, said that no ESIA was done. So, I am wondering why the military has a certificate, but an officer from NEMA is saying that no proper ESIA was done. I do not know who is telling the truth. I do not know if the military has the capacity to do its own ESIA or whether NEMA is mandated to do that. That is something that needs to come out clearly.

In the Report, on the second point, the Committee talks about the initial budget that was set aside of Kshs400 million and a total of Kshs175 million to be utilised to compensate the affected persons and then the balance be reallocated to other modernisation projects at FOB. Is this factual? This Committee's observation is asking a question. Who is being asked this question? So, as we pass this Report, there is a question before us from the Committee. Who is being asked? Is it us, as parliamentarians, or the Government that should have been asked, so that it gives us the answer? When the Committee asks: Is this factual? Who is supposed to figure out if it is factual or not? So, I am contributing to a Report that I do not have the ability to meet the people that the Committee met. I am here accepting a Report that is asking: Is this information factual? I wish the Committee could have told us if it is or not factual.

The Ministry of Defence has so far, according to this Report, not entered into any agreement for the acquisition of the land for the FOB. So, if they have entered into any agreement, what is going on? Why have they not entered into an agreement? What are the reasons? What is stopping them from doing that? I wish the answers to these questions were put before us, so that we can deal with them. It is important that when we talk about this we remember we had issues - as you know land issues are sensitive - where the NLC leadership had to leave office. They ended up in court because of scandals involving land. The Standard Gauge Railway (SGR) land and the Ruaraka land had issues. It is important that when we deal with these issues, we deal with them up to the end.

The fifth point on the Committee's observations is that the ownership of the parcels of land neighbouring the 878 parcel of land already identified by the KDF is in dispute. That means that even as we are considering expanding from 878 acres to 5,000 acres, there are already disputes. When are these disputes going to be sorted out and what are the disputes? I wish that

information was provided to us. I am noticing that on the six points, they are saying that the setting up of the FOB and the installation of the radar is behind schedule.

Page 27 of this Report says that the modernised radar was acquired and delivered in December 2018. Why was this purchased and delivered if the place where it is going to be installed is not even ready? These are the questions that sometimes Kenyans ask. We are jumping the gun. Why would you go and buy the equipment when you do not have a place for it? Land comes first. Once we have land, we can spend money to acquire the equipment. I think these are the kind of things that Kenyans look at, and that is why these things end up in this House. Otherwise, their recommendations are adequate. They have recommended that we have to carry out due diligence on the ownership of the land, hasten the compensation of the affected persons and authenticate ownership for any future expansion. I feel that this Report has many questions that are still not answered, but because the Committee is in the right direction, I support it.

**Hon. Speaker:** Let us now hear the Member for Funyula.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. First of all, I must join my colleague, Hon. Mbuvi, to state that...

**Hon. Speaker:** Sorry, Hon. Oundo. Let me just interrupt you for 30 seconds to recognise the presence in the public gallery of pupils from Xaverian Primary School, Kisumu Central Constituency, Kisumu County. Welcome to observe the proceedings of the National Assembly. Proceed, Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): We must commend the Committee and the KDF for accepting to open up for scrutiny in the acquisition and utilisation of public resources. I have had a chance to peruse through the Report and I must say the Committee has made a reasonable attempt to bring into fore the issues at hand. There are a few issues that need to be brought into the attention of the Committee, so that as they retreat to reconsider or even as we approve the Report, probably when it comes to implementation, they need to come out clearly.

One, looking and listening through the Report, it is as if the maximum or the ideal size of land to be acquired was 5,000 acres. That was the ideal parcel of land to be acquired to ensure that whatever is supposed to be done is effective, efficient and serves the purpose for which it was intended. The only danger and fear - and time will tell - is that acquiring land in phases will essentially end up inflating the cost of acquiring the land. There is a basic principle about factors determining value that once there is an economic stimulus, there is something around that area in terms of the value of land generally increasing substantially. The rate at which it will increase is dependent upon how the community receives the facility and how the facility contributes to the economic wellbeing of the neighborhood.

My fear is that we have another scandal in the making. We have another case of inflated cost of land acquisition that could even be much higher than the cost of the capital projects. I urge the Committee to seriously go back to the drawing board and generally tell the Ministry of Defence that in fairness, in good order, and in order to fully utilise and effectively absorb public resources, they could probably face the development project with land acquisition as the first aspect and the rest of the issues can come much later. If this is not done, the project will end up being scaled down and will not serve the purpose for which it was supposed to. The cost of acquiring land might be more than 100 times the cost of acquiring it at this particular moment.

The second issue at hand, which seems to be a glaring omission looking at the conclusion of the Report, is the fact that there seems to be no environmental impact assessment. Looking

through the submission by NEMA, nothing seems to have been submitted considering the fact that we are putting up such a facility in a highly fragile ecosystem. There is danger and fear that without an approved or an accepted AIE, we are going to end up damaging the livelihoods of the people surrounding the facility. I urge the Committee to insist that the Department of Defence ensures that we have an approved AIE.

A project of this magnitude also requires another study, namely, the social impact assessment. The emphasis is on the willingness to pay and accept. Those are technical terms expected to be undertaken in such analysis. Looking through this Report, there is no reference to such kind of study. We are going to end up with a project which, however well-intended and important it is will reframe and affect the people and the ecosystem around there tremendously. It is probably not too late. It is possible that the Committee can sit down with the relevant staff in the Ministry of Defence to review this matter in view of the comments the Members have made. I come from the area where we are told never to question anything from the Defence. I would approve and support the Report, but with reservations. I hope the reservations we have raised are going to be considered. We hope the Ministry of Defence is not going to use its might and thorax to bulldoze the communities around there and bid them into submission to accept the project the way it is without proper safeguards having been put in place.

With those few remarks, I support but with my stated reservations. Thank you.

**Hon. Speaker:** I hope the Members of the Committee - and I can see the Vice-Chair is present - are taking the observations and reservations by the various contributors.

Hon. Prof. Oduol, you have the Floor.

**Hon. Prof. Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Speaker for the opportunity to contribute to this Motion. From the outset, I want to commend the Committee. The Report is thorough and it enables us to have a clear indication of the key stakeholders that they engaged with and the objectives that are spelt out. They include the Cabinet Secretary in the Ministry of Defence, the NLC, the Ministry of Lands, NEMA and Members of Parliament.

As I look at the critical and strong foundation of the Committee in terms of their engagement, I would like to take note that the key issue when we talk about military work and the context, in which we are seeking to get this land, is strategy. The observations that I want to make, which in my view would be useful for the Committee to take cognisance of, and given that in their recommendations they are clearly indicating that there would need to be from the Ministry of Defence, due diligence on authentic ownership of proposed land should be done, so that it can expedite compensation.

My submission to the Committee is that as we talk about strategy, we are, indeed, looking at a context of national and public interest. The manner in which we undertake to get this information and pull it together to share should be informed by the need to put the national interest and the security of the country first. Therefore, the work of the KDF would be taken into account.

Hon. Speaker, looking at the information that we get from the Report, it is clear that the manner in which this was done is a bit untidy. Specifically, the NLC advised the Ministry of Defence to provide documents to facilitate compulsory acquisition and they did this in accordance with Section 107 of the Land Act, 2012. In the Report, we still see that at this very time, as we talk about this matter, the Ministry of Defence is still in the process of complying.

When we also look at the issue of the significance of ensuring that if we get land which is personally owned, we should understand the pattern that we have in Kenya, not only of how land

issues are emotive, but also that we have unfortunately this behaviour where we try to include personal interests, so that if the land is going to be acquired by the Government, then we can get a lot more amount out of it. It is, therefore, not very strategic or prudent that we still find that the proposal is to acquire land in phases. Indeed, what this means is that we are alerting many more people not only of what would be information that should not have been discussed at such length in the public, but more or less setting them up so that they know how they can get a little more for their own personal interests at the expense of what would be public interest.

Therefore, as I support this Report, I do so with a bit of concern on the manner in which we perform our duty in the National Assembly. This is in seeking to be strategic and to come up with ways, not only get information, but also hold those officers especially of the Ministry, accountable, so that they do not seek to get into contracts where we will not only be spending a lot more of public resources, but where we will also set up room for disputes between individuals and a very significant body like the Ministry of Defence.

As I conclude, I would like to draw attention to what is in the Report. I want to thank and commend the Member of Parliament. When I look at the Report and the untidiness that I am talking about, which in my view is not strategic, this should not have been the kind of information that we allow perhaps personal interests or opportunities before national interest. That comes through very clearly in the Report. The Member of Parliament indicates very clearly that in 1997, the land was gazetted as the most ideal spot. I think that is useful. We do not need to go into too much detail of how it was ideal because we are dealing with security issues. But the Member of Parliament, in the Report, says that the land was subdivided. It was clear, even at the time we were looking at this, that it was subdivided in a context where it still bordered anonymity.

We are dealing with Government agencies, specifically the Ministry of Lands and we are talking about land that we want to use, but we know it seems to have some challenges with regard to anonymity of borders, yet we still go ahead. In the Report, we clearly see that there was a parcel of land that was left undivided intentionally by the ranch group leaders. This is the area that was later subdivided to be sold to individuals. This is the context from where we have individual petitions which have been sent to the Ministry of Lands. The Report tells us that there has been no response to date. So, as I support this Motion, I do it with a heavy heart.

I want to thank you, Hon. Speaker, because I got an opportunity during the recess to be part of a team of Members of Parliament that went to China to attend the African Parliamentarians Network against Corruption (APNEC) Conference where you are our President. One of the key learnings I got as I sat in the sessions is that there needs to be a very strong sense not only of patriotism or interest in protecting our country, but we need to do this with the awareness of the context of the kind of values and the sort of characteristics and mannerisms that we have. Very importantly, we need to keep a close eye on the offices, especially those in charge, on how they discharge their duties.

One of the key summaries that I got is that we would not like to leave room in whatever we do for people who might not want to do things in a procedural way, who might want to get

some benefit and who might want to put personal interest or leave room for personal interests. We were told that we must be very careful as we look at tigers at the very top who might use their offices and might indicate, as we see in this case, that there is a certificate from NEMA. The same Report says that there might not be a certificate. We were told that we need to look at the swathes. My understanding was that this is the middle level where we might find people such as ourselves. We should also look at the flies, which would be the common person might be looking at.

As I support this, I would like to urge the Committee that it would be very important for those who exercise oversight to come to a context where we challenge ministries to ensure that they do everything within their power to protect public and, in particular, the Defence Forces.

I thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Narok South, you have the Floor.

**Hon. Korei ole Lemein** (Narok South, JP): Thank you, Hon. Speaker. Hon. Mbuhi has spoken as if he is a Member of Narok County.

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

*[The Temporary Deputy Speaker  
(Hon. Jessica Mbalu) took the Chair]*

Hon. Temporary Deputy Speaker, I have heard the Chairperson of the Committee move the Motion. My concerns are truly important. Environmental impact assessment was not done properly. The land that the military has purchased has close proximity to a national game reserve. That was an issue that the Committee was supposed to have taken into consideration. Again, this is land that we call a migratory corridor and in essence, it is going to affect a lot as far as wildlife is concerned.

Of much concern is what the Chair of the Committee has put across. Having acquired 876 acres and the military requires 5,000 acres, their concern is the neighbouring land which is in dispute.

Hon. Temporary Deputy Speaker, this is an emotive issue in that area, the reason being that the community believes that much of that land was acquired fraudulently and is in dispute. This is an issue that this Committee is supposed to have taken into consideration and gone deeper to find out what the issue is. As my colleague said, it is true that even the social and economic impact of the project on the local community must have been assessed properly. The neighbouring community believes that this was a strategic way of taking the land from them. The decision to settle on the land that has been identified raises questions. Even in the Report, one person who was mentioned by my colleague, who is my very good friend, is Mr. Wambugu, who owns almost 3,000 acres. Which one was easier for the military? Is it to approach an individual or to look for small parcels of land? So, in as much as this Report was tabled by the Committee with the recommendations, we have a lot of reservations on the same.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Yes, the Member for Vihiga.



**Hon. Ernest Kivai** (Vihiga, ANC): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to support this Motion.

The justification for this project was well given by the Chair of the Committee. This is a matter that touches on national security. As we speak, our airspace is covered to a maximum of 60 per cent. If you look at that cover, you will find that geographically, some areas of the country, especially the southern and western corridors, are not well covered. So, the justification for acquiring land in Narok was well thought out. We had a chance to visit the area and we were shown a specific site where they wanted to mount the radar.

The Ministry of Defence had so many projects for the Narok land, but the most important, and first priority, was installation of the radar. There was only one spot where they told us they wanted to install the radar and this is where the land in question is. The sequence of events has been well spelt out by the Mover of the Motion. I will just concentrate on some of the issues that the Committee though were important. This has to do with the local community. What were the issues?

The first issue was with regard to interface with the Mara Game Reserve ecosystem, which has been pointed out here. The second issue was to do with the presence of the military in that area. I must tell you that the site is quite away from the beaten track. Some people felt that the presence of the military in that area could have some negative effects. Thirdly, there were some complaints about the price offered. Most of them felt that the price offered was below the market value. Fourthly, there were issues to do with the way the land was procured. Some people felt that there could have been issues of corruption involved. Finally, there were issues of due diligence.

I want to make it very clear that in matters of public participation, we had a very good meeting with the community and all these issues were thrashed out. While dealing with the issues, many positives were raised. The military promised corporate social responsibility in terms of fixing the roads. The road leading to that area is quite dilapidated. There were concerns about schools and water, from which the community is going to benefit. I must also add that during our tour, we were accompanied by the area Member of Parliament and so, all these things were pointed out in his presence.

When I talk of the southern and the western corridors of our country not being well covered in terms of air space, Narok offers the opportunity for the southern corridor, which faces Tanzania to the south. It offers that opportunity to be covered. It was also mentioned that the military, in their programmes, want to implement similar projects in Lodwar and Mariakani. With that, we will have our country well covered in terms of airspace monitoring.

So, as I support this Motion and as we agree that these are issues of national security, what we need to take from this are the concerns that the House is raising. I have been listening keenly and I think we must take seriously what the Members are saying. These are issues that we will be discussing. However, nobody should contest the fact that the country needs to have these facilities. The land has been acquired on the basis of willing buyer willing seller.

I urge this House to seriously look at the Report and approve it because we want to move from here and go to the next two sites. One of the concerns I have picked from this House is a concern by a Member as to why the radar was procured before the land was acquired. That is a serious and genuine concern. I can assure this House that this was brought out very clearly and we thought it was not the right thing to do. The right thing would have been to have the land first and then acquire the radar. It is something we have noted and will bring it out clearly.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us hear the Member for Narok County, Hon. Soipan from the Speaker's Panel.

**Hon. (Ms.) Soipan Tuya** (Narok CWR, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak to this Motion. I commend the Committee for taking up this matter on its own motion as we see from the Report. The Report raises a number of critical issues that caught the eye of the Defence and Foreign Relations Committee. That notwithstanding, it is with many reservations that I speak to the Motion. We are talking about matters of national security which concern all of us. However, such matters must not be addressed in a way that out rightly disenfranchises the very people for whom the security measure is purported to be undertaken. Why do I say so?

From the onset, when I look at the Committee's Report, I feel like it is half baked and did not get to the core of the issue it intended to investigate. The reason is after reading the Terms of Reference (TOR) as to why they set out to investigate this matter in Narok against the observations they made. If I was the Chairperson of this Committee, I would not have hastened to bring this Report to the Floor of the House.

One of the things they were supposed to investigate is whether there was a proper environment impact assessment done on the land. I do not know why the Report came back to the House without answering this critical question. What did they find out from the ground? This matter is still questionable. The Report has come back to the House with a question. Then, why bring it to the Floor, instead of taking more time to investigate? Finding out whether an environmental impact assessment was done or not is a simple job. They should have sat together with NEMA and the people on the ground. I am the County Women Representative for Narok County, and I speak as a representative of the people of Narok County.

The location of this Government project is almost at the heart of the Maasai Mara Game Reserve; already a fragile ecosystem. The Committee should have taken this very seriously and established whether the project was given a clean bill of health environmentally for purposes of the national game reserve which forms a huge part of the national cake of this country.

If we are talking about national security, the people of Narok have no problem supporting such a project of the national Government of this magnitude, which speaks to the national security. It must not be done at the expense of the people, which the same security is supposed to serve. The other question that has not been addressed, on which one Fred Kariankei, a member of the community, has written a memorandum, is lack of public participation.

We appreciate that matters of national security are handled in a discreet manner and shrouded with a lot of confidentiality for good reasons. But involving the members of the community cannot be overlooked. This is a constitutional right of the people of a certain locality for any project of this magnitude. For public interest, it should involve serious public participation. International standards require free prior and informed consent for any project that happens within community or private land.

The Committee does not give us answers to these critical questions. That is why I say that the Report is not fully baked and should not have been brought back to the House in a hurry. I see the Committee has made recommendations that the Ministry of Defence should go back and

look into these issues and give answers. I am happy to see Hon. Kenta here because he is the Chair of the Committee on Implementation.

The questions that have not been answered by the Departmental Committee on Defence and Foreign Relations should be taken up by the Committee on Implementation. Let the Ministry of Defence come and defend this position. There are very many other pieces of land. If, indeed, they find that an environmental impact assessment was not done, then this project must be stopped until we have a clear indication that the social disenfranchisement of the people of Narok and interference with the fragile ecosystem of the Mara is an issue to be dealt with.

We know the issue of willing buyer willing seller is there once one decides to sell their land. But we must not close our eyes to things which can affect us. Even that very national project, because I am sure the national Government would like to have a project in a peaceful area that is supported by the local communities, we cannot close our eyes to the environment that the national Government project is going to operate in.

On the issue of the acquisition of land, some of the land is already in controversy. Why the hurry and kind of force this to go through without first looking at the critical issues which have been raised by members of the community in the Committee's Report? As I commend the work and proactive nature of the Departmental Committee on Defence and Foreign Relations, I still feel they need to have serious answers to some of the questions they raised in their TOR.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well spoken. Hon. Soipan has spoken as a representative of the people of Narok. We will now have the Member for Seme, Hon. Nyikal Wambura.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I find it difficult to really congratulate this Committee even though I know it has done good works other times, but this time, the Report looks premature.

They start by saying what they set out to do and we see a lot of inadequacies. The need for this radar base for protection of our air space is not the question. What is before us is the process. The Committee set out to establish the location, size and use of land. Looking at the Committee's observation, the land acquired is not adequate because 5,000 acres are needed. They have started with 875 acres and they have said this will be acquired in phases and yet they have gone ahead to say that the land around this area is in dispute.

If you are setting up a base and you need more land, and the land around has problems, I do not see how you can recommend that land. The Report states that for establishment, the money set aside for the project is available and is supposed to pay for the land. Then, in the Report, they are asking if this is true. So, who will answer that question? Also, looking at the establishment of whether an environmental impact assessment was carried out and the details of that exercise, they have attached a certificate. We expected they would have looked at the environmental report and attach part of it to the Report. So, we are left in doubt.

On the question of public participation, there is a lot of doubt and there is no clear indication that it took place. Some annexes to the Report by some people are indicating that there was no proper public participation. On my part, I do not want to spend a lot of time on this. On

the recommendations, they are not quite clear. The recommendations are what the Committee should have done. For example, the Ministry of Interior and Coordination of National Government should carry out due diligence on the ownership of the proposed land to acquire and expand compensation of the bona fide. They should have found out if that was done and given a clear way forward instead of saying this should be done.

In the event of future expansion, they started by saying that 5,000 acres of land are required. Obviously, there will be future expansion. With this, I find this Report inadequate because it was dealing with a very serious matter. What remains is the need for this base and identification of an area. This Committee has not done adequate work and given a clear way forward.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, the Member for Seme. Let us have the Member for Narok North. He is next on my request list.

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Temporary Deputy Speaker. First of all, I agree with most of the speakers who have spoken before me. I will go further and say that I oppose this Committee's Report. In fact, the Members can observe from Chapter 5 thereof that I have been personally involved and opposed to this transaction. Just to be a bit polite, I will say that this Report is unsupportable at all. It is incoherent, disjointed and inconclusive. If this Parliament passes such a Report, I think we are trying to prove that this House does not take its work seriously. My advice to the Committee will be to withdraw the Report, do a thorough report and then bring it to this House.

Maybe for the purpose of informing the Members, this particular camp was...

*(Hon. Ali Rasso spoke off record)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Do I hear noise? I treat it as noise. Hon. Rasso, I will treat it as noise because you are supposed to press the intervention button.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. If Hon. Kenta really disagrees with the Report, it is available to him. The Committee has gone to lengths to come up with this Report, to visit the site in Narok and have conversations with all possible stakeholders. Let him come up and say the issues that he disagrees with.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Rasso, what is out of order, or are you rising on a point of information?

**Hon. Ali Rasso** (Saku, JP): It is out of order to say that there is no Report before the House; the Report is before the House. Let the Hon. Member say the issues that he raises with the Report.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): His point of order, which you must clarify, is that you said that there is no Report in the House.

**Hon. Richard ole Kenta** (Narok North, ODM): I have not said there is no Report. I said there is a Report that is unsupportable.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Rasso, that is a correction. It is good for us to listen to one another. Carry on.

**Hon. Richard ole Kenta** (Narok North, ODM): Hon. Temporary Deputy Speaker, I have heard what my colleague has said. One thing that we should be open about is when they visited the place to undertake public participation. They went when the camp was already there. The community was locked out and they had a rough time. How was there a camp before the land was acquired and before the authorisation by NEMA and all the others? This was something that was pushed through the throats of the community.

Hon. Temporary Deputy Speaker, as you have heard from the Members who have spoken before me, this land is within the precincts of the Maasai Mara National Game Reserve, which is the Eighth Wonder of the world. The logic of buying this land was not for defence. It is somebody who wanted to offload 5,000 acres, which he had acquired illegally – and they know it – to the Government of Kenya through the military. That is why there was force. There was no public participation. They know it. What the Committee did, and we commend them for that, is to stop the purchase of the 5,000 acres. I have appeared before the Committee in the presence of the Minister for Defence and the Minister confirmed that they did not require the 5,000 acres. They only required 100 acres. Even the 894 acres do not make sense at all. When you talk about willing buyer willing seller, how can it be that you do not look at the environmental impact? There should have been a study. Even if it is my land, I must consult my neighbour. Did they accept? They never accepted.

The other issue is that the 5,000 acres were taken from young people. It was land set apart for the young generation of the Maasai people. The group ranch representatives, in collusion with land officers and some politicians, decided to allocate themselves land and sold the 5,000 acres to somebody who now wants to offload it. What I am simply saying is that what has been done is completely wrong. This is not the only place that you can put such equipment or hardware. There is Lanet in Nakuru. When you talk about security, on the other side of the border, is the Serengeti. What is the threat?

So, for Parliament to look at this thing in a way that will show the Kenyan people that we are serious about fighting corruption, let them go back and revisit the issue and bring a fully baked report. Nobody is disputing that we need security, but we do not need security that destroys other communities. We are a pastoralist community. The military has already started harassing people there when they do not even own the land. We know it was not for military purposes, but for a grabber to offload the land. That is a fact and we do not want Parliament to be taken for a ride.

I do not want to belabour this point. The Report is self-explanatory. The conclusion says:

“The Ministry of Defence should carry out due diligence on the ownership of the proposed land to be acquired and the compensation of the bona fide owners of the land.”

First of all, they did not identify the owners. They have not done the due diligence and you are already in occupation. So, which land are you occupying? What is your right over that land? The taxpayer is paying billions of shillings to brokers. Then they go on to the second. There is going to be future expansion. Mark you, they only needed 100 acres and now they are talking about 5,000 acres.

“In the event of future expansion of the FOB and other related projects, the Ministry of Defence should carry out diligence to authenticate ownership of all the neighbouring parcels of land whose ownership is currently disputed before acquisition.”

The Committee has accepted that the ownership of land is even in dispute. It is not identifiable. So, what is the Government of Kenya buying? What is the taxpayers' money being used for? That is the question. If you do not even know the owner of the land and you are in occupation, why are they telling Parliament to ratify an illegality? I urge this House to reject this Report in totality because it will paint this House in bad light. We should not let it happen.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I confirm that the Report is before the House and as usual, Parliament does not debate anything that is not procedurally before the House. Next is the Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, I was waiting for this chance. You are there to direct the House. The two Members of Parliament from Narok County are telling this House - and we have listened to them - that there is something amiss. At the beginning, I was wondering whether I should support this Report or not, but given what I am hearing from these elected Members of Parliament from Narok, we have to revisit this issue.

From what the Chairman presented, so far 570 acres have been acquired and they were looking for 876 acres, but the requirement for the airspace for this facility is 5,000 acres. We have that disparity. There is also the issue of the impact assessment that was not done. We are all Kenyans. There is the possibility of people coming in to speculate. Brokers are there. Many people would like to have the Report, but give the Committee more time to engage the leadership of Narok. It will be better that way than us rushing to pass the Report.

More importantly, as somebody mentioned, we are talking about 5,000 acres that are required. The Committee went and found out and agreed with the personnel from the Air Force. We have to acquire the 570 acres while we await the 4,000 acres later next year. Knowing that the NLC officials are out of office because of corruption, we are getting into a situation where there will be a lot of speculation. Brokers will come in. I will not be surprised if there will be killings because of the conflicts and the money. We will have problems in Narok and prices are bound to go up. They will acquire 570 acres and thereafter look for another 4,000 acres. I can tell you for sure the prices will be more than triple what they are currently.

There is a provision to have that military base in the area that has been identified for the security of this country. There is also a possibility of acquiring it compulsorily. Compulsory acquisition is in the Constitution as long as you can resettle the people elsewhere for the benefit of the country. Let us do that once and for all rather than buying in bits because you are bound to have speculators and brokers killing each other. This happened in my area.

A road was supposed to pass through an area, people came from nowhere and bought the land yet they knew what was happening. The prices went up. I will table a Motion in this House because of that. The Chairman is here. Please, take your time. Let us go back and look at this, so that if you have to buy 5,000 acres, buy it at once rather than waiting until things are out of hand.

Given the level of corruption in this country, this is a hot one. We better defer it. I do not support the Report. Let us go back and reconsider it.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Karachuonyo.

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity.

I see this Report in two parts. The first part is on the need and the second one is the process. With regard to the need, the Report is good because we need protection of our airspace and land. We need protection even in our seas. We need to be protected. On that score, the

Report is very effective. We also have to remember that we have a very porous border that is long and unprotected. If the Military were to take the steps they want to, I will fully support them.

A lot remains unsorted in terms of the process. My colleagues have spoken about public participation which is a very essential requirement. We do not have a good report showing us that this was done. I plead with the Chairman of the Committee to ensure that public participation is done before this Report is passed by the House. We need the Report anyway.

In addition to that, the environmental impact assessment report must be done. The wildlife in that area is also a factor of the economy of our country. If we do not have any report on how the wildlife will be affected by the step the military is taking, we may hurt ourselves when our intention was to benefit from the project.

I also want to comment on the land purchase. We were told that the ownership of some parcels of land has not been identified. If that is true, then the willing buyer willing seller principle will be violated. From whom are you buying the land? That one too needs to be sorted out. More than anything else, I support the idea of buying the total land requirement instead of buying in piecemeal, which will escalate the price at the end of it all. Buying in piecemeal also encourages speculators. That will distort the amount we will pay for the land at the end of it all.

I request the Committee to go back and deal with those things which do not seem to be fully taken care of. I know the Chairman may not like what we are saying.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are free to say anything as long as you are relevant. Hon. Member, you are free to debate and say anything as long as you are relevant. Do not be afraid of the Chairman. Ignore him.

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you, Hon. Temporary Deputy Speaker. I support the first part of the Report where the need is emphasised. That I support very strongly, but the process is where I have many questions. More needs to be done on the Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have Madam Commissioner, the Member for Taveta.

**Hon. (Dr.) Naomi Shaban** (Taveta, JP): Asante sana, Mheshimiwa Naibu Spika wa Muda kwa kunipatia nafasi hii nizungumze juu ya Ripoti hii ambayo imeletwa na Kamati ya kusimamia Masuala ya Wanajeshi pamoja na Masuala ya Mambo ya Nje.

Suala la ardhi ni jambo ambalo huleta hisia mbaya. Ni jambo ambalo limefanya watu kupigana ndugu kwa ndugu, kuumizana, kuuana na umwagikaji wa damu kwa sababu wenyeji wa kawaida wasipohusishwa vizuri, bila shaka ni jambo ambalo linaweza kuleta utata mkubwa sana.

Nikiangalia Ripoti hii, Kamati imefanya kazi lakini sioni kama wameimaliza kazi yenyewe vizuri. Wangehusisha viongozi wote kama viongozi wa kaunti na wa Bunge ili waafikiane na wananchi kuhusu njia mwafaka ya kufanya kazi hii.

Jambo ambalo ni wazi ni kuwa Wizara ya Ulinzi wa Nchi inayosimamia masuala ya wanajeshi hapa nchini inahitaji ardhi upande wa Narok. Lakini juu ya kuhitaji ardhi upande wa Narok, ni lazima waipate kwa njia ambayo ni sawa na ya uwazi. Nikiangalia mapendekezo ya Kamati hii pale mwisho yananitiza mno. Hii ni kwa sababu waliolalamika walipoona kuwa tangu pale mwanzo kulikuwa na mchezo fulani uliochezwa, basi wangependekeza kuwa Tume ya Kusimamia Masuala Ya Ufisadi na yule anayesimamia suala la uhalifu hapa nchini, haswa, Director of Criminal Investigations (DCI), waangalie ni jambo gani lililoendelea. Lakini kabla wafikie hapo, nina imani kuwa wangekuwa wamezungumza na viongozi wote kwa jumla na kuhakikisha kuwa wananchi ambao ni wahusika kwenye kipande hiki cha ardhi, wacha hawa wa

570 peke yake mbali wote wa 5,000 wamehusishwa. Kufikia hapo, wangukuwa wamepata habari kamili kuwa aliyepata ardhi hii na anayetajwa sana hapa kushinda wenzake aliipata vipi, na kama aliipata kwa hali ya usawa ama kwa kununua kutoka kwa majirani zake. Basi iwe watu wamekubaliana kweli labda wao ndio walikosea walipomuuzia wakati aliuliza kupata vipande hivi vya ardhi.

Ukweli ni kwamba sioni kama Ripoti hii iko kikamilifu hapa mbele ya Bunge la Kitaifa. Mwenye Kiti na Wabunge wa Kamati wamejaribu sana kuangalia jambo hili. Ninajua wanaangalia kuwa Wizara inayosimamia masuala ya wanajeshi inataka kufanya hii shughuli na hivyo basi wana hiyo haraka. Wahenga wanasema, “Haraka haraka haina baraka.” Hivyo basi, ninapendekeza warudi wahusishe wahusika na washika dau wote na bila shaka, watapata mwelekeo bora.

Ninapendekeza kuwa suala hili lirudishwe kwa Kamati na wahusishe watu hao ili waweze kupata mwelekeo ambao utafurahisha kila mtu.

Asante sana, Mhe. Naibu Spika wa Muda.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Shaban, the Member for Taveta. Let us hear the Member for Wajir South, Mohamed Sheikh. He is on the request list, and I had seen him. I am sure he is consulting. Let us have the Member for Nyando, Hon. Okelo.

**Hon. Jared Okelo** (Nyando, ODM): I thank you, Hon. Temporary Deputy Speaker. I rise to delve into this inquiry into land acquisition by the KDF in line with the Report that is before us.

From the outset, I would like to say categorically that I oppose the adoption of this Report, because issues of land in this republic are emotive. Therefore, each time we are dealing with land issues, we must employ absolute abundance of caution lest we send this country to the drains. We do not wish to see that. Stemming from the issues of land and the incoherent complexities around it, we have seen the Ndung’u Land Report gathering dust to date in some shelves without publicising it for general public. So, we must be very careful every time we are looking at land issues. In the record of historical injustices that have been meted onto this country and the general populace, land becomes an integral part of historical injustices. The very reason each time land becomes a subject matter, then we have to tread carefully. The question that we are asking is why the buyer is offloading the land and what the underlying issues are surrounding this parcel of land within Narok County.

From the Report, the Committee acknowledges that certain concerns were raised in the course of the interrogation, but at the same time, they recommend a full process of acquisition. Once questions have been raised about ownership of land, that is a red flag. Therefore, we have to step back and reflect and retool before we move forward with the sale agenda.

If somebody is out to dispose of a piece of land and the buyer must just be the military, he is trying to sanctify land and sell it to the strongest so that if issues will emerge at the end of the day, they will be faced with barrels of guns as opposed to the barrel of the mouth where people can debate issues. The mere fact that the military is targeted for the sale becomes suspect. Even if security would become an issue and issues of security are always shrouded and obscured in mystery, then you ask whether the Maa Community has become so insecure that they need the presence of the military. We know of many places that have attracted the wrath of bad boys such as Kapedo and many areas which are undergoing cattle rustling. If that is an issue, then let us take the military camps to them.



Again, another fundamental issue is whether we are in absolute lack of military bases. Have we outnumbered the available resources within Lang'ata, Thika, Isiolo, Nakuru and the one on Waiyaki Way? Are we so much in need of a military camp that we just have to sacrifice everything else at the expense of unity of this nation? It is important that when fundamental questions are raised about the ownership of land, the country must be awake and respond to the issues of cohesion more than the acquisition of land.

We have been told that proper environmental assessment was not done. If so, why do we need to proceed, if we do not have a cogent report that will give the country the absolute confidence to move forward? We have constantly heard of areas where the military was undertaking training and we hear of grenades or bombs that were left behind still exploding to date. That is just part of it.

We also know that the Mara River plays a pivotal role in provision of water to the citizenry. What effects will the military camp, with its artillery, have on the water that this country is relying on? So, an environmental assessment is something that we cannot skirt around. We need a cogent report about it. Are we inviting another Ruaraka Land saga that the country will have to carry the burden of payment and litigation through court processes? We do not want to get there as a nation. I suggest that if the country is in dire need of a military camp, then we know of the upsurge of insecurity along our borders. Let us tighten security along our borders and let the Maa Community remain as it is. In any event, the Maasai are known to be very strong men. The morans fear nothing. Therefore, they have never asked us for any additional security through the military.

I, therefore, oppose the adoption of this Report, which is before the House so that the country can enjoy its tranquillity, especially the Maa Community, and we can live as a one unitary body without having to invite fractures or fractions amongst ourselves.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Bumula, Hon. Mabongah Mwambu, you have the Floor.

**Hon. Mwambu Mabongah** (Bumula, Independent): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to air my views concerning this Report, which is before the House. From the outset, I wish to oppose the Report. I have few concerns. Having looked at the Report, Members are avoiding one issue that is affecting the community and trying to solve the other one. Just like what my colleague has said, security is paramount. We all agree that security is paramount but as we look at it, are we looking at the lives of the people before we get to security? When we talk about security, we talk about the very citizens who are being mistreated. The leaders from that region have raised major concerns here; that the community was not involved in public participation and that clear reports have not been submitted. This shows very clearly that the Chair of the Committee and his team did not bother to get sufficient information concerning this matter before they brought this Report to the House.

My concern is why whenever the Government seeks to compulsorily acquire land it identifies land of poor people. Is it because they have the manpower to manipulate the payment and resettlement processes of poor people? There is a huge chunk of land that belongs to people who are able and can even donate it to the Government.

A poor man is crying and has no help. He now looks upon an elected Member of Parliament like me to defend him or her. The leaders have come to the House and raised their concerns; that they were not involved in public participation, and that they do not support the

Report. We appeal to the Committee to go back and involve the leaders of the community right from the county level up to the Members of Parliament so that the community is involved.

From the Report, we realise that the community is not rejecting the establishment of the military base. They are saying that they were not involved in the process, and that they do not know what is going to befall them in terms of the environmental effects of military operations. It is important, as Members of this House, to be serious and talk on behalf of members of the community and this country. Whenever members of a community are dissatisfied with some operations, it is important for us to go back and listen to them because it is our constitutional mandate that we must do public participation until everybody is brought onboard. Once everybody is satisfied, we should avoid displacement of people and issues to do with land where people are not compensated and are left to struggle with life when they are supposed to be protected by the same Government that we serve.

With those few concerns, I reject this Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): There is a point of intervention from the Chairman of the Committee.

**Hon. Katito ole Metito** (Kajiado South, JP): Hon. Temporary Deputy Speaker, I have a point of information. I want to inform the House. The problem with some Members at times is that we contribute without reading the reports being discussed. Unfortunately, some Members say that they have read the Report but they proceed to give misleading information. I want Members to know two things on public participation. It is good for them to know and make their decision.

On 25<sup>th</sup> October 2018, as indicated in the Report, the area Member of Parliament, the Member for Narok West, appeared before the Committee. On 19<sup>th</sup> March 2019, Hon. ole Kenta wrote a letter to the Committee, on behalf of the four elected Members of Parliament of Narok County – Narok North, Narok South, Narok East and Narok West Constituencies – requesting to appear before the Committee on their behalf. His request was granted and he appeared before the Committee two days later. The whole Committee visited Narok County and held a series of meetings, which are documented in the Report. So, public participation was done. Whether the Report is accepted or not public participation was done.

On the issue of environment impact assessment, which has been alleged not to have been done, in October last year, when the NEMA appeared before the Committee, they said that they were yet to do the environment impact assessment. That position is also captured in the Report. However, by February this year, NEMA had done the assessment. We had told them, as a Committee that we would not proceed until they did the environment impact assessment. Their certificate is attached to the Report.

So, the problem is that some Members have not read the Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You have made your clarification.

**Hon. Jared Okello** (Nyando, ODM): On a point of information, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member, whom do you want to inform?

**Hon. Jared Okello** (Nyando, ODM): Hon. Temporary Deputy Speaker, for the first time, somebody is putting to question my capability to read and fathom issues. The assessment certificate cannot be misconstrued to mean an assessment report. A certificate and a report are two different documents. We have to distinguish them.

Secondly, the mere fact that a Member of Parliament appeared before a Committee ....

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are on a point of information but you are now arguing. I am not going to allow that. You had your time to contribute. This is a House of debate; be it you are negating or supporting. I want to protect the Chair of the Committee. He did not refer to you in particular as the Member for Nyando. He did not say that you do not know how to read. He is not challenging your capacity to read and understand issues.

Let me have the Member for Isiolo, Hon. Jaldesa Dida.

**Hon. (Ms) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to contribute. I want to quickly respond to the sentiments of the Chair of the Departmental Committee on Defence and Foreign Relations that Members of Parliament do not read Committee Reports. He has withdrawn the sentiment. We have the Report here.

I also want to join my colleagues who have contributed to this debate and say that I oppose the Report. I do not oppose it based on the contributions by Members; I oppose it as a victim of illegal acquisition of land by the Government under the pretence of development. Isiolo County, which I represent, is one of the counties that are seriously affected by illegal acquisition of land, specifically by the Ministry of Defence. We have two military battalions in Isiolo County yet we suffer all manner of insecurity, ranging from radicalisation to cattle rustling. We suffer yet we have the 78<sup>th</sup> Battalion and the School of Infantry. Therefore, saying that this or that is needed to enhance security does not arise.

Public participation is a constitutional right. It has been raised in the Report by the residents of Narok County that no public participation was done. It is on page 1 of the attachment. It is clearly written that there was no public participation. We listened to Members of Parliament from Narok County, including the able County Women Representative of Narok, who stood and said that there was no public participation. We cannot be told of public participation where people met in a hotel and made a decision, the way counties pay people to purport to be involved in public participation.

There should be no development...

**Hon. Peter Mwathi** (Limuru, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): There is an intervention by the Member for Limuru, Hon. Mwathi Mungai

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. I have heard the Member who said that some people met in a hotel. Can she substantiate? Where has

she got that information from? I belong to the Committee and I do not know that. Is it in order for her to say something that is not in the Report and cannot be substantiated?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Jaldesa Dida, can you substantiate the statement you have just made?

**Hon. (Ms) Rehema Jaldesa** (Isiolo CWR, JP): Hon. Temporary Deputy Speaker, I do not think I am out of order. I listened to the Narok County Women Representative, who said that there was....

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member, substantiate the statement to the effect that Members met in a hotel.

**Hon. (Ms) Rehema Jaldesa** (Isiolo CWR, JP): Hon. Temporary Deputy Speaker, I withdraw.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Carry on, Hon. Jaldesa.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Temporary Deputy Speaker.

**An. Hon. Member:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Is it a point of argument? Hon. Member, you know very well how we do points of order. You are not on intervention. So, I assume that it is something else.

Hon. Jaldesa, carry on.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Hon. Temporary Deputy Speaker, we were told there was no public participation by the two Members from Narok County. Therefore, if Members were not involved, we assume the possibility of the ordinary people being involved could be nil. We, as communities hosting the military, have suffered massive losses and torture. If I am dared to substantiate, I can bring to this House reports of women who were raped by military officers who live in those counties. Massive pieces of land have also been grabbed without compensation.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Jaldesa Dida, we have an intervention from the Member for Bumula, the Hon. Mabongah Mwambu.

**Hon. Mwambu Mabongah** (Bumula, Independent): Thank you, Hon. Temporary Deputy Speaker.

My point of order was just a follow up on the Member of the Committee. These issues are here. What they could have told us....

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): At what point are you following up, Hon. Member?

**Hon. Mwambu Mabongah** (Bumula, Independent): I am following the order of the Member of the Committee, the Member for Limuru.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): He has already finished debate. There is no way you can address him now. Order Hon. Mabongah! You are out of order! Proceed, Hon. Jaldesa.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you. I think *Mhe.* Mabongah wanted to support my sentiment that, indeed, there was no public participation.

From the Report, there was objection from the community in as far as due diligence was concerned. From the Report, there was a concern and letters were written to the Committee by the affected communities for failure to undertake a proper feasibility study on the environmental impact. There was a concern raised about interference of the ecosystem of the Maasai Mara.

As I oppose this Report, I want the Committee to go back, not only to Narok, but also to all the counties where the military has illegally taken over massive community land. The underlying factor here is community land. All these areas are affected by the massive land grabbing. It has happened and yet these are community land. The community lands are basically for the pastoral communities where we do not have clear ownership of land. Because of that they take advantage to take our land. It is not only the military. You can hear of a project like the LAPSET. They are grabbing our land, there is no community participation, and there is no clear process of compensation. Because of that we have speculators who just come and take our land. There is corruption. People from Nairobi just come and take large land without even going to the ground. The issue of land is very emotive. We must be very sensitive on that one. It is something that can make even people lose their lives.

Therefore, as I oppose, I beg the Committee to go back, not only to Narok, but even to places like Isiolo and clearly define how those communities will be compensated.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. The Member for Isiolo North, Hon. Hulufu Oda, you have the Floor.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you Hon. Temporary Deputy Speaker for the opportunity to also comment on this Report.

I would like to start by appreciating the important role that the KDF plays and, by extension, the need to facilitate it have the infrastructure it requires to provide defence for our country. However, having read this Report very clearly, I hesitate. I have gone through this Report and I have a number of concerns that constrains me from supporting it.

Going through this Report, I realise that the KDF and the NLC, if you look at the submission by the Colonel who is the Commander of that Regiment, did not follow certain steps. There is no way you can talk about compulsorily acquiring land for any public use before environmental impact assessment is done to establish suitability of the intended use on that piece of land. That is one of the key concerns which I have with this Report.

Initially, while the Kenya Air Force was indicating that the environmental impact assessment was done, NEMA denied that it has taken place. However, as we speak, there is indication that it was done as an afterthought. This raises a lot of questions. I thank the Committee for going out on its own volition to investigate this matter and bring this Report to this House.

The second reason I am very hesitant to support adoption of this Report is the fact that the site which is identified is located in a very sensitive ecosystem – the Mara ecosystem. From my understanding of Mara and the sensitivity of such areas, I do not think what the military intends to set up there and the current use of that ecosystem will coexist amicably. Therefore, I am very hesitant.

The notices for public participation were sent out but reading through the report, very few submissions were made. But I am glad, although not many community groups have made their submissions the people's representatives - the Members of Parliament - have made their submissions. Two Members of Parliament from Narok have again commented on this report in this very House this evening. That tells us that there is no buy in from the Maa community and from the Narok community. Despite appreciating the importance of this radar to protect our territorial integrity and ensure that our country is safe, without the acceptance of the community who are the owners of this land at the moment, I do not find a good reason why we should adopt

this report or why we should encourage the military to do due diligence and proceed with compensating people and continuing with the project.

I would like to echo what my County Women Representative, Hon. Rehema has said. My own county, and specifically my own constituency of Isiolo North is host to the largest number of military barracks in this Republic. And we have been having issues with the military every time extending the boundaries. We have issues with the 78 Tankers Battalion, Soy School of Infantry and so on and so forth. They extend the boundaries and keep on harassing our people. At some point, we will invite this Committee. As they go back to do public participation and seek the possibility of getting buy in to set up this radar in that specific place or another good alternative... I would like, as well, to encourage them to consider visiting all these areas, especially in northern Kenya where we have provided land to the military to set up their camps.

Finally, I would like to say that we are not opposed to providing land for the military to set up systems that will help them to protect our country. What we are saying is that this particular site does not seem to be very appropriate, from ecological perspective and from the fact that ownership of the land is in contention. It used to be a group ranch. We are told a huge portion of it has been sold to a private individual and some members of the Maasai community are contesting this. They have even petitioned the Ministry of Lands, as I have read in the report. It is said that part of this land was set aside for the next generation of Maasai. Unfortunately, it has already been sold probably by the local elites, which is something common in most of the areas where land is communally owned. For these reasons, I would like to oppose this report. I would like to encourage the Committee to go back and do a more thorough job in terms of engaging more stakeholders in Narok so that, in consultation with the county government, the community and the leaders, we should get another appropriate site in Narok County or elsewhere in the neighbouring counties.

Thank you very much for the opportunity to contribute.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): The representative of the people of Limuru, Hon. Mwathi Mungai.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Report. From the onset, I would like to say that I am a member of this Committee. In most of those events that are said to be in question, like public participation, I attended a few of them. Let me say that the need for the country to be secured cannot be gainsaid. The fact that the military needs to modernise and to be able to synchronise with what is happening in the world in terms of security of a country is critical. That is what led and informed the Ministry of Defence when they found that the bases that they had did not have as rapid response as they would like given the new technological advancements that have been experienced even in other countries. That is why they said, especially on the southern side, that it was necessary for us to have a secure base to secure our country from any aggression or invasion. Same as is happening on the northern side.

I say this knowing that Kenya has been going through various tribulations in terms of invasion and some aggression. We are just experiencing a maritime dispute, which has come

before the Committee and every Kenyan is seized of the matter. If you go to the west, we have the Migingo Island dispute, which is also happening along the Elemi triangle. That is why we are trying to secure ourselves from the northern side at Lodwar. So the fact that people live in this nation and they should live in peace must also go hand in hand with the security that they require to live in peace. If this work is going to be done for the utmost good of every Kenyan, then it is not painful for us to give way for our security forces to be able to secure us.

What happened is that the military did an aerial survey in 1987, even as confided to us by the area Member of Parliament who appeared before the Committee. I would like to quote what the area Member of Parliament, Hon. Gabriel K. ole Tongoyo, said. It is in the report.

*(Hon. Onyango Oyoo spoke off record)*

Well, if you want to call an honourable Member of this House an MCA, it is up to you. He is your colleague. It is very wrong. I am addressing the Chair.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): Hon. Oyoo Onyango, you are out of order! I can hear you from where I am. Please consult in low tones and have some decorum in addressing Members. Hon. Mwathi, carry on.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Speaker, thank you for the protection. The Member says that in 1987, Ololtoto was gazetted as the most ideal for use by the KDF. However, the area has been subdivided and is private land. So, even as we are speaking of a fragile ecosystem, our visit there, and if you look at the copy of the Kenya Gazette which is attached herewith....

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): The Member for Limuru, Hon. Mwathi Mungai, there is a point of order from the Member for Narok County.

**Hon. (Ms.) Soipan Tuya** (Narok CWR, JP): Hon. Temporary Deputy Speaker, I am on a point of order. I want a clarification from the Chair of the Departmental Committee on Defence. The land that you are talking about as having been stated by the Member for Narok West is Ololtoto, which is in Narok North Constituency while the subject land for acquisition for the military purpose is in Narok South. Let us set the record straight. The land that is said to have been acquired is a totally different piece of land from the one we are talking about.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): The Member for Limuru, you are the one on record as mentioning that piece of land. Can you clarify unless you want your Chair to help you?

**Hon. Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Speaker, the Member wants a clarification from the Chair of the committee. I am reading the Report as it is written.

**The Temporary Deputy Speaker** (Hon. Jessica Mbalu): Hon. Chair, do you want to clarify that?

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you. Procedurally, she should have sought clarification from the Member who was on the Floor. But you have given me the chance. What the Member for Narok West told the Committee is that, initially in 1987, there was an area

which was marked for this military camp. Later on, it was subdivided into private land, so it is no longer there. That is why they are now moving to another place. I was the one chairing the Committee when he said that the area being earmarked now is the one which was gazetted. He said previously it was another place.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, this was brought by the Hon. Member for Limuru. Please carry on.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. The debate should be carried out in a sober manner so that we are all seized of the facts. From the facts we can decide whether we want our military to protect us or we pull them out.

I was on the issue of fragile ecosystems. When we visited the site, we found that all this land has been subdivided into individual parcels. In fact, if you look at the Report, it says that 570 acres are adequate for Phase 1 to set the initial base. However, those who hold the land from where we can get 570 acres have such land that is bigger than 570 acres. So, most of them said that they cannot divide their parcel to sell that which is required by the Ministry of Defence unless the Ministry takes the whole of it otherwise they would not be willing to release the half. That is why it increased from 570 to 876 acres which has been bought on a willing buyer willing seller basis.

So, as we speak, the land has been acquired and the military is there. We went to the ground and found people. They came and we sat at the altitude which the Ministry of Defence had chosen and they agreed. In fact those who had not been compensated at that time were saying we were taking them for granted. They wanted to be paid their money so that they could settle elsewhere.

When we talk about the issue of the NEMA, the Report is here. It was done in February this year. It says the project has been given a go ahead subject to the conditions which they were to fulfil. These conditions have been fulfilled and the military has already relocated to that place. So, it is good to have those facts so that even as we debate, Members know exactly what we are saying.

Hon. Temporary Deputy Speaker, I also want to mention the issue of invitation of the leadership not once or twice. The Narok North Member of Parliament, who was opposing, came to the Committee. On the day that we went for public participation, we invited him and all the others to come with us. It is only the area Member of Parliament who came, and he had no problem. We had enough capacity to carry all those who would have wished to go. So, if they were not willing to come, what else would we have done? The Chair wants to clarify something.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Your time is over, Hon. Mungai. Hon. Member for Narok, there is nothing like being disturbed. Let me give him one minute.

**Hon. Peter Mwathi** (Limuru, JP): Let me summarise and thank you for being kind. As part of their contribution, I want to just read what the Narok North Member of Parliament said and then sit down:

“As a community, they are not objecting to the acquisition of the earmarked 876 acres parcel of land and setting up of the military camp but should the Ministry of Defence wish to expand their foot prints, they should get approval of Parliament before they acquire more land.”

That is what he said. I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let us have the Member for Samburu West, Hon. Lesuuda Naisula.



**Hon. Jared Okelo** (Nyando, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Nyando, what is your point of order?

**Hon. Jared Okelo** (Nyando, ODM): Hon. Temporary Deputy Speaker, I seem to be losing trajectory and the flow of thought on this conversation. Listening to my brothers from this Committee speak, I do not know whether they are defending their Report, or they are defending the land under question; or they are defending the military which is a legal entity that can sue and can be sued. Can they clarify because the three musketeers seem to be lost in the whole discussion?

I thank you Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, the Member for Nyando, do you have the Report?

**Hon. Jared Okelo** (Nyando, ODM): I do.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): What we are debating here is the Report and nothing else. Let us have the Member for Samburu West.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Thank you, Hon. Temporary Deputy Speaker. Listening to Members contributing especially those from the said county and those of the Committee, there seems to be some unresolved issues on the acquisition of this land.

Members of Parliament are also representatives of the people and having looked through the Report, the Committee Members have said that they did public participation. What is not clear is whether the military itself did public participation on the ground as an agency that is interested in that land. That is not clear. There should have been an attachment of the public participation and not just the Committee going to find out. We should have seen the military doing public participation with the community before going to acquire that land. That is not here in the Report, it is not attached and it is not tabled in this House.

Secondly, the two recommendations say that the Ministry of Defence should carry out due diligence on the ownership of the proposed land. My thinking is that the Committee ought to have recommended that the process be stalled until the ownership of the land has been justified by the Ministry itself, but we do not know if the process is continuing as they find out about the ownership of the land. The second point says that in the event of future expansions and other related projects, the Ministry of Defence should carry out due diligence again. I thought you do due diligence before going there and doing all these other things. I thought due diligence should have been done first so that this Committee should have been telling us whether due diligence was done or not.

I am speaking this way because my county is one that is largely occupied by military bases in this country. We have them in Samburu East, Samburu West and Samburu North. We have seen a scenario like this in my constituency where the former municipal council in the 1980's gave out land to the military. The military used it for some time and never went back to do anything on that piece of land, and yet it was very close to Maralal Town. After sometime they left, there was encroachment on that land and people have lived on those two parcels of land.

For a long time, the community has been trying to give the military another piece of land away from them so that they can own that land. Interestingly, we followed the whole process and went to the National Land Commission together with the military and the place we wanted to give them is where we have been having issues of castle rustling at the Suguta Valley. We told

them to move away from the town and go where the military is needed so that it can act as a deterrent to some of these issues.

It was interesting because the military told us they cannot go there because it is inhabitable and inaccessible. If the military cannot access those places, how do we expect the people of Samburu and even other communities to access them? They should go there and open up that area. We are ready to give them as much land in that area so that they can open it up and reduce some of the vices challenging us with regard to matters security.

I cannot belabor the issue of the ecosystem. Talking about Masaai Mara we have a game reserve there and the environmental impact assessment is not something to be taken lightly. We all know that we rely on it as a nation since it is a very useful resource. Although, we cannot say we do not need this facility because matters security is important, but communities should be respected and due diligence done before we get to the level, we are in.

Therefore, with all those reasons I just want to mention that in Samburu East we have seen many children maimed every other time by bombs carelessly left behind and unattended which cause loss of lives. Therefore, we should think clearly if we have exhausted areas already adjudicated and if they are in use. Finally, we need to think about the whole aspect of our country regarding the issue of public spaces and land. I am sure if we thoroughly looked into this issue we cannot miss some public land somewhere in this country so that we can leave communities alone especially in areas with contention.

Thank you, Hon. Temporary Deputy Speaker.

**Hon. Benjamin Washiali** (Mumias East, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The nominated Member, Hon. Sahal Ibrahim. Hon. Washiali, are you on an intervention?

**Hon. (Ms.) Nasri Ibrahim** (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute. As you know in this country...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Sahal, just a moment for an intervention. Yes, Member for Mumias East.

**Hon. Benjamin Washiali** (Mumias East, JP): On a point of order, Hon. Temporary Deputy Speaker. Without appearing as if I am trying to interfere with the Member on the Floor, I have been following the debate on this Motion for quite some time. Even when I was in my office, I was following it on television. I am sure my colleagues, even though they have been given an opportunity to speak, are repeating themselves. So, I am requesting you to call upon the Mover to reply and then move to the next Order. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You are on which Standing Order?

**Hon. Benjamin Washiali** (Mumias East, JP): Under Standing Order No.95.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Before I move to prosecute your point of order, I had already given the nominated Member a chance so let her carry on. Hon. Sahal, just carry on.

**Hon. (Ms.) Nasri Ibrahim** (Nominated, FORD-K): Thank you, Hon. Temporary Deputy Speaker. As we know, we have many issues because of terrorism in Kenya. So, it is high time we supported our defence forces. It is the responsibility of our Government to protect its citizen. So, it is against this background that the Ministry of Defence embarked on the Kenya Air Force modernisation programme in the Financial Year 2013/2014.

This will enable our forces to effectively monitor and react to air space threats. As a strategy to protect all our borders, the FOB established in Narok County will also serve the whole of western region. As a strategy to deal with the security threat, it is also proposed that FOBs be established in Wajir, northern region, Mariakani, southern region, Narok and eastern region to support the existing ones. I want to thank the Committee for their recommendations.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members I want to prosecute the point of order by the Member for Mumias East because he is quite in order since he stood under Standing Order No.95 which is procedure on closure of debate. Therefore, I move to put the Question.

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

Order! Hon. Oyoo, Order! Member for Muhoroni, you are out of order. Hon. Members, I am not in a position to put the Question since the House is not properly constituted.

*(Hon. Onyango Oyoo stood in his place)*

Hon. Member, resume your seat. The Member for Muhoroni is out of order. I was upstanding because I wanted to deal with him. Hon. Members because you are in order, allow me to call upon the Mover to reply as passed.

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you, Hon. Temporary Deputy Speaker. The problem is the Standing Orders, unless with the permission of the Speaker. Hon. Temporary Deputy Speaker, can you allow me to donate two minutes to the Member for Muhoroni?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Chairperson, we have procedures of the House and I am guided by them. Since debate was prematurely concluded, we are not in a position to donate time.

**Hon. Katoo ole Metito** (Kajiado South, JP): That is why I am saying the problem is with the Standing Orders.

I want to thank the Members who have contributed to this Motion. I want to make one clarification for Members to make an informed decision when the day for putting the Question comes. We are not talking about community land. The Report is seeking an approval for only the 876 acres which are privately owned. The recommendation we made and I want to appreciate the contribution by the Member for Samburu West is we need this military camp for our security but we must be in cognisance of the community interests. That is why we are only talking about the 876 acres which are privately owned. Members of this House from Narok County appeared before the Committee and specifically two of them from Narok West and Narok North. They said, and this is in the Report, that they had no problem with the 876 acres which are privately owned, but the problem is the surrounding community land.

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

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Soipan Tuya) took the Chair]*

They even made it very clear that the ownership of the surrounding parcels of land is disputed. That is why we put in the Report that, should the Ministry of Defence want to expand their footprint, they should do due diligence. We actually used the words of the Member for Narok North. In future, if they need anything outside the 876 acres, due diligence must be done and approval of this House must be sought because the ownership of those neighbouring parcels is disputed. We are seeking an okay for only 876 acres and nothing more. Actually, the military wanted 570 acres only for Phase I. The parcel of land they found, which is privately owned by one individual, is 876 acres. The owner said: "I cannot sell half. If you need, take it all." That is why it moved from 570 to 876.

There is also the issue of the National Environment Management Act (NEMA) certificate for environmental impact assessment. When officers from NEMA appeared before the Committee around October last year, they had not done the environmental impact assessment. We told them we could not continue until they did it. So, they asked for more time and they did it in February this year and the Report was tabled in April. What appears in the Report as the environmental impact assessment not having been done is a position that was captured in our progress report as at the end of last year. It was done in February this year. The certificate is attached in the Report which was concluded in April.

Therefore, I assure Members that security is very important. There are some things we are not going to say here for security reasons but there are reasons why Narok was found to be the ideal position. I do not want to say in public but I said when I was moving the Report. Narok, Lodwar and Mariakani are the areas that the Ministry of Defence has identified for purposes of installing radars if they get funding from this House. Of course, they have reasons. This is radar. It is just the Safaricom booster. I was telling one Member, at times when we invite Safaricom or Airtel to put those masts or boosters, you may want them to put it in this location, but when they go on the ground, they say the coordinates for signals is not there. It is the same case with the radars of Kenya Air Force. We may want a certain location, but when they do their own technical setup, the coordinates may not add up. It moves to another place. That is why they identified this parcel as the best to put the mast we are calling radar and then they will be able to monitor our airspace. If you give them money in the subsequent financial years, they will do the same in Lodwar and Mariakani and then the airspace of the country will be well monitored.

I plead with this House to approve the 876 acres. That is what the Report is saying. If they want the rest, they must seek parliamentary approval. They must do due diligence to ensure that the ownership of the land is not disputed. However, at least for this parcel, it is not disputed.

I beg to reply, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Very well, Chair of Departmental Committee on Defence and Foreign Relations. Order, Hon. Members! Why are Members shouting across the aisle? Member for Limuru and company let us have some order. You cannot shout across at the Whip of the Majority Party. You can always consult in a good environment and not in a combative manner.

Hon. Members, we shall defer putting of the Question on this Motion until such other time as it will come up before the House. We shall move to the next Order.

*(Putting of the Question deferred)*

RATIFICATION OF AGREEMENT FOR ESTABLISHMENT OF  
REGIONAL MARITIME INFORMATION EXCHANGE

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Dido. There is delegation of duties.

**Hon. Ali Rasso** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I think we will revisit the Narok issue at a later date.

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

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement for the Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and the Regional Agreement on the Coordination of operations at Sea in the Western Indian Ocean, laid on the Table of the House on Wednesday, 26<sup>th</sup> June 2019, and pursuant to section 8 of the Treaty Making and Ratification Act, 2012 approves the Ratification of the Agreement for the Setting Up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and the Regional Agreement on the Coordination of operations at Sea in the Western Indian Ocean.

Hon. Temporary Deputy Speaker, for us Kenyans, the Indian Ocean is really an important maritime area and a road of networks into coastal Kenya. This is where our shipping lines are. It is, therefore, strategic for us that we are part of an Indian Ocean arrangement. In this Report, I am moving two agreements. The first one is setting up of a regional maritime information exchange. The second one is about the maritime operations centre. The Indian Ocean is strategically very important for Kenya because Kenya is the gateway to this region. Taking interest in the Indian Ocean is important for maritime surveillance, passage of international maritime vessels and for ferrying of cargo within this maritime space.

I will first talk about the regional maritime information exchange and sharing mechanism in the Indian Ocean region. These agreements have actually been signed by Kenya, France, Seychelles, Djibouti, Morocco and Madagascar. Kenya signed on 26<sup>th</sup> February 2019 to be part of this arrangement. The first Agreement is composed of 23 Articles. I want to, briefly, go through a few of the very important Articles. Although I consider all the 22 Articles important, but because of time constraints, I will look at Article 3 which talks about the objectives of the Agreement.

The Agreement seeks to lay the basis for a regional cooperation framework among the state parties to enhance maritime safety and security. Specifically, it seeks to improve each party's knowledge of its maritime situation; inform speedy operational responses to threats; allow state parties to master the knowledge and technology of among others, maritime information and fusion; and promote the culture of maritime information sharing.

Article 4 talks about the scope of the Agreement and what it covers. It does not govern warships or state vessels that are not exercising commercial activities. In this particular case, when Kenyan warships are transiting through the region that has been agreed on by the state parties of the maritime zone, it means they are not under any obligation to be constrained by this particular Agreement.

Article 5 establishes the Regional Maritime Information Fusion Centre. This is about setting up a command post or an information exchange. The Centre is mandated to receive, store,

process, merge, share and exchange maritime information for the purpose of maritime security, safety of harbour and maritime approaches, protection of the maritime environment and monitoring of maritime traffic. Each party to the Agreement is to designate a liaison officer within the Centre and all parties are to consider the financing of the Centre. One single important assignment that we as Kenyans have in terms of manning this Centre is to second a liaison officer of the rank of a lieutenant-colonel to represent Kenya in this Centre 24/7. Also, in terms of running the Centre, Kenya will pick up part of the bill to ensure that it runs effectively and efficiently.

Article 6 outlines the responsibilities of the parties.

Article 7 outlines the responsibilities of the host state. In the maritime information exchange, the host country will be Madagascar. That country will be responsible for the independence and funding of this Centre. The Centre is enabled to discharge its duties without being constrained by the local or customary laws of that country and also state parties will have access to this Centre without any hindrance.

Article 9 talks about modalities of access to shared maritime information and data. In this particular case, this is about the importance of sharing information that goes to third parties and the security of information that is transmitted from one country to the other and also from one country to the Exchange Centre.

Article 10 talks about procedures relating to the exchange and sharing of information either electronically, verbally or in writing. This information will be responded to by the receiving countries just as it was transmitted from the Centre. More importantly, it is about securing this information under encryption. You will note that this is military information about movement of certain vessels that are suspected to be carrying contraband or dangerous goods or are suspected to have been hijacked. That is why this information must be encrypted as it is transmitted.

Article 11 is about information and data protection measures. It is about how you pass information from one state party to the other; information to third party recipients and also confidentiality of information that state parties must subscribe to.

Article 12 is on the matter of judicial purposes. Information shared under the Agreement may only be provided for use in judicial proceedings with the concept of the sharing party unlimited to the information that is required. In this particular case, information that is gathered from the Fusion Centre or from state parties can be used in a court of law through sharing this information by agents from either of the state parties to this Agreement.

Article 14 is about the procedure of amendment of the Agreement. The Agreement amendment may be proposed in writing and will be deposited with the Indian Ocean Commission which is a major and standing commission within the region. Any amendment comes into force 30 days after it has been deposited.

Also, in this Agreement, state parties can have reservations with regard to any of the articles. There is also room for settlement of disputes under the Agreement through consultations and diplomatic channels. Also, as state parties sign this Agreement which in this particular case also happened when the Cabinet Secretary for Defence of Kenya was signing this Agreement, the caveat is that the Agreement must be agreed upon and approved by the Cabinet and subsequent ratification by the National Assembly, and is also subject to the Treaty Making And Ratification Act of Kenya, 2012.

There is room within the articles about withdrawal. Article 20 is about the organisational structure of these regional coordination mechanisms. In this, the important input is a steering

committee which is the body that manages this particular institution. It is only the chairmanship of the steering committee that is rotational with the exclusion of the representatives of Madagascar which is the host country. The steering committee is expected to provide strategic leadership to the institution.

Hon. Temporary Deputy Speaker, Article 22 of the Agreement provides the entry into force of this Agreement by signing by the member countries which have agreed to be state parties to this Agreement. This Agreement was signed at Balaclava, Mauritius on 29<sup>th</sup> April 2018 by the representatives from Comoros, Djibouti, Madagascar, Mauritius and Seychelles. It is important to note that two of our neighbouring countries within the region that also sit on the Indian Ocean realm, Somalia and Tanzania, are not part of this Agreement. Kenya and France signed the agreement in Nairobi on 26<sup>th</sup> November 2018. The Cabinet Secretary for Defence signed the Agreement on behalf of the Government of Kenya, subject to approval by the Cabinet and ratification by the National Assembly. This regional Agreement is really important, particularly in the area of information sharing.

Hon. Temporary Deputy Speaker, I will now quickly progress to the second agreement which is the Regional Agreement on the Coordination of Operations at Sea in the Western Indian Ocean and the Explanatory Memorandum. The difference between the first agreement and the second one is that the first agreement is about information and exchange of data but the second one is about coordination of operation at sea.

This Agreement also consists of 22 articles. Largely, they generally reflect the same sort of parameters as laid down in the first agreement in terms of the objectives, facilitation, scope of the agreement and regional coordination. So, the important things which I would really want to spill out here is that all parties under the operational agreement undertake to fight piracy and organised crime, assist in the exercise of the state prerogatives with regard to vessels, participate in the search and rescue of humans at sea, protect the maritime environment, restore safety of navigation at sea, protect underwater sites and help in the event of disasters. Largely, this is within the scope of what our navy does as a maritime force at the sea. This is also where we see that we have a coast guard now. How closely do they relate and cooperate when they are not in the blue waters that have the maritime force but in the brown waters? That is in the 12 nautical miles where the coast guard operates.

There is also Article 7 of the Agreement that outlines coordinated operation of regional interest. Article 8 of the Agreement is on the actions that may be taken at the national level relating to suspicious vessels. Article 10 of the Agreement outlines boarding and such guidelines of vessels in the high sea. Only authorised team of state parties are allowed to carry out boarding and searches. However, visiting teams which may carry weapons may on a case by case basis operate in accordance with the modalities that are to be agreed between the state parties. On this particular one, the United Nations (UN) Law of the Sea allows free passage of international maritime traffic without any interference. Under these circumstances, if the state parties want to intercept a vessel then clearly, they have agreed that they must have modalities on how country maritime forces can board such vessels so that they do not interfere with that routine flow of traffic.

There are also modalities, jurisdiction and mutual legal assistance in the Agreement. This is the legal assistance which is offered by state parties in case a vessel is intercepted carrying contraband or dangerous goods so that they can appear before court. There is also the issue of vessels beyond territorial waters of any state. This is about respect to the territorial borders of friendly countries. This Agreement was also signed in Balaclava, Mauritius on 29<sup>th</sup> April 2018

by representatives of Comoros, Djibouti, Madagascar, Mauritius and Seychelles. Both Kenya and France signed the Agreement on 26<sup>th</sup> November 2018, subject to ratification by the National Assembly. There is also the financial implication. The host countries, Seychelles and Madagascar, are required to cater for the expenses of the two centres. Kenya's express contribution to the Agreement is delegation at its cost of a liaison officer to the Centre.

The following are the observations by the Committee. There is the procedure for approval of a treaty as stipulated in Treaty Making and Ratification Act, 2012. The implementation of the provision in the Agreement will enable Kenya foster regional cooperation in order to enhance maritime safety and security. The operationalisation of both the Operational Agreement and the Information Agreement require the cooperating state to each attach liaison officers to the Centre. The European Union (EU) through the Indian Ocean Commission has made provision for an initial funding amounting to Euros5million to support coordination of cooperation.

Finally, the Committee recommends that pursuant to Section 8 of the Treaty Making and Ratification Act of 2012, the House approves the ratification of the Agreement for Setting up of a Regional Maritime Information Exchange and Sharing Mechanism in the Western Indian Ocean Region and Explanatory Memorandum and Regional Agreement on the Coordination of the Operation at Sea in the Western Indian Ocean and the Explanatory Memorandum.

With those remarks, I beg to ask Hon. Charles Kilonzo to second. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Kilonzo.

**Hon. Charles Kilonzo** (Yatta, Independent): Hon. Temporary Deputy Speaker, I second the Motion.

At the outset, I want to say that the Motion is long overdue. If we recall, at the height of piracy, this country faced a lot of challenges and so did the neighbouring states. Some of the challenges still exist. Some of them include; piracy, terrorism, illegal fishing, illegal exploration and drug trafficking. The member states faced all these challenges and none had any means of cooperating with a neighbour. So, these two Agreements present an opportunity and we need to move very fast as a Parliament and do our job of ratifying them.

Allow me to talk about the first one on Regional Maritime Information Exchange and Sharing Mechanism in the Indian Ocean. Before, there was no sharing of information. In Article 3, the Agreement seeks to lay the basis for regional cooperation framework among state parties to enhance maritime safety and security. Specifically, it seeks to improve each party's knowledge of its maritime situation, inform speedy operations to speedy responses to threats and to allow state parties to master the knowledge and technology among others. It also improves maritime information fusion and promotes the culture of maritime information sharing. This is something which was not in existence. It is very important that if we are going to fight the challenges I mentioned earlier, we share information.

As it was earlier stated under Article 4, the Agreement does not govern warships or state vessels that are not exercising commercial activities that are in transit. So, parties are at liberty to choose which information to share when it comes to that aspect, but all parties have agreed to increase the sources and quantity of information given to the Centre and to observe agreed confidentiality and integrity requirements attached to the information shared. It has also been stated that the host country is Madagascar.

Of importance, we all remember when we tried pirates at the height of piracy off the shoreline of Somalia. We had a memorandum of understanding where pirates arrested by the international naval forces were tried and jailed in Kenya. One of the biggest challenges then was



that there was not enough exchange of maritime information from member states within that area. Most of them were arrested off the shores of different countries. This Agreement gives us an opportunity under Article 12. It governs the shared maritime information for judicial purposes. Information shared under this Agreement may only be provided for use for judicial proceedings with the consent of the sharing party and limited to the information required. If we are going to fight piracy through judicial purposes, we have to make sure that we have information which is available and can be shared from other member states.

Allow me to refer to the other Agreement, the Regional Agreement on the Coordination of Operations at Sea in Western Indian Ocean and the Explanatory Memorandum. The difference between the two Agreements is that one is sharing information and the other is the operations after sharing the information. For example, we might have our navy operating within a region where members have signed agreement. We need agreement on the guidelines, regulations and rules of operations.

There is a very interesting article which is very important and I want to quote it. Article 4 says that all parties to cooperate in the fight against visible threats listed in Article 6 which include, among others, piracy. It also says that all parties are to provide assistance to regional coordinated cooperation at the sea in terms of material, human and legal means, and for *ad hoc* mutual assistance, facilitate clearance procedures, encourage efficient...

The whole idea is that some of the neighbouring countries are very small and may not have the resources to operate in the sea so the stronger brothers in the Agreement will assist them. Article 6 is very specific on fighting piracy. All parties in the Agreement undertake to fight piracy and organised crime which is one of the biggest threats. Organised crime and drug traffickers, because of lack of agreements of this nature, have been having a field day. All they need to do when you are pursuing a suspicious vessel, when you exit your territorial boundary, you cannot pursue it. This Agreement allows that under Article 12 and underlines the manner in which state parties are to treat other vessels beyond territorial waters of any state. This Agreement will allow us if we are pursuing traffic traffickers to do so even in territorial waters of other countries who are party members. This is something that was totally impossible before.

To finish, one of the biggest benefits in the Agreement, in the last page is that the European Union through the Indian Ocean Commission has made provisions for initial funding amounting to 5 million Euros to support coordination of cooperating states' actions at the sea. The EU has committed to fund the operation made under the programme up to 2022. So, this comes with a benefit. Immediately we ratify this Agreement as Parliament, then the benefits will be financial. We will be funded. It will not be taxpayers' money to be used but there will be assistance from the EU.

With those remarks, I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, it is inevitable that we defer the initiation of debate for the Motion until the next time it comes up in the Order Paper because we have run out of time.

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, the time being 6.59 p.m. the House stands adjourned until Thursday, 25<sup>th</sup> July 2019, at 2.30 p.m.

The House rose at 6.59 p.m.