

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 17<sup>th</sup> October, 2019**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****COMMUNICATIONS FROM THE CHAIR**

**Hon. Speaker:** Order, Member for Ndaragwa! I want the Members who are making their way in to take their seats. Hon. Members, I have two Communications. One is a fairly short one.

**WITHDRAWAL OF THE STATUTORY INSTRUMENTS (AMENDMENT) BILL**

Hon. Members, as you may recall, the Statutory Instruments (Amendment) Bill (National Assembly Bill No.13 of 2019) was published vide Kenya Gazette Notice No.21 of 15<sup>th</sup> March 2019. The Bill sponsored by the Member for Kangema, Hon. Muturi Kigano, proposes to amend the Statutory Instruments Act of 2013. The section he proposed to delete exempts rules and regulations made by courts of competent jurisdictions from being referred to the relevant Committee for review and scrutiny upon being tabled in the respective Houses of Parliament. The Bill was read for the first time on 3<sup>rd</sup> April 2019, and committed to the Committee on Delegated Legislation for consideration.

I wish to inform the House that I have since received a letter dated 14<sup>th</sup> October from the sponsor of the Bill, the Member for Kangema, Hon. Muturi Kigano, requesting to withdraw the same Bill. In seeking to withdraw the Bill, the Member states:

“The matters sought to be included and to fall under the Statutory Instruments Act are purely executive in character and are solely administrative.”

Standing Order No.140(1) provides:

“Either before the commencement of business on the Order of the Day for any stage of the Bill being read, the Member in charge of a Bill may, without notice, claim to withdraw a Bill.”

Standing Order No.140 (2) provides: “If the Speaker is of the opinion that the claim is not an abuse of the proceedings of the House, the Speaker shall direct that the Bill shall be withdrawn.”

In this regard and pursuant to the provisions of the said Standing Order, I direct that the Bill be withdrawn from the House business forthwith for the reasons given by the Mover.

The Members making their way in, please, do it quickly. Those coming in, please, do so. The other Communication will take slightly longer than that. There are those who have already served their purpose for today’s Sitting and are making their way out. There are some who are withdrawing. Those who are coming in, please, do so quickly.

#### CHIEF ADMINISTRATIVE SECRETARIES ELIGIBILITY TO ANSWER QUESTIONS IN THE NATIONAL ASSEMBLY

**Hon. Speaker:** Hon. Members, this Communication relates to the issue of the accountability of the Executive to Parliament and the place of the Chief Administrative Secretaries in responding to Questions in the National Assembly.

You will recall that on Tuesday, 8<sup>th</sup> October, 2019, during the Statement Hour, Hon. Didmus Barasa, the Member for Kimilili, rose in his place on a point of order seeking the direction of the Chair on the admissibility of answers to Parliamentary Questions from the Executive given by the Chief Administrative Secretary.

For clarity, the Member for Kimilili stated as follows in part:

“...today morning, I appeared before the Departmental Committee on Health to get a reply to a Question I had asked. I refused the reply because it was coming from a Chief Administrative Secretary, a person who is not in the Constitution!”

According to the Member for Kimilili, a Chief Administrative Secretary, popularly known as CAS, is unknown to both the Constitution and the Standing Orders of this House. By this argument, the Member for Kimilili was advancing that accountability of the Executive to Parliament, particularly with respect to answering any questions relating to matters under the jurisdiction of any of the line ministries, could only be enforced if appearances before the committees of the House is restricted to the responsible Cabinet Secretaries and Principal Secretaries.

The issue raised by the Member attracted immense interest from other Members who sought to canvass on the matter. I was inclined to permit a few of you to ventilate on the matter. This included the Leader of the Majority Party, the Leader of the Minority Party, the Minority Whip, Hon. William Cheptumo, Hon. David Ochieng, Hon. Kimani Ichung’wah, Hon. (Prof.) Jacqueline Oduol, Hon. Amos Kimunya, Hon. Katoo ole Metito, Hon. David ole Sankok, Hon. Martin Owino and Hon. David Pkosing.

Having considered the various views of the Members who spoke on the matter, I undertook to give a comprehensive direction on the matter and also guide the House on the way forward. In this regard, I have isolated the following two issues as requiring my determination:

(i) Whether accountability of the Executive to the National Assembly with regard to responding to any questions before a committee of the House in terms of Article 153(3) of the Constitution and Part IXA of the Standing Orders is an exclusive function of Cabinet Secretaries or may be delegated to Chief Administrative Secretaries or other officials in line ministries; and,

(ii) whether the establishment of the offices of Chief Administrative Secretaries and subsequent appointment of holders of those offices offend the Constitution or in any way affects the transaction of business of the House in our committees.

Before I guide the House on those questions, it is important to appreciate that these questions are arising in a phase of governance different from which preceded the promulgation of the Constitution of Kenya on 27<sup>th</sup> August 2010. As you may be aware, the constitutional dispensation birthed in 2010 was a shift in the architecture of governance and the nature of the operations of the Legislature and its relationship with the other two arms of Government. This shift especially affected the composition and relationship between the Legislature and the Executive, as for the first time in the country's history, no Member of the Executive partakes in the affairs of either House of Parliament through membership to Parliament.

As the "Father of the House", Hon. Jimmy Angwenyi, who was also a Member of the 8<sup>th</sup> and 9<sup>th</sup> Parliaments, and other ranking Members of this House who served in the 10<sup>th</sup> and preceding Parliaments would attest, the presence of the Executive in the Legislature was a unique hallmark of accountability in Parliaments preceding the promulgation of the new Constitution. Article 95 (2) of the current Constitution provides:

"The National Assembly deliberates on and resolves issues of concern to the people." Under this Article, the House is mandated to hold the Executive to account. Among other avenues, this oversight role ordinarily relies on questions raised by Members, both in their individual and representative capacities, as well as on the basis of matters arising from undertakings and assurances made by the Executive to the House.

Across Parliaments, Parliamentary Questions enable Parliament to access relevant, timely and actionable answers or information from the Executive to enable it to effectively discharge its mandate. Question Time under the previous dispensation was an active process on the Floor of the House, where both the questioners and the responsible ministers were present in the House and supplementary questions could be raised and either be answered promptly or appropriate assurances and undertakings made during that sitting.

Question Time was not only popular to Members but also to the general citizenry, who could watch and hear as their representatives put their Government to task over issues of concern to them and receive prompt pertinent responses and undertakings on the record. This changed at the commencement of the 11<sup>th</sup> Parliament, the first under the new constitutional dispensation. The introduction of a presidential system of governance in which members of the Cabinet are no longer Members of Parliament resulted into the absence of the representatives of the Executive in the Houses of Parliament, and, therefore, effectively crippling the idea behind Question Time.

As a result, various attempts to revitalise Question Time under the new constitutional dispensation were made by the 11<sup>th</sup> and this 12<sup>th</sup> Parliaments, culminating in the insertion of Part IX of the National Assembly Standing Orders relating to Questions. Those of you who served in

the 11<sup>th</sup> Parliament would recall that the first attempt was a temporary substitution of Question Time with “Statements” directed to Chairpersons of relevant Committees for a response, as a way of attempting to align the new constitutional dispensation with the processes of Parliament and, more particularly, in receiving answers to Questions. In this new arrangement, Questions asked by Members were responded to in writing by the relevant Cabinet Secretaries and the responses would be read out on the Floor of the House by the Chairpersons of the relevant departmental committees. Unfortunately, supplementary questions would never receive any responses or even adequate responses from the Chairpersons since they were not the authors of the statements that they read out.

Whereas this arrangement worked with difficulties in the interim, it will be recalled that chairpersons of committees faced challenges as they could not comprehensively speak or make undertakings on behalf of the Executive, which they are constitutionally expected to oversee. In 2014, upon recommendations of the Procedure and House Rules Committee, the House considered the provisions of Article 153 of the Constitution which provides for the decisions, responsibility and accountability of the Cabinet with a view to engendering proper accountability by the Executive to Parliament.

For avoidance of doubt and for clarity, Article 153(3) and (4) of the Constitution provides:

“(1) A Cabinet Secretary shall attend before a Committee of the National Assembly, or the Senate, when required by the Committee, and answer any question concerning a matter for which the Cabinet Secretary is responsible.

(2) Cabinet Secretaries shall—

(a) act in accordance with this Constitution; and,

(b) provide Parliament with full and regular reports concerning matters under their control.”

Hon. Members, in another attempt to actualise the requirements of Article 153 of the Constitution and address the challenges faced through the temporary “Statements” procedure, the House yet again amended its Standing Orders to establish a Committee on General Oversight and introduce Cabinet Secretaries Reporting Time. Cabinet Secretaries’ Reporting Time was intended to allow a Cabinet Secretary to make a report to the House on any matter under his or her charge. On the other hand, the Committee on General Oversight was intended to enable the attendance of Cabinet Secretaries before a Committee of the whole House chaired by the Speaker or the Deputy Speaker, to respond to Questions raised by Members and whose notice had been given.

Hon. Members, as you may recall, on the basis of the doctrine of separation of powers and functions among the arms of Government, the arrangement for Cabinet Secretaries to be accountable to Parliament through the Committee on General Oversight was argued to be untenable by a section of the society who perceived the Committee on General Oversight as another sitting of a full House of Parliament. In view of the foregoing, I issued a ruling on 21<sup>st</sup> October 2014 staying the provisions of the Standing Orders relating to the Committee on General Oversight and its operations. In that Communication, I also directed the Procedure and House Rules Committee to spearhead consultations with a view to creating a mechanism providing for

the accountability of the Executive to the House while upholding the doctrine of separation of powers. That ruling, however, did not preclude Cabinet Secretaries from the obligation to appear before Committees of this House and respond to Questions by Members every Tuesday morning.

Consequently, in the 12<sup>th</sup> Parliament, the Procedure and House Rules Committee recommended amendments to the Standing Orders to re-introduce Questions in a manner that is not only consistent with the Constitution, but also able to link the process to the public affected by issues raised in those Questions. The proposals culminated in the introduction of Part IX titled “Questions” in the 4<sup>th</sup> Edition of the National Assembly Standing Orders. Under this Part, a Member now reads his or her Question on the Floor of the House for the Question to be recorded in the Hansard and the responsible Cabinet Secretary is required to appear and respond to the Question before the relevant departmental committee. It is worth noting that under Standing Order 42A(5), the appointment of the date when the Cabinet Secretary responsible for a Question to be responded to will appear before the relevant Committee to answer the Question is done and communicated to the House by the Leader of the Majority Party. I do hope that this background suffices to explain the milestones leading to the subsisting procedure on handling Parliamentary Questions before this House.

Hon. Members, let me now address the first issue for determination, which is whether the accountability of the Executive to the National Assembly with regard to responding to any questions before a committee of the House in terms of Article 153(3) of the Constitution is an exclusive function of Cabinet Secretaries or may be donated to Chief Administrative Secretaries. The central issue of concern to Hon. Didmus Barasa, and, indeed, the House, is a question of accountability of the Executive to the House and the person through which such accountability is to be projected in the House. In addressing this issue, I will re-state the provisions of Article 153(3) of the Constitution as read together with Standing Order 42A(5), which domesticated Article 153(3) in the National Assembly Standing Orders.

Standing Order 42A(5), which gives effect to these provisions, provides as follows:

“42A (5) A member shall ask his or her Question on the day it is scheduled in the Order Paper and the Leader of the Majority Party, at an appointed date, will inform the House of the date and time when a Cabinet Secretary shall be required to appear before a Committee to reply to a Question, subject to paragraph (6).”

Hon. Members, the wording of the stated provisions of the Constitution and the Standing Orders leaves no doubt as to the expectations of the House in terms of who is accountable to the House. In substance, Article 153(3) of the Constitution is couched in mandatory terms that vests direct constitutional obligation on a Cabinet Secretary, with little or no latitude to a Cabinet Secretary delegating that authority with regard to appearing and answering Questions relating to their duties when required to do so by the House. A Cabinet Secretary is, therefore, under obligation to appear before a Committee of Parliament and to answer any Question concerning a matter for which he or she is responsible. Additionally, as provided for in Article 153(4) of the Constitution, a Cabinet Secretary must provide Parliament with full and regular reports concerning matters under his or her control. Here, I note that we have not been receiving any

reports regularly or even otherwise from many of the Cabinet Secretaries, if not all. The House can, therefore, proceed to deal with them in accordance with the Constitution.

I, therefore, agree with the position held by the Hon. Member for Kimilili that the Constitution envisages Cabinet Secretaries as the principal link between the Executive and the legislature. This is borne out of their responsibility to attend Committees of Parliament and regularly report to Parliament on matters that they are responsible for, as well as the fact that this House approves their appointment to various dockets and initiates the process of their removal from office under Article 152 of the Constitution.

Hon. Members, over and above construing the provisions of Article 153(3) and (4) of the Constitution in the context of their substance, there is the second limb to it – that is the process of achieving the intended goals, which process is determined by the House, pursuant to the provisions of Article 124 of the Constitution. That is the Article that gives the House the responsibility to come up with its own rules. This now begs another question for me, which is: Does Article 153(3) and (4) also imply that the obligation by a Cabinet Secretary to provide full and regular reports to Parliament cannot be achieved unless the Cabinet Secretary appears in person before Parliament or its Committees?

In attempting to answer this question for purposes of the business of the House, it is worth noting that other than Cabinet Secretaries, Article 155 of the Constitution establishes the positions of Principal Secretaries tasked with administering State Departments under their dockets. Principal Secretaries are essentially the accounting officers of the Ministries. They offer primary responses to any audit queries under consideration by the Public Accounts Committee in the scrutiny of national expenditure by Parliament. Invariably, responses provided by Cabinet Secretaries on a matter raised by the House rely on information collated by the Principal Secretaries from either their departments or the various agencies falling under such departments. Indeed, and as Members will recollect, a Cabinet Secretary is often accompanied to committee meetings by the relevant Principal Secretary and technical officers drawn from the Ministry and state agencies, who assist the Cabinet Secretary to provide relevant and actionable information to the Committees.

The practice in other Commonwealth parliamentary jurisdictions supports the link between membership of the Cabinet and accountability to Parliament. In the House of Commons of the United Kingdom, only Ministers are allowed to answer Questions on the Floor of the House despite there being Parliamentary Secretaries, who are effectively Assistant Ministers; and Parliamentary Under-Secretaries, who assist them in the discharge of their duties. In the Parliament of New Zealand, in addition to addressing Questions to a Minister, a Member may address a question to an Associate Minister within the limits of any responsibilities formally delegated by a Minister. Additionally, Members of Parliament designated as Parliamentary Under-Secretaries are mandated to respond to a Question on behalf of an absent Minister. However, a question cannot be addressed to a Parliamentary Under-Secretary. The fundamental difference between our Legislature and those two Westminster-style legislatures is that, in our case, the Cabinet comprises of persons who are not Members of Parliament.

Hon. Members, in the case of our legislative setup, the eventual aim of the House is to have responses to Questions made by competent, legitimate and authorised persons in an accurate, timely and authoritative manner so as to assist the House to attempt to resolve issues of concern to the people and discharge its oversight role over the Executive, pursuant to Articles 95 and 153(3) of the Constitution.

In this regard, it ought not to be lost that the ‘Cabinet Secretary’ is an office rather than a person. Hence, it is arguable that an authorised representative of the Cabinet Secretaries (CSs) may, acting on delegated powers, respond to a matter before a Committee, as long as he or she takes full responsibility for the answers and undertakings given by the Executive to the committee of the House.

This is in tandem with the established practice whereby some Questions are responded to through oral replies by the responsible CS appearing in person, some through a written reply signed by the responsible CS and submitted to the committee. Other questions are responded to through oral submissions made by representatives of CSs, who presents the responses signed by the responsible Cabinet Secretary.

Hon. Members, the practice I have just mentioned is a product of this House. Members will note that even though the current text of Standing Orders 42A to 42F envisage a CSs as the person to whom all Questions are addressed and from whom all responses are expected, a review of the Hansard Report during consideration of the amendments to the Standing Orders to re-introduce Questions suggests that Members contended with the fact that, on some occasions, Responses to Questions may be made by persons other than CSs.

While moving the Second Report of the Procedure and House rules Committee on the said amendments, the Deputy Speaker, Hon. Moses Cheboi said:

“I urge the House to adopt these amendments as contained in the Second Report of the Procedure and House Rules Committee. It is my considered opinion that in operationalising these amendments, the House and its committees will need to strike a fair balance with regard to appearance in person of CSs to answer questions in committees. I understand that CSs and Principal Secretaries (PSs) can be very busy. Between PS and CS, the CS can respond to questions. Anybody who is above the rank of PS can appear to answer questions. For example, if the Chief Administrative Secretaries (CASs) are above the rank of PS, they can respond to questions.”

The Deputy Speaker’s position was supported by the Majority Party Whip, the Hon. Benjamin Washiali who, while contributing to the debate, stated as follows:

“To me, the question of CSs being too busy to attend to questions is neither here nor there because, with the introduction of the CASs, when CSs are busy dealing with other issues of development, the CASs can stand in for them so that the aspect of answering questions is not deferred.”

Hon. Members, despite this particular observation not being included in the text of the Standing Orders, it currently guides the procedure of committees with regard to the consideration of Questions. Further, from the Report of the Committee and the debate that ensued in the House during the adoption of Standing Order No.42 (a)(b)(c)(d)(e) and (f), there is no doubt that the

House intended to permit CASs to also appear before Committees to respond to questions on behalf of the Cabinet Secretaries.

Hon. Members, having said that, you may agree with me that to hold CSs as the only persons who may engage with or appear before Parliament or its Committees will create unnecessary impediment to the conduct of the business of the House. The House has established Committees in which majority of its work is now conducted. The fact that an increasing amount of work is committed to Committees whose operations run concurrently has created a need for constant interaction with the Executive. The duty to attend and answer questions before Committees and to regularly report to Parliament if enforced in the strictest sense of the substance of Article 153, will, therefore, mean that some Committees will have to await the availability of a Cabinet Secretary before considering relevant matters placed before them. The wait could not only be indefinite, if one were to take into account the official duties of the affected Cabinet Secretaries but also, imply that a lot of business would lapse without the requisite reply being provided by the substantive CS.

Hon. Members, the prerogative of Parliament to hold the Executive to account ought to be exercised in a manner that enables it to effectively discharge its mandate as given by the people. I am cognizant of the fact that vide Executive Order No.1 of 2018 on the Organization of Government, the President communicated to Parliament the manner in which he had decided to re-organize his Government. The Executive Order, additionally, identified the principal persons charged with the overall direction of the various ministries. Apart from the CS charged with overseeing the various ministries, a key feature was the inclusion of Principal Secretaries and the CASs. As it is now, an Executive Order, under the hand and seal of the President, has communicated to the House that a CAS is one of three ranking officials in the Executive.

Hon. Members, any person to whom the power to govern is entrusted, is subject to constant oversight by this House. As your Speaker, I am obligated to ensure that this House stretches its oversight capabilities to such person(s) to whom the Constitution, statute or lawfully issued orders, such as Executive Order No.1 of 2018 is assigned authority to govern. My opinion is in harmony with that of my predecessor, at the early years of our Independence, Speaker Humphrey Slade, who on 3<sup>rd</sup> July 1963, observed:

“The Chair remains in a unique position to safeguard, in a singular form, the right of Members to bring the Ministers to account and the Executive in general for their actions. Parliamentary Questions, therefore, serve as a true parliamentary mechanism to bring the Executive and, indeed, those who govern to be accountable to those being governed.”

Hon. Members, I am, therefore, of the considered opinion that in holding the Executive to account, the House must take into account its prevailing structure as communicated by the President. In this regard, I am persuaded that, for purposes of facilitating the conduct of business of the House, apart from treating the CS as the officer primarily accountable to Parliament, a room does exist for our committees to permit the conveyance of timely and actionable responses to Questions before Committees through the PS and/or the CAS.



Hon. Members, in summary, without excusing CSs from their constitutional responsibility, the House must, therefore, consider a workable alternative that allows it to obtain relevant, timely and actionable information from Ministries to enable it discharge its mandate. Such information may be presented either by the Cabinet Secretary in person, or in exceptional circumstances and for good reason, presented on his or her behalf by a person of suitable rank expressly mandated to do so in writing. This, in my opinion, should settle the first issue for determination. Therefore, CSs who are not able to attend must, in writing, designate the persons, not below the rank of Principal Secretaries (PSs), the responsibility to represent them before committees

Hon. Members, the second issue that the Member for Kimilili invited the Speaker to guide on is: “Whether the establishment of the Offices of Chief Administrative Secretaries and subsequent appointment of holder of those Offices offends the Constitution or in any way affects the transaction of business of the House in our committees” On this matter, I hasten to draw the attention of the House that, following the creation of the position of Chief Administrative Secretaries, two petitions were filed with the High Court challenging the creation of those positions on constitutional grounds. These are the Nairobi High Court Constitutional Petition No.33 of 2018 as consolidated with Petition No.42 of 2018, Okiya Omtatah Okoiti and Kenya Human Rights Commission vs Speaker of the National Assembly and 74 others. I do not know where those others are.

*(Laughter)*

The petitions are pending full hearing and determination before the High Court. There is also another related matter filed at the Nairobi High Court as Constitutional Petition No. 67 of 2018, Marilyn Muthoni Kamuru & 2 Others v Speaker of the National Assembly and Others, which is also yet to be determined.

I, therefore, find the question of constitutionality or otherwise of the position of Chief Administrative Secretaries to be *sub-judice* in terms of Standing Order 89. In this regard, I decline to render any guidance on that matter, except to observe that, as your Speaker, I have a duty to ensure that the transaction of the business of the House is facilitated as necessary to proceed.

Hon. Members, in summary, I wish to guide the House as follows:

(i) THAT, as a first and cardinal responsibility, pursuant to the provisions of Article 153(3) and (4) of the Constitution, Cabinet Secretaries are expected to and must appear before committees of the House as and when required to do so to answer questions and to examine other matters before committees;

(ii) THAT, at the same time, Chief Administrative Secretaries remain admitted to committees of this House for purposes of transacting the business contemplated under Part IX of the Standing Orders, which is Questions, as long as they are able to commit their respective State departments to the undertakings, commitments and assurances they may have to make in the course of responding to Questions before committees;

(iii) THAT, Committees remain at liberty to determine, on case by case basis, whether it is the Cabinet Secretary or the Chief Administrative Secretary or, indeed, the Principal Secretary who is to appear before the Committee to answer Questions and how often they may do so. This should take into account the weight of the matters contained in the Questions before the Committee. Essentially, a committee should be able to determine the weight of the Question and whether those other people, other than the CS, will be able to respond.

*(Applause)*

(iv) THAT, whenever a Cabinet Secretary authorises a Chief Administrative Secretary to respond to Questions before Committees, the Cabinet Secretary shall take full responsibility of responses transmitted to the National Assembly. In this regard, the written responses ought to be signed by the particular Cabinet Secretary to denote the authorization and taking of responsibility.

Hon. Members, this guidance serves as an avenue for allowing the conveyance of a written and signed response to a matter raised by this House or a Question by a person authorized by a particular Cabinet Secretary. The guidance is not a *carte blanche* for Cabinet Secretaries to disregard their constitutional responsibility of accounting to the people's representatives for their actions in the performance of their constitutional duties.

The House is accordingly guided. Thank you.

Next Order!

## MESSAGES

### PRESIDENTIAL MEMORANDUM ON THE FINANCE BILL, 2019

*(Hon. Members walked in the gangways)*

**Hon. Speaker:** Hon. Members, those who are coming in or walking out, please, do so quickly. Member for Migori, I am sure you are walking out. You have overstayed in the Chamber!

*(Laughter)*

Hon. Members, you may recall that on 26<sup>th</sup> September 2019, the National Assembly passed the Finance Bill (National Assembly Bill No. 51 of 2019). Thereafter, the Bill was presented for assent to His Excellency the President in accordance with the provisions of the Constitution and our Standing Orders. However, His Excellency the President, by way of a Memorandum dated 16<sup>th</sup> October, 2019, has since referred the Bill back to the National Assembly for reconsideration, pursuant to the provisions of Article 115(1)(b) of the Constitution.

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His Excellency the President has expressed reservation to Clause 45 of the Bill which relates to capping of interest rates chargeable on loans advanced by banks and other financial institutions.

In his Memorandum, His Excellency the President highlights several factors that have necessitated the proposed amendment to Clause 45 of the Bill, which seeks to amend the Banking Act (Cap.488) by repealing Section 33B so as to remove capping of interest rates chargeable on loans. These include the following:

(i) The reduction of credit to the private sector, particularly Micro, Small and Medium Enterprises (MSMEs);

(ii) The decline in economic growth;

(iii) The weakening of the effectiveness of Monetary Policy;

(iv) The reduction of loan advances by banks;

(v) The mushrooming of shylocks and other unregulated lenders in the financial sector;

(vi) The withdrawal of banks' lending to specific segments of the market;

(vii) The increase in average loan size, reflecting lower access by small borrowers and larger loans to more established firms; and,

(viii) The decreased diversity of loan products.

Consequently, the President recommends an amendment to the said Clause of the Bill so as to resolve the above concerns.

Hon. Members, the Reservation of the President, as contained in his Memorandum, now stands committed to the Departmental Committee on Finance and National Planning for consideration. Standing Order 154(2) requires the House to consider the President's Reservations within twenty one (21) days upon receipt of the Memorandum. In this regard, the Committee ought to table its report soonest to allow the House to consider the President's Reservations within the said timeline.

In considering the Reservation, the Committee is expected to additionally apply itself to the question of the commencement date of the provision and the effect of the proposed amendment with regard to existing loan contracts between lenders, that is, banks, other financial institutions and borrowers.

Hon. Members, may I, at this point, remind the House of the Speaker's Communication delivered on 28<sup>th</sup> July 2015 concerning the consideration of President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance that, the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of fully accommodating the President's reservations is a simple majority as contemplated under Article 122(1), as read together with Article 115(2)(a) of the Constitution.

On the other hand, an amendment that does not fully accommodate the President's reservations, or, indeed, one that has the effect of total override of the President's reservations, including negating his proposed text, would require a two-thirds voting threshold to be passed, in keeping with the provisions of Article 115(4) of the Constitution.

I wish to further reiterate that only the specific clause of the Bill that has reservations, namely Clause 45, ought to be considered. I now direct the Clerk to circulate the Memorandum

from His Excellency the President to all Members so that you can familiarise yourselves with its contents.

I thank you, Hon. Members.

*(Loud consultations)*

Leader of the Majority Party, what is it?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, you have read the President's Memorandum. I think as the Committee discusses it, they need to find a transitional clause on when it will take effect and what happens to the millions of Kenyans who are now paying interest at a certain percentage. We need to include a transitional clause.

**Hon. Speaker:** That is contained in the Message. Next Order!

### PAPERS LAID

**Hon. Speaker:** The Leader of the Majority Party, you have the Floor.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. I do not know why people are making a lot of noise! Is it because I have counted the numbers in *Tanga Tanga*, ODM and *Kieleweke*?

**Hon. Speaker:** This is time for papers.

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

The annual report and financial statements of the Kenya Investments Authority for the year ended 30<sup>th</sup> June, 2018.

Report of the Auditor-General on the financial statements of Kenya Airports Authority for the year ended 30<sup>th</sup> June 2018, and the certificate therein.

**Hon. Speaker:** Chairman, Departmental Committee on Justice and Legal Affairs, Hon. Cheptumo, you have the Floor.

**Hon. William Cheptumo** (Baringo North, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Justice and Legal Affairs on its consideration of a Petition regarding unethical conduct of the Registrar of Companies by Mr. Samuel Matheri Hungu.

Thank you, Hon. Speaker.

**Hon. Speaker:** Chairperson, Departmental Committee on Lands. Hon. Wanjuki, on behalf of the Chair, lay the Paper.

**Hon. (Ms.) Jane Njiru** (Embu CWR, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Lands on its consideration of a Petition by Hatua Yetu Community-based Organization regarding the impending eviction from Mazrui Trust Land.

Thank you.

**Hon. Speaker:** Chairman, Departmental Committee on Communication, Information and Innovation, Hon. Kisang, you have the Floor.

**Hon. William Kisang** (Marakwet West, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Communication, Information and Innovation on its consideration of the Data Protection Bill (National Assembly Bill No. 44 of 2019).

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us now have the Chairman, Special Funds Accounts Committee, Hon. Kathuri.

**Hon. Kathuri Murungi** (South Imenti, Independent): Hon. Speaker, I request that I do the tabling later on because I understand the reports are in the office. If possible, I can be allowed to table it later on.

**Hon. Speaker:** The reports are not ready?

**Hon. Kathuri Murungi** (South Imenti, Independent): They are ready, but I have just learnt from my clerk that they are on your desk. Maybe, they brought them a bit late for your signature.

**Hon. Speaker:** They can only have landed on my desk after 2.30 p.m. I had gone through all the other reports that were brought and approved. If they are there, it is not possible that you can table them later because I may not have the opportunity to go through them. My work cannot just be to append my signature.

**Hon. Kathuri Murungi** (South Imenti, Independent): Hon. Speaker, I can do it another day.

**Hon. Speaker:** Some other date, yes.

**Hon. Kathuri Murungi** (South Imenti, Independent): Thank you.

**Hon. Speaker:** Very well, Hon. Kathuri. The Chairman, Departmental Committee on Environment and Natural Resources, Hon. Kareke Mbiuki.

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Environment and Natural Resources on an inquiry into the status of dams in Kenya.

I thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

## NOTICE OF MOTION

### ADOPTION OF REPORT ON STATUS OF DAMS IN KENYA

**Hon. Kareke Mbiuki** (Maara, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the report of the Departmental Committee on Environment and Natural Resources on an inquiry into the status of dams in Kenya, laid on the Table of the House on Thursday, 17<sup>th</sup> October 2019.

I thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

### QUESTIONS BY PRIVATE NOTICE

**Hon. Speaker:** First Question by the Member for Dagoretti South, Hon. John Kiarie.

#### *Question No.40/2019*

#### FAILURE TO PAY HUDUMA NAMBA REGISTRATION CLERKS

**Hon. John Kiarie** (Dagoretti South, JP): Thank you very much, Hon. Speaker. I rise to ask Question No.40 of 2019 by Private Notice. This Question is directed to the CS for Interior and Coordination of National Government.

(i) Could the Cabinet Secretary explain why registration clerks who were involved in the National Integrated Identity Management System, popularly known as Huduma Namba, registration exercise are yet to be paid in full almost five months after the completion of the exercise?

(ii) What measures has the Ministry put in place to ensure that all the registration clerks are paid the said allowances in full without any further delay?

Thank you very much.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Administration and National Security. The Committee should note that this is a Question by Private Notice. I can see the Vice-Chair is present. It is a Question by Private Notice and it is referred to you to deal with it.

Next Question by Private Notice is by the Member for West Pokot County, Hon. Lilian Tomitom.

#### *Question No.41/2019*

#### PROVISION OF RELIEF FOOD TO RESIDENTS OF WEST POKOT

**Hon. (Ms.) Lilian Tomitom** (West Pokot CWR, JP): Thank you, Hon. Speaker. I rise to ask a Question No.41 of 2019 by Private Notice to the CS for Devolution, Arid and Semi-Arid Areas:

(i) Are there plans by the Ministry to provide relief food and other humanitarian support to the residents of West Pokot County, in particular Kacheliba and Sigor sub-counties, to address the acute hunger being experienced in the area as a result of prolonged drought situation?

(ii) What immediate and long-term mitigation measures have been put in place to mitigate the effects of drought in those areas?

Thank you, Hon. Speaker.

### ORDINARY QUESTIONS

**Hon. Speaker:** The Question is referred to the Departmental Committee on Administration and National Security. The next Question is by the Member for Luanda, Hon. Christopher Omulele.

#### *Question No.458/2019*

#### STALLING OF THE MASENO-KOMBEWA ROAD CONSTRUCTION

**Hon. Christopher Omulele** (Luanda, ODM): Thank you Hon. Speaker, I rise to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question:

(i) Why has the construction of Maseno-Kombewa Road, which was awarded to M/s. Agrimc Consutium Ltd., under Contract Number 119 during the Financial Year 2015/2016, stalled for the last 24 months?

(ii) Could the Cabinet Secretary confirm that the construction carried out so far on the said road meets the set quality and standards?

(iii) What steps is the Ministry taking to ensure that the construction of the said road, which is currently in deplorable state, is completed the soonest possible, considering that the contract period for its construction has since expired?

Thank you Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Transport, Public Works and Housing.

Sorry. Hon. Members who may have looked at the Order Paper will notice that the next Question was by the Hon. Member for Malava, Hon. Malulu Injendi. But he has requested for its deferment, and which request has been acceded to.

#### *Question No.459/2019*

#### FAILURE TO OPERATIONALISE BASIC EDUCATION ACT, 2013

*(Question deferred)*

So, we move to Statements. The first Statement is by the Member for Baringo Central, Hon. Joshua Kandie.

## REQUEST FOR STATEMENT

### FUNDING OF SPECIAL NEEDS EDUCATION IN THE COUNTRY

**Hon. Joshua Kandie** (Baringo Central, JP): Thank you, Hon. Speaker. Pursuant to Standing Order 44(2)(c), I wish to request for a statement from the Chairperson of the Departmental Committee on Education and Research on the funding of Special Needs Education (SNE) in the country.

Hon. Speaker, the number of primary boarding institutions offering special education as per the Government's standards has increased from 243 in 2016 to 339 in 2019, with the total enrolment likewise increasing from 26,900 to 39,629 learners during the same period. For secondary schools, the number of institutions has increased from 106 to 114 with enrolment increasing from 4,019 to 5,500 learners.

Hon. Speaker, it is of great concern that despite this increment in facilities and enrolment, the Government's capitation grant for SNE primary boarding, special and integrated schools and units has remained at a constant figure of Kshs455 million which, in essence, means that the allocation per learner has reduced from Kshs16,914 in 2016 to Kshs11,481 in 2019. On its part, the secondary schools' allocation has remained at a constant figure of Kshs200 million which technically implies a reduction per learner from Kshs49,763 to Kshs35,730.

Hon. Speaker, the purpose of SNE grants is to subsidise boarding expenses in view of the fact that most special needs learners attend boarding schools on account of them having requisite human resources and facilities, and not by choice, to meet remuneration costs of critical auxiliary staff such as transcribers, sign language interpreters, therapists and house parents, as well as procurement of specialised learning resources such as Braille and other assistive devices.

Hon. Speaker, the allocation to the special needs sub-sector has received in the recent past has been too inadequate to meet the aforementioned needs of institutions that offer special needs education, and most SNE schools are currently facing financial crisis exemplified by unpaid remuneration for non-teaching staff as well as pending bills owed to suppliers.

Hon. Speaker, it is on account of these ongoing challenges occasioned by underfunding of Special Needs Education that I seek a Statement from the Chairperson of the Departmental Committee on Education and Research on the following:

(i) What short and long-term measures are being pursued by the Government in allocating sufficient funding to the Special Needs Education sub-sector?

(ii) Is the Ministry of Education in possession of updated data on Special Needs Education that places the optimal allocation for SNE learners in primary boarding and secondary schools at Kshs30,000 and Kshs57,000 per annum, respectively?



I thank you, Hon. Speaker.

**Hon. Speaker:** The Statement is to the Chair Departmental Committee on Education. He will respond when the House resumes.

Next request is by Hon. Osotsi.

#### FORCEFUL EVICTIONS IN CHESUMEI IN NANDI COUNTY

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Speaker. Hon. Speaker, pursuant to Standing Order 44(2)(c) I wish to request for a statement from the Chairperson of the Departmental Committee on Lands regarding the forceful evictions carried out by security forces on 9<sup>th</sup> October 2019 in Kapcheturo Village, Kaptobongen Location, Kiptuyia Ward, Chesumei Sub-County, Nandi County.

Hon. Speaker, there has been a long-standing legal dispute regarding land LR. No. Nandi/Kapkangani/1371-1384 since 1979 between one Mr. Kipkosgei Arap Cheptulu and Tito Amalemba and nine (9) others on behalf of the affected families through Civil Suit No.794 of 1979, which has since been heard and determined.

Hon. Speaker, thereafter, through an eviction order, forceful evictions of the affected families totalling 1,500 persons were carried out where their houses were demolished, crops destroyed and some graves exhumed. This has resulted in dire humanitarian crisis due to lack of basic needs for the victims. In addition, school-going children are not able to attend school, including those who are scheduled to sit for national exams.

Hon. Speaker, in July 2019, the Cabinet Secretary for Lands, accompanied by the then County Commissioner and a security team visited the land and assured the victims that they would not be evicted until the Government finds a solution to the land problem. She assured the affected families that the Government had two options, to either compensate the individual claiming ownership or allow the affected families to continue occupying the land or resettle the affected families on a new piece of land to be acquired by the Government.

Hon. Speaker, in the statement, the Chairperson should inform the House on the following:

- (i) Whether a requisite notice was given to the victims before evictions were carried out.
- (ii) Why security forces used excessive force in evicting peaceful peasant farmers?
- (iii) Why the Government has been slow in providing humanitarian support to the victims, including school-going children, especially those who are scheduled to sit for national exams?
- (iv) The circumstances in which numerous households in Kiptuyia and Kapkangani areas have been issued with eviction orders on land they have occupied for many years?
- (v) Whether there are any plans by the Government to compensate the affected families for the losses incurred during the eviction exercise; and further, whether there are any plans to either compensate the individual claiming ownership or

allow the affected families to continue occupying the land as promised by the Cabinet Secretary and the timelines for the same?

Hon. Speaker, this is a very serious matter because the affected families are in the cold. It is raining and we would like this matter to be prioritised.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, I am sure you have looked at the Calendar of the House. At the rise of the House today, of course, we will proceed for the short one week recess. I hear that this matter is very serious. As you know, all matters raised here are very serious.

So, it will be considered alongside other serious matters by the Departmental Committee on Lands and if, within the period available to them they are not able to complete, then they will come back to the House and request for more time. This is because you have raised several issues which may require quite some extensive engagement with various players. The request is directed to the Departmental Committee on Lands. The next request for Statement is by Hon. Abdi M. Ibrahim, Member for Lafey.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Kaluma, what is your point of order?

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, I am seeking your direction on how some of these Statements or Questions should be dealt with and, more so, when the subject matter is cutting across more than one departmental committee. A short while ago, we had the issue concerning our maritime dispute. Though it properly falls within the remit of the Departmental Committee on Defence and Foreign Relations, but the matter is about a court proceeding or legal process which would be better dealt with by the Departmental Committee on Justice and Legal Affairs. I have heard the Statement requested by Hon. Osotsi and I agree with you that this is a very serious matter.

I saw a gentleman dig up a grave of a person he said is his father and carried the skull around. That desperation bothered me. But what bothers me is that I heard it being said that the subjected eviction was following a court order. You have remitted the matter to the Departmental Committee on Lands because it is a land question. But if the basis of that eviction is a court order, is it not the kind of matter that should be remitted to the joint committees on Lands and Departmental Committee on Justice and Legal Affairs so that we can treat the whole matter. I am raising this issue because the manner in which the Environment and Land Court cases are proceeding across the country is bothering me.

We now have Chesiumi; it may be out of court or not. The other day, we had Kilifi. Maybe, Mau never came from court. You get eviction orders coming from courts in a manner that suggests the court is not being very sensitive. Would I be right to request that if, indeed, the eviction which is the subject matter of this statement request arose from a court order, then it be a matter before the Departmental Committee on Justice and Legal Affairs in expediting Parliament's duty in this. They should sit jointly with the Departmental Committee on Lands so that it can be determined fast.

Thank you, Hon. Speaker.

*(Several Hon. Members stood up in their places)*

**Hon. Speaker:** No! No! Hon. Members, there is no debate. You see the Departmental Committee on Justice and Legal Affairs may not sit on the judgement on the decision of the Environment and Land Courts. Hon. Osotsi has applied his mind fully, consciously and felt that this matter can be best handled by the Departmental Committee on Lands. Since, he has applied his mind and every part of his body consciously and decided that it should be directed to the Departmental Committee on Lands, let it go there. That is his choice. Hon. Oundo, this is his request.

You see, I do not want to be told there was also another eviction through another court order. I do not sit on appeal against those evictions but you, as a House, through the various committees are at liberty to examine some of those decisions and make whatever you wish of them. Let us have Hon. Abdi Ibrahim seeking his Statement.

#### MEASURES TO MITIGATE AGAINST FLOODS IN MANDERA COUNTY

**Hon. Ibrahim Abdi** (Lafey, EFP): Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the floods-related disaster in the larger Mandera County and, in particular, Lafey Constituency.

Hon. Speaker, the on-going heavy rains that are being experience in many parts of the country have caused havoc among the residents of Lafey Constituency in Mandera County, where floods have left a trail of destruction on homes and infrastructure and caused the death of livestock across the county in the last few weeks.

The flooding situation has left over 2,000 livestock dead, thus depriving the affected residents of their livelihood. It is unfortunate that the flooding disaster has always been experienced as an aftermath of the drought that is normally experienced in those parts of the country. The Government has done little to cushion the residents against the resultant losses.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security. In the Statement, the Chairperson should inform the House on the following:

(i) The mitigation and intervention measures, if any, that are being undertaken by the Government including, among others, re-stocking of livestock through compensation of the affected residents.

(ii) Steps being undertaken to ensure the long-term and sustainable measures are put in place to cushion residents of Mandera and other parts of the country against the perennial losses caused by floods as opposed to reactive measures always employed by the Government.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Statement will be replied to by the Chair of the Departmental Committee on Administration and National Security.

The final one is by Hon. Sara Korere. Today you have behaved true to type. You have become nomadic, Hon. Korere. I normally know your sitting position to be the other side but proceed.

#### PERSISTENT INSECURITY IN LAIKIPIA NORTH CONSTITUENCY

**Hon. (Ms.) Sara Korere** (Laikipia North, JP): Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the increased cases of insecurity in Laikipia County.

Hon. Speaker, groups of armed militia have been terrorizing residents in most parts of Laikipia County, with most recent attacks executed on 14<sup>th</sup> October 2019 in Mirango and Wangwachie areas of Laikipia North and West constituencies, respectively. One Maina John of ID. No.24686464 was severally injured and 12 cows and 36 goats stolen. On 15<sup>th</sup> October, 2019, the same militia shot dead one Stephen Ali Apetet who is a driver with the Laikipia Nature Conservancy.

Hon. Speaker, every time the said militia executes those heinous attacks, they disappear into the expansive Laikipia Nature Conservancy. It is evident that the frequency of those attacks has been aggravated by the Government's decision to disarm all local National Police Reservists who have been very instrumental in providing security in the affected areas. Numerous efforts to resolve this matter have been futile as exemplified by the fact that the Government has deployed Anti-Stock Theft Unit (ASTU) of the National Police Service in the area, but the attacks have persisted and intensified.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

(i) How is the Government undertaking to protect the lives and property of the residents of Mirango and Wangwachie areas of Laikipia North and West constituencies, respectively?

(ii) How soon will the stolen livestock be recovered and the perpetrators of the heinous acts apprehended?

(iii) What mechanisms are in place to ensure urgent action to respond and end this menace, including a possibility of urgently re-arming the National Police Reservists in the said areas?

I thank you, Hon. Speaker.

**Hon. Speaker:** Chair of Departmental Committee on Administration and National Security, I noticed that you were walking away until your attention was drawn by Hon. Katoo ole Metito that this one is directed at you. Please, stay a bit because I know there is something that could affect you. You will respond to this when the House resumes. Let us have the Chair of the Departmental Committee on Transport, Public Works and Housing to respond.

## STATEMENTS

**Hon. David Pkosing** (Pokot South, JP): I thank you, Hon. Speaker. I beg to respond to a Statement sought by Hon. Didmus Barasa which, Hon. Speaker, you directed that we respond within two weeks. Those two weeks ends today. Following your direction, I would like to respond as follows in three ways.

The first one is on the number of buildings declared unsafe and, therefore, earmarked for demolition by relevant government agencies. A total of 14,895 structures have been audited. Out of those, 723 permanent structures have been declared unsafe pending structural audit integrity testing to pave way for demolition. I have annexes. I do not want to take the House through that lengthy process. Hon. Didmus Barasa can consume the information in the annexes.

The second one is on the measures the Government has taken against the proprietors and owners of such buildings which have collapsed in the past and led to losses. In our response, a total of 41 structures have been recorded collapsed. The cases have been taken up by the Directorate of Criminal Investigation (DCI) and the Office of the Attorney-General. I have given the annex for the benefit of my colleague, Hon. Didmus Barasa.

Lastly, what measures have been put in place to ensure that buildings are safe and certified by relevant authorities before occupation. I have about eight answers which are annexed in this report for the consumption of the House and Hon. Didmus Barasa. In the interest of time, I thank you for giving me this opportunity.

I table the response.

*(Hon. David Pkosing laid the Paper on the Table)*

**Hon. Speaker:** The Leader of the Majority Party, you have the Floor.

BUSINESS FOR THE WEEK COMMENCING ON 29<sup>TH</sup> TO 31<sup>ST</sup> OCTOBER, 2019

**Hon. Aden Duale** (Garissa Township, JP): Pursuant to the provisions of Standing Order 44(2)(a), I rise to give the following Statement on behalf of the House Business Committee (HBC), following its Meeting held on Tuesday, 15<sup>th</sup> October, 2019. I wish to note that the House is scheduled to proceed on a short recess commencing tomorrow in accordance with the Calendar of the House. As a result of this, the HBC has not scheduled any business for next week. Upon resumption from the short recess, we hope to consider for Second Reading the following Bills:

1. The Data Protection Bill, 2019, which the Chair has tabled the Report this afternoon;
2. The Refugee (Amendment) Bill, 2019;
3. The Insurance (Amendment) Bill, 2019; and,
4. The Competition (Amendment) Bill, 2019;

I hope the relevant Committees will have tabled Committee Reports to inform debate at Second Reading. We will also prioritise various pending committee reports and motions. Scheduling of Questions will also continue upon resumption of our regular Sittings.

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Finally, the HBC will reconvene on Tuesday, 29<sup>th</sup> October, 2019 at the rise of the House to schedule business for the rest of the week. I now wish to lay the Statement on the Table of the House.  
Thank you, Hon. Speaker.

*(Hon. Aden Duale laid the Paper on the Table)*

**Hon. Speaker:** Hon. Kanchory Memusi, you have the Floor.

**Hon. Memusi ole Kanchory** (Kajiado Central, ODM): Thank you, Hon. Speaker. I had done some amendments on the Public Procurement and Asset Disposal Act which has taken too long. It was taken to the Budget and Appropriations Committee. The Committee seems to have been confused on some amendments proposed by Hon. Kuria, which were proposing very different things.

Hon. Speaker, I seek your intervention on the same to just know why it has taken too long.

**Hon. Speaker:** The Chair of the Budget and Appropriations Committee is here. Maybe, he can confirm whether they were confused. Hon. Kanchory Memusi says you are confused by other amendment. Maybe, you can respond. I am not able to address the issue of confusion and if the Committee got confused. The Chair is here. He can tell us how much they got confused or not at all.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. Of course, Hon. Kanchory is aware that the Budget and Appropriations Committee is composed of very eminent personalities in this House, and who are not likely to be confused by anything. As you are aware, it came at a time when the Committee was very busy and we are in the process of considering many of those proposals that are before us. I am sure, maybe, in the course of the first or second week after the short recess, we should be able to deal with the issue.

**Hon. Speaker:** Hon. Wanyonyi, you have an intervention.

**Hon. Tim Wanyonyi** (Westlands, ODM): Yes, Hon. Speaker. On 25<sup>th</sup> June this year, I brought a Question which was referred to the Departmental Committee on Trade, Industry and Cooperatives. Up to date, I have not received any response from that Committee. I am just inquiring what is causing the delay.

**Hon. Speaker:** Hon. Kanini Kega Mathenge, the Chair of the Committee, is absent having commenced his short recess. Is there anybody to depute him? The Deputy also appears to have commenced his short recess. Hon. Wanyonyi, you can raise this matter on 29<sup>th</sup> when they are all here. Since the House will be in active sittings, then we can have it responded to.

**Hon. Tim Wanyonyi** (Westlands, ODM): That is in order, Hon. Speaker. I am properly guided.

**Hon. Speaker:** Hon. Mutua Barasa, you have the Floor.

**Hon. Didmus Barasa** (Kimilili, JP): Hon. Speaker, I sought for a Statement from the Departmental Committee on Administration and National Security with regard to the role of NTSA in interpreting the police accident investigation reports to reduce road carnage in this country. The Vice-Chair committed to provide the Statement within two weeks but now, it is

more than one month. I know for a fact that the State Department for Interior is not to blame because it is not the business of the person to be overseen, but it is the business of the overseeing Committee. This is because there are very many avenues to pursue especially if getting such statements is difficult.

So, I am frustrated. I have raised this matter even at the Committee level. I know for a fact that this Committee has seen more than 15 petitions lapse against time. I pray that you order the Committee to provide the statement within the shortest time possible and also order that we get a report of how many petitions, questions or matters that this Committee was investigating and their status, so that we can move forward as a House. Our oversight role as a House cannot be compromised by either the incompetence or laxity of the Members who are in charge of a Committee. We need the answers to the very many questions we ask here. You cannot take more than one month to provide a simple Statement on the role of the NTSA in mitigating road accidents in this country using the National Police Service (NPS) Traffic Department accident investigation reports. This is a simple matter that can be provided within the shortest time possible. I need your guidance. I raised this matter in the Committee. The Vice-Chair is my neighbour at home. I spoke with him, but I did not get the answers.

I appreciate the Chair of the Departmental Committee on Transport, Public Works and Housing. I requested for his Statement a week ago. He committed to provide it in two weeks. He provided the Statement today. What is happening with this Departmental Committee on Administration and National Security? This House should ventilate on this. If the Committee is unable to serve this House, we should dissolve it and re-constitute it so that we can move forward.

I thank you, Hon. Speaker.

**Hon. Speaker:** Do you want to dissolve the Committee? Are you a Member of that Committee? You also made a very interesting Statement that the Vice-Chair is your neighbour, but you did not get responses.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): On a point of information, Hon. Speaker.

**Hon. Speaker:** There is information which is being given. Let me hear this information which is, perhaps, useful for the House. Hon. Kaluma, you have the Floor.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, the manner in which the Departmental Committee on Administration and National Security has been proceeding has been deemed by Members to be delaying a bit. This is because of the number of questions and issues that are taken to the Committee. If you have noted, quite a big percentage of the questions that Members raise go to that single Committee. In the wisdom of the leadership of the Committee, we informally created sub-committees within the Committee, so that we can expedite parliamentary business. We created three sub-committees informally for efficacy in the Committee.

There is a sub-committee which was created with the understanding of the Committee for efficacy to be in charge of petitions, questions and Bills. That is where even the statement request by my brother falls. I am in that sub-committee with my brother, Hon. Didmus Barasa, who is the Vice-Chair in that internal committee arrangement.

*(Laughter)*

How can he be crying to the House over a matter he should be dealing with even in my absence as the Vice-Chair? I do not think we are proceeding in the right direction. He is the Vice-Chair of that sub-committee which deals with questions, Bills and Statements.

*(Laughter)*

**Hon. Speaker:** Let me first of all hear from the Vice-Chair of the main Committee. Hon. Members, if that Committee has created sub-committees, that is very good for efficacy. Let us hear from Hon. Waluke.

**Hon. John Waluke** (Sirisia, JP): Thank you, Hon. Speaker. I want to confirm to the House that it is true that Hon. Didmus is the Vice-Chair of the sub-committee of our Committee.

*(Laughter)*

He is shooting the sub-committee where he is the Vice-Chair. To finish, it is true that I promised to give a Statement, but we are dealing with the sub-committees to answer that issue.

Thank you, Hon. Speaker.

**Hon. Didmus Barasa** (Kimilili, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Barasa, you are not the only one who wants to contribute. There are several other requests. We will hear from you finally as the Vice-Chair of the sub-committee.

Let us hear Hon. Pukose.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, I feel the frustrations of Hon. Barasa. I raised an issue about a month ago. The Departmental Committee on Administration and National Security responded to my question within the stipulated time. At each and every time, they gave me back the information. It might be some mis-communication between the Vice-Chair of the sub-committee and the substantive Chair and Vice-Chair. This is something that can be handled. They are neighbours who can handle it at that level.

**Hon. Speaker:** We want to hear a confirmation from Hon. Mutua Barasa that he is the Vice-Chair of the sub-committee. He is taking an issue with his neighbour, who is the Vice-Chair of the main Committee. Hon. Waluke has said that the matter was referred to the sub-committee where Hon. Barasa is the Vice-Chair. Perhaps, we should hear from Hon. Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you. Hon. Speaker, I am very surprised. If they can prove that I am the Vice-Chair of any sub-committee in this country, I am ready to resign my position as a Member of Parliament. It is ridiculous, childish and unprofessional for a Member to insinuate that I am the Vice-Chair of a sub-committee. Let them even produce the minutes where I am captured as the Vice-Chair. I am not the Vice-Chair of any committee.

**Hon. Speaker:** Hon. Barasa, I will show you a quick way of getting out of the House. You must withdraw the word “childish”.



**Hon. Didmus Barasa** (Kimilili, JP): Hon. Speaker, you cannot allow somebody to insinuate things which I have not done.

**Hon. Speaker:** You must withdraw the word “childish”.

**Hon. Didmus Barasa** (Kimilili, JP): Hon. Speaker, I will not withdraw! It is not right.

**Hon. Speaker:** Hon. Mutua Barasa, if you are not ready to withdraw, get out of the House! You must withdraw and apologise! This is not where you are used to commanding the villagers. You either withdraw or leave the House.

*(Laughter)*

**Hon. Didmus Barasa** (Kimilili, JP): Hon. Speaker, I withdraw and apologise. However, it is very irresponsible for the Member for Homa Bay Town and the Vice-Chairman to claim that I am the Vice-Chair of the sub-committee. I have never been a Vice-Chair of any committee in my life. This is not acceptable. If they are unable to substantiate that I am the Vice-Chair of a Sub-committee, they should withdraw that Statement.

**Hon. Speaker:** Apparently Hon. Members, this is a matter that is within the Departmental Committee on Administration and National Security. The Statement was made by Hon. Peter Kaluma by way of information to the House. Hon. Waluke who is the Vice-Chair has confirmed that Hon. Mutua Barasa is the Vice-Chair of that sub-committee. By the way, it is something that I encourage time and again. Because there is a lot of business that comes before committees, what I have heard from that Committee is very welcome and positive. It is important for the committees to divide themselves so that they are able to handle the businesses that come before them.

I know that the Departmental Committee on Administration and National Security, the Departmental Committee on Lands, the Departmental Committee on Transport, Public Works and Housing and the Departmental Committee on Justice and Legal Affairs have a lot of work. If the Committee has decided to form sub-committees, that is very positive. If Hon. Barasa does not belong to the sub-committee, is it formed in Members minds or it is something that is known? We need to hear from the Members of the Committee. Hon. Duale, you are not a member of the Committee.

**Hon. Aden Duale** (Garissa Township, JP): Allow me to contribute, Hon. Speaker.

**Hon. Speaker:** Yes.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, if you allow me, this is a matter that touches on integrity. Hon. Barasa rose on a point of order asking why it has taken long for his Statement to be ready. If you allow me, I will even take the matter to the Liaison Committee. Hon. Barasa has requested that they must provide minutes of the sub-committee showing that Hon. Didmus Barasa is a Vice-Chair. If both the Vice-Chair of the Committee and Hon. Kaluma cannot provide the minutes, then the two Members must be named.

Hon. Speaker, what you have said and what Hon. Kaluma has said is true that committees must work in sub-committees. Hon. Kaluma is on the HANSARD saying that he is the Chair of the sub-committee and Hon. Didmus Barasa is the Vice-Chair. This is a House of records. Either

group cannot play ping pong on the Floor of the House. So, Hon. Kaluma and Hon. Waluke must substantiate and provide evidence of the minutes showing Hon. Barasa is the Vice-Chair. If that is found, then Hon. Didmus Barasa is out of order and must be named. If the other two Members, Hon. Waluke and Hon. Kaluma, cannot provide minutes to show that Hon. Barasa is a Vice-Chair of a sub-committee, then they both need to be named.

Further, I wish to bring to your attention, and I am going to take it to the Liaison Committee, that there are chairs of committees of this House who when a Statement or Petition is sought by a Member, the Cabinet Secretary calls and without consulting the membership of that committee, the chair cancels a meeting. There is nowhere in the Standing Orders where a chairman can cancel a meeting of a committee without consulting the membership.

Secondly, I have seen Government agencies that are overseen by this House writing directly to chairs of committees. Any communication to the august House, particularly to the National Assembly, can only be communicated to the Hon. Speaker and the Clerk. I am ready to table a document from the Government to a chair of a committee.

So, the matter between Hon. Kaluma, Hon. Waluke and Hon. Barasa is not a circus. This is an august House. Hon. Kaluma and Hon. Waluke are under obligation to provide minutes showing Hon. Barasa is a Vice-Chair of a sub-committee. If that is ascertained, then I will be the first person to name Hon. Didmus Barasa. If they do not provide the minutes, then they should be named. They cannot take the House in a circus.

**Hon. Speaker:** I see Hon. Waluke nodding. Hon. Waluke, do you want to respond?

**Hon. John Waluke** (Sirisia, JP): Thank you, Hon. Speaker. I am ready to be named because it is in black and white. It is in writing that we divided the Committee into five sub-committees because of the bulk of work and Hon. Didmus Barasa is in the same sub-committee with Hon. Kaluma. It is true and I am ready to be named. I am not lying. I am speaking as the Vice-Chair of the Departmental Committee on Administration and National Security.

**Hon. Speaker:** We want the minutes showing that the Committee met and formed sub-committees and the membership. That is what is required.

Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Hon. Speaker, there are other Members of this Committee including Hon. Mbai. We met as a Committee and that was the first item we transacted, not informally, but on the HANSARD. We are saying that Members of Parliament are claiming that the Departmental Committee on Administration and National Security are delaying. Hon. Didmus Barasa will confirm to you that following the division of the Committee into sub-committees, all Bills which were pending before the Committee were transacted in one retreat. Today, we are dealing with Questions. The problem with our brother is that he comes technically and leaves, but this is something that we transacted in a Committee meeting. We do not even need minutes. The HANSARD is there showing that all the Members of the Committee were divided into sub-committees. The sub-committees met and designated their leadership as directed by the Chair as will be confirmed by the HANSARD.

**Hon. Speaker:** Hon. Members, Hon. Kaluma has talked about the HANSARD.

*(Hon. (Ms.) Gladwell Cheruiyot raised her hand)*

Member for Baringo, we do not transact business by raising hands. Hon. Members, on this one, we will wait for the HANSARD record. Hon. Mbai.

**Hon. Nimrod Mbai** (Kitui East, JP): Thank you, Hon. Speaker for giving me the opportunity. As a Member of the Departmental Committee on Administration and National Security, I am not happy with it being put under disrepute. It is true the Committee under the chairmanship of Hon. Koinange sat and decided that due to the many Questions from Members, we sub-divide ourselves into sub-committees, which would deal with specific Questions and present reports for adoption by the whole Committee. It is true I am a Member of the sub-committee chaired by Hon. Kaluma and Hon. Barasa is our Vice-Chair.

*(Laughter)*

Hon. Speaker, I would like to guide my brother, Hon. Barasa, that the day we sat and sub-divided ourselves into sub-committees, he was not present. The day we held elections for leadership of the sub-committees, Hon. Barasa was around and the day we sat over Questions, Hon. Barasa was not in. It is out of his absence that his Question could not be tackled. The day we sat and handled his concern, he was not around and the Chair had to add us more Members so that we could get quorum to handle the matter. So, I kindly request Hon. Barasa that instead of bringing the Committee into disrepute on the Floor of the House, he should get back to the Committee and help us transact business.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let me make this Communication. Hon. Waluke, as the Vice Chair of the Committee, when the House resumes on Tuesday, 29<sup>th</sup> October 2019, please, avail to the House the records of how you divided yourselves into sub-committees. In fact, that may be something other committees may be asked to emulate, if that is what you did for efficiency.

Further discussion on whether Hon. Barasa is saying the truth or not or he has had momentary lapses of memory, that happens in human beings. That is quite possible. You can be elected in absentia. We just want to see the records. We cannot go there. Let us wait for the record. Hon. Waluke will provide the record and the House will be better informed. Let us not discuss that too much. We will be able to make a decision. On that day, perhaps, Hon. Barasa will see on record in black and white that he is a Vice-Chair. Remember he has already said he has never been a Vice-Chair of anything on earth.

*(Laughter)*

That record will help him to update his curriculum vitae. Hon. Waluke, please, provide this information. Hon. Barasa will update his curriculum vitae that he is a Vice-Chair of some sub-committee.

**Hon. John Waluke** (Sirisia, JP): Thank you, Hon. Speaker. I stand guided. I will make sure that I provide the document, whether today or tomorrow, that shows that Hon. Didmus Barasa is the Vice-Chair of the sub-committee. I can submit it even today.

**Hon. Speaker:** Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, you have given the direction. Unless Hon. Barasa retracts the statement that he is ready to resign if the contrary is proved to be true, then his seat will be declared vacant. The route Hon. Barasa is going is very dangerous. You can allow him to retract that statement from the HANSARD. Maybe he was emotional.

**Hon. Speaker:** Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, although I am aware that the seat of Didmus Barasa can be declared vacant, he has to resign in writing. That goes a long way in telling us, as leaders, that we should be responsible in whatever we say. Talking about resigning is not a small matter. It is a matter that should be driven by conviction not the spur of the moment. There is also a fundamental question here which is: How should Members relate to their committees? Honestly speaking, unless you have exhausted all the avenues within the Committee, you should not bring circus like what Hon. Didmus has done. This is a matter that he should have sorted out in his Committee even if he was not Vice-Chair of anything. Since he sits in that Committee, if he regularly attends the Committee, it is a matter he could easily raise with the Committee and ask why his Question is not being addressed yet others are being addressed.

Something needs to be done about the relationship between Hon. Didmus Barasa and the Committee. If he is tired of sitting in that Committee, Hon. Duale is up to the task. He can swap him with some other Member from another Committee because I know he is an active Member from, at least, the public image that he gives. I am shocked that in the Committee, the contrary is being proved. I just hope he still has interest in that Committee. We can spare Barasa the agony of thinking of resigning because I am sure the people of Kimilili need representation. They chose Barasa for five years. Let him work for the people for five years. After that, they will make a judgment not based on his speech. Maybe he was just angered. I do not know what annoyed Barasa. He should hold his cool. Next time he should not be so annoyed like he was today.

I urge that we spare him. Let us not take the route of asking him to resign or even naming him. I am pleading with the Speaker.

**Hon. Speaker:** Unless Hon. Didmus Barasa wishes to withdraw that particular part of threat to resign, if what he is quarrelling with is proved, as has been said by Hon. Waluke, then the rest will be up to Hon. Barasa's conscience and could very well be ground for naming if he does not resign. Hon. Barasa, do you still want to maintain?

**Hon. Didmus Barasa** (Kimilili, JP): Hon. Speaker, I am very clear in my mind. I am a Member of that sub-committee, but I am not its Vice-Chair. I will want the Vice-Chair to submit the HANSARD because committees' transactions are held on record. I want him to submit the HANSARD Report. If they met somewhere over a beer and decided that I become the Vice-Chair of that sub-committee, that was never communicated to me. I attended that meeting in Nairobi in a hotel where we transacted Bills from morning to evening as a Member and not as a Vice-Chair. That meeting was chaired by Hon. Waluke himself and not even Hon. Peter Kaluma.

Let me repeat that you have given a direction that the HANSARD Report be tabled here. I am not the Vice-Chair of that sub-committee, but I am a Member of that sub-committee. After tabling the report, we will take them to a psychiatrist to check whether they are in their senses or out of their senses.

**Hon. Speaker:** We will just need to end that thing. Member for Bumula, Hon. Mabongah.

**Hon. Mwambu Mabongah** (Bumula, Independent): I would suggest, because I also have an issue with the same Committee, that if, indeed, they have sub-committees, they should make it formal and communicate to the House, so that we can know when to appear.

**Hon. Speaker:** I know you have not been here long enough. That is not the way it is done. There is no need for us to be told in the House. That is a matter for committees. Once you form sub-committees of yourselves, you do not have to come to the House to tell us how you operate. Spare us the agony of that. You just need to inform the Members of the committee. That is enough.

Member for Baringo South, you have been burning to say something.

**Hon. Charles Kamuren** (Baringo south, JP): Thank you, Hon. Speaker. I am not a Member of that Committee. My concern is how Hon. Barasa feels. It is like he has been misquoted by the Chairman. He might have been elected to that sub-committee as the Vice-Chair and he is not aware. I do not know whether it is in order to be elected as Vice-Chair without your knowledge. It is like he is not informed and that is why he has reacted the way he has. It is an opportunity that he can be forgiven.

**Hon. Speaker:** Hon. Wambugu, you are from the same Committee, are you not?

**Hon. Ngunjiri Wambugu** (Nyeri, JP): Thank you, Hon. Speaker. First, I apologise to the House on behalf of the Committee. This conversation is not supposed to be here. It is something we can deal with in the Committee. We will make sure that whatever it is the Committee is supposed to do is done. We have now digressed into a situation where we are discussing Committee and how our Committee operates in the House. I do not think that is how we are supposed to proceed. That is my opinion.

**Hon. Speaker:** The issue is whether you have sub-committees. Hon. Ichung'wah, what is it?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, I agree with the Leader of the Minority Party that we must have a system on how we transact committee business especially if you are a Member of a committee. I will not expect Hon. John Mbadi as a Member of my Committee to raise on the Floor of the House an issue that touches on committee business that we can deal with in-house. However, it also points, as Hon. Mwambu said, to something. I have sat in this chamber - you know I sit here - and during weekends, I have time to visit other places in the country. On Tuesdays, Wednesday and Thursdays, I religiously sit here like my brother, the good trade unionist.

Hon. Speaker, there have been concerns, indeed. The Departmental Committee on Administration and National Security has gone to the extent of forming sub-committees to deal with particular issues like Questions and Petitions, but there has been undue delay in responding

to Questions, Petitions and Statements from this particular Committee. That is an issue that the House ought to discuss. I agree with what my brother, Hon. Wambugu Ngunjiri is saying, that maybe, the issues that we are discussing here are not for the Floor of the House. More substantively, the issue of committees delaying business that belongs to the House is a matter that we ought to discuss.

I know this is a matter that I should be raising, and it has been raised. The Leader of the Majority Party is in the Liaison Committee. The Vice-Chair is also here. Traditionally, it is the Vice-Chair who is found seated in that Committee. I want to commend the Vice-Chair for taking his time to sit in the Committee. However, I think the Committee ought to take their work more seriously. Particularly, I urge the Committee Chair to ensure that they take their work seriously. Even as they form sub-committees, the ultimate responsibility rests with the substantive Chair and the Vice-Chair of the Committee. Even as Hon. Didmus Barasa disputes his vice-chairmanship, it should not escape this House that for him to get to the level of raising the issue on the Floor of the House, there might be other underlying issues. I would want to ask Hon. Ngunjiri Wambugu and the other Members of the Committee to sit down and get to know what is eating that Committee. It is only this Committee that has had very many issues being raised on the Floor of this House, especially issues to do with delays in responding to Questions.

Hon. Speaker, the Leader of the Majority Party raised the issue of Cabinet Secretaries writing letters to Chairs of Committees. I have been here since the 11<sup>th</sup> Parliament and it is customary that, anybody, including Cabinet Secretaries, write. You can even write to the Clerk of the National Assembly and copy the letter to the Committee Chair. It is true that there are Chairs who communicate through phone calls or letters that are written like love letters between two persons. Some Committee Chairs even call meetings off. I ask the Leader of the Majority Party, if he has a copy of that particular letter, to be kind enough to table it, so that if a Committee Chair is doing this out of his or her undying love for a particular Cabinet Secretary, we can advise him or her in the Liaison Committee that, that can be done outside committee work or parliamentary business.

Thank you, Hon. Speaker.

**Hon. Speaker:** I can see that a number of you want to speak to this matter. That is not the business actually. For the information of Members who were not in the 10<sup>th</sup>, 9<sup>th</sup>, 8<sup>th</sup> and 7<sup>th</sup> Parliament - during the clamour for multi-party democracy - the docket that used to have the biggest number of Questions during Question Time was always that of the Ministry of Interior and Coordination of National Government. We are lucky the last holder of the position of Minister in that docket, Hon. Katoo ole Metito, is currently a Member of this House. I am sure the Members who were in the 10<sup>th</sup> Parliament will recall that with excitement. Hon. Kioni, the Leader of the Majority Party and the Leader of the Minority Party will recall the late Hon. Joshua Orwa Ojode, the then Member for Ndhiwa, when he was an Assistant Minister in that docket. He was literally answering Questions on a daily basis. He never failed to answer Questions even on a single day. When we had a morning, an afternoon or any other sittings, there always used to be Questions for him to reply to. So, it is something that is a problem with Kenya. Most of our Parliamentary Questions have to do with chiefs, assistant chiefs, police officers, attacks, killings,

cattle rustling and all manner of things, including anti-corruption issues. All of those issues coalesce around security. That is part of the reason why this Committee is overloaded with work. I sympathise with its membership. I am happy that the Committee has actually formed sub-committees of itself. It is the Committee that receives the biggest number of Questions.

This afternoon, there were only four Questions that were asked. If you check on the Order Paper, you will find that three of them were directed to this Committee because they are all related to security. Even some of the Statement requests which were sought, again, fall in this docket. So, it is not something that the Committee just found itself dealing with today. It is something that is historical. When we used to have Ministers in this House, the Minister for the Interior used to be the busiest. When the current Deputy President was an Assistant Minister in that docket, he was literally here every day. Ministers from time to time changed. Hon. ole Sunkuli and Hon. Marsden Madoka would always be here. That docket attracts a lot of Questions because of the way we do things in this country. It deals with Questions on security, administration and other related incidents that happen across the country. So, I would not want to fault the membership of this Committee because the Committee has a lot of work, particular Questions, Statement requests and Petitions.

A while ago, on the Statement sought by Hon. Osotsi, Hon. Kaluma suggested that it should be handled jointly. Maybe, Hon. Barasa was going to be a Member. You would have joined him. Hon. Barasa, I want to encourage you to continue being an active Member of that Committee. It is just that that Committee is quite busy, given the nature of the issues happening across the country. Let us rest this matter at this point. Let us allow Hon. Waluke to bring the document he has promised when the House resumes on 29<sup>th</sup>.

Hon. Katoo ole Metito, you are hereby, given a chance.

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you, Hon. Speaker. I had a Statement to make, but Hon. Barasa's matter has taken a lot of time. I have given him some wise counsel, that when we come back, he should know what to say, so that he does not find himself on the wrong records of the House.

#### CRITERIA FOR RECRUITMENT OF OFFICERS INTO KENYA DEFENCE FORCES

Hon. Speaker, yesterday, the Member for Tiaty rose on a point of order and asked a Question by Private Notice regarding recruitment of Kenya Defence Forces. Particularly, he asked why the Ministry of Defence has reverted to the county headquarters as the only recruitment centres as opposed to the sub-county county level. The Hon. Deputy Speaker, who was on the Chair then, ordered that the Cabinet Secretary appears before the Defence and Foreign Relations Committee this morning to respond to the Question.

The Ministry has honoured that order. We had a meeting this morning at 10.00 a.m. It was, indeed, a matter of great interest. We were over 50 Members in the room. As a Committee, we resolved that the Ministry should revert to the system of having sub-counties as recruitment centres. The Cabinet Secretary, together with the team from the Ministry of Defence, undertook to convene an urgent meeting of the Defence Council for more consultations and then

communicate with the House the decision they will take, taking into account the directions given by the Committee. I am happy to report that they met and they are in agreement with the Committee. They have done a communication to Parliament. So, a letter is already in your office. The advertisement has been cancelled as it was directed by the committee of this House. New dates for recruitment are going to be announced. The important thing is that the recruitment centres will be sub-counties.

The other issues which were raised by Members who appeared before the Committee will be taken into consideration. So, the advertisement that the recruitment was to start on 28<sup>th</sup> of this month with recruitment centres being county headquarters, has been cancelled.

Thank you.

*(Applause)*

**Hon. Speaker:** Very well. Was that a Question by Private Notice?

**Hon. Katoo ole Metito** (Kajiado South, JP): Yes, Hon. Speaker.

**Hon. Speaker:** For avoidance of doubt, other Chairpersons, that is how Questions by Private Notice are responded to with efficiency.

*(Laughter)*

Next Order!

## PROCEDURAL MOTION

### EXEMPTION OF BUSINESS FROM THE PROVISIONS OF STANDING ORDERS

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

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. Hon. Katoo has shown the way.

I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 42 relating to reading and laying of Messages from the President, and in furtherance to the provisions of Article 132(2) of the Constitution, this House resolves that during the period of the short recess, upon receipt of names of persons nominated for appointment to State or public offices requiring approval of the House from His Excellency the President, the Speaker shall forthwith refer the Messages containing the name(s) to the relevant Committee for consideration without having to recall the House for Special Sitting.

This is a preparatory Motion and a contingency measure to ensure that the 10 days recess for Members is not interrupted. During the period of the recess, should any special matter requiring the attention of the House arise, the Speaker will be empowered, through this Motion,



by this House, to accord it special attention without having to recall the House. Invariably, a number of appointments requiring consideration of the House have been made in the past when the House is on recess. When that happens, Standing Order No.61(2)(a) on a Special Motion states that the Speaker must dispose of the matter within seven days of receipt. We are going for 10 days recess and the Standing Order is talking of seven days. That implies that the Speaker may have to recall the House within those days in keeping with the Standing Orders. Therefore, so that we are not caught up by that, we must make a resolution as a House. In that regard, the House Business Committee has deemed it fit for the House to make this kind of a resolution this afternoon to apply for each time we go on a recess.

One of the appointments that the President may refer to this House for vetting is the Chair and Commissioners of the National Cohesion and Integration Commission (NCIC). I saw the CEO of NCIC speaking on the kind of hate speeches doing rounds. It will be better if the Commission is in place, so that it makes a decision on the hate speeches and not the secretariat. So, I hope the committee that will be given that task will be the Committee on National Cohesion and Equal Opportunity. Hon. Kamanda must lead from the front in making sure that he is compliant in terms of cohesion. You cannot be the Chairperson of the Committee on National Cohesion and Equal Opportunity and you are not compliant. The Chairperson is my neighbour. He is a respectable career civil servant and a politician. He is a good Chairperson. So, as he vets the men and women that the President will submit when we are on recess, all of them - the committee and the nominees - must be compliant in terms of integration and cohesion. I am sure within the 10 days recess, the Building Bridges Initiative (BBI) will present their report. Their deadline is 23<sup>rd</sup> October. So, they have time. We are eagerly waiting.

I am happy to report that the *Punguza Mizigo* Initiative is dead as I had said before. I said in day one that it was dead on arrival. I saw the leader of that party that has no MCA, no Member of Parliament, no governor or Senator, insulting me on television the other day. I want to tell him that I am a leader of a serious political party with 170 Members of Parliament. This Motion is important. I now ask the Leader of the Minority Party, who is a Member of the House Business Committee, to second so that names of any appointment that the President or the Executive will make go direct to the Committee.

**Hon. Speaker:** Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. I want to second this Procedural Motion. Before we adopted this new system where we sometimes preempt communication from the presidency, it required us to come back from recess even for a day to receive a communication on President's appointment and then we go back for recess. That is not proper use of our time. It is costly. Given that we anticipate some appointments to be made, it is proper that we allow you to refer any matter pertaining to presidential appointments or proposed nominations of members to committees of the House. One of the possible appointments - Hon. Duale has spoken about it - is that of the NCIC Commissioners. The Leader of the Majority Party talked about the Chair of the Committee on National Cohesion and Equal Opportunity in the House. Hon. Kamanda has been giving wise council to young Members like Hon. Ndindi Nyoro. Yesterday, I understood why Hon. Maina Kamanda has been counselling him. He is doing a

good job. We need to encourage him, as a father to these Members, to continue counselling them wisely. He said he is a father from that county.

Finally, on the issue of *Punguza Mizigo* Initiative, when you make proposals to amend the Constitution, you should not make it personal, so that when it is rejected, you go to public television stations and spew anger as if someone has demolished your house. Some lawyers think that Kenyans do not think. When they come up with flashy titles like *Punguza Mizigo*, they think Kenyans will be foolish not to read its contents.

Hon. Speaker, allow me to say that the people of Nyeri County have one of the most intelligent speakers in the county assembly. I listened to the gentleman speak and I saw quality. I hope our county speakers will emulate Nyeri County Speaker. I am not saying other speakers are not intelligent, but the Nyeri County Speaker impressed me. He was eloquent in explaining why they rejected the *Punguza Mizigo* Bill. So, Aukot should hold his horses. He should understand that the same way he is followed by his Thirdway Alliance Party, is the same way other parties have the right to enjoy the support of members of those parties. I chair the ODM Party and I would not want to see a situation where party members rebel against the party like the Member for Malindi is doing. It pains me that I see a member of my party rebelling. I want to thank all the MCAs elected on ODM tickets wherever they are for taking the decision that they have taken in rejecting this Bill that was not well thought out.

Thank you, Hon. Speaker. I second.

*(Question proposed)*

**Hon. Members:** Put the Question.

*(Question put and agreed to)*

**Hon. Speaker:** Of course, Hon. Mbadi and Hon. Duale did not address the issue, but I am sure they will, of how these counties are going to communicate to the Houses of Parliament that they have rejected the Bill. Most of them have been doing it on *Twitter*. That is not official communication. They should be told to now communicate. Even on television stations is not communication. They still have to write formally and deliver the decisions of their respective assemblies and certificates.

As you said, Hon. Mbadi, they have done well. They have read through the small document and realised it was just hogwash. It is hollow and empty, with too many contradictions; one provision contradicting the other. I think it was just excited youth who were called upon to come up with things.

Next Order.

**BILL***Second Reading*THE REPRESENTATION OF SPECIAL INTEREST  
GROUPS LAWS (AMENDMENT) BILL*(Hon. Jeremiah Kioni on 15.10.2019)**(Resumption of Debate interrupted on 16.10.2019)*

**Hon. Speaker:** Hon. Members, when the House rose yesterday, Hon. Mohamed Sheikh was on the Floor and he has a balance of 10 minutes. I can see him. You have nine full minutes.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you very much, Hon. Speaker. I appreciate that the minutes I had left are back on and I can continue contributing to this debate. Thank you so much.

I support this Bill on special interest groups. It is quite essential and important. The Constitution of Kenya is quite clear in the sense that it has catered for every individual that lives within the borders and boundaries of this country. In that sense, our Constitution is clear and outrightly gives opportunity to every individual that belongs to this country. To those who come to this country, obviously there are provisions that cater for them.

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

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

Minority groups, women, the youth and those who have special abilities are important members of our society. For them to be considered by the Constitution is quite vital. Therefore, this Bill has clearly outlined that people of special interest groups can vie for electoral and unelected offices. They can vie for various positions in this country. Therefore, this Bill will ensure that the decision that was made between 2008 and 2015, that is about five years now, was quite overdue. Therefore, the Bill is timely and will ensure that that has been put in.

Given that I am carrying on from my previous contribution yesterday, I have clearly outlined the position that I am taking on this. I support the Bill. Without taking much time, I am glad I contributed to this very important Bill.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Igembe South.

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Temporary Deputy Speaker. I support this Bill. It is high time we realised the potential of the mentioned

groups. In most cases, political parties tend to sideline people with special needs. You will see women, youth, minorities and PWDs being sidelined during decision-making. It is high time we adopted this amendment, so that during political campaigns, all these groups are included.

In many cases, special interest groups are not valued in decision-making bodies. They are appointed to boards, agencies and public institutions. They are not given any opportunity to make decisions. So, it is high time we implemented this amendment.

Under the Political Parties Act, when it comes campaigns funding, special interest groups are normally looked down upon. They are not funded and political parties expect them to perform well or to get the positions. The amendment provides that political parties are supposed to submit the framework of their expenditure within the period of one financial year and this will bear fruit. Political parties will take care of the special interest groups and manage them, both in the national Parliament and in county governments.

Hon. Temporary Deputy Speaker, political parties will ensure they have the two-thirds gender rule representation. Currently, many political parties lack such structures as they are highly ethnicised. So, these amendments will ensure there is no discrimination in membership.

Also, the IEBC will ensure that after the preliminaries, parties submit lists that have both genders and that do not contravene the Constitution.

Secondly, the 5 per cent of Persons Living with Disabilities (PLWDs) means they will not be left out during nominations and the submission of the lists. They will all be represented. This Bill tends to monitor how political parties will be working and how information will impact on members. It will determine how Kenyan citizens are enlightened on matters. It addresses the issue of how sensitisation will be carried out across the country concerning the need to have special interest groups represented.

I support these amendments fully. All groups should be represented. They will help the Government to make informed decisions. Many times, decisions are made minus consideration of special interest groups as they are not represented in political parties. So, it is good for us to look into these amendments as they mean well for special interest groups. In most cases, young people are not allowed to vie in political parties. They are not even valued as young people. Parties do not believe that we, the young people, can make informed decisions which can transform this country. So, it is good for these amendments to go through. More important is the penalty which has been stipulated of Kshs1 million or a three-year jail term. This should be enacted, so that the young generation can be at liberty to vie for political positions.

I beg to support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. I am sure Hon. Member for Igembe you are a living example of the youth, being the youngest elected Member in the House.

Hon. Member for Kathiani.

**Hon. Robert Mbui** (Kathiani WDM-K): Thank you, Hon. Temporary Deputy Speaker for this opportunity. This Bill seeks to amend various laws. It is an omnibus Bill because it deals with seven Acts of Parliament.

The intention is to give effect to Article 100 of the Constitution which is meant to promote the representation of women, PLWDs, youth, ethnic and other minorities and marginalised communities in Parliament. A clear reading of the Bill and the amendments proposed show that it is meant to promote that representation in the county assemblies and public institutions. I have read through these amendments and made seven observations, which make me inclined to support the Bill.

First, the laws basically want to give a clear definition of special interest groups. Almost all these amendments are meant to give a clear definition. The definition that appears within the statutes is the one that is in Article 100 of the Constitution. That is something that is commendable.

Secondly, I have made the observation that there is clear intention to recognise special interest groups that we have defined. So, most of these laws want to ensure that they are recognised within their institutions. Thirdly, there is inclusion of special interest groups in decision-making in public institutions.

The fourth observation that I made is that it improves communication. People with disabilities are part of special interest groups. For the deaf, they communicate through sign language. So, the law proposes certain changes in the statutes to enhance communication, so that even the deaf can know about the laws that are being made.

The blind will also benefit from the use of braille. This will help in improving communication for the special interest groups category. There is also the issue of facilitation of special interest groups in political parties. When people vie for political offices and they fall within this category, the parties should ensure that they are given special or preferential treatment, so that they can compete favourably with others. There is also the issue of enhancing change of attitude towards people with special interests and this is quite commendable.

Finally, my observation is on capacity building of special interest groups. They have some very serious hidden amendments in this omnibus law. I want to single out two issues, the first one being the amendments proposed to the Political Parties Act. In this omnibus law, they have proposed a sharing formula for political parties. The proposal given is that 53 per cent of political parties' funds should be shared among the top two political parties. This must be advised on the current situation in this country where we have one big party, the Jubilee Party, and the National Super Alliance (NASA) Coalition.

Unfortunately, this might not always hold. A time may come where the first, second and third political parties will leave each other with a very small margin in terms of numbers. Then what will happen if we say the top two will share 53 per cent of the kitty from the Political Parties Funds? What if the third political party is just one Member less than the second largest political party? I will propose an amendment to this if possible that instead of saying that the top two political parties should share 53 per cent and all other political parties share 20 per cent, we should consolidate both the 53 and 20 per cent and then share it proportionally amongst all the political parties represented in the House.

This will help us to ensure that even those smaller political parties are given an opportunity to grow. Here we are talking about special interest groups and we want to kill the

smaller political parties. This does not make sense. So, in my opinion, there is some mischief. I support the bit where they say that 20 per cent of that fund should be shared amongst the parties that are showing clear inclination towards supporting special interest groups. But the top two parties cannot take the lion's share and leave scraps for the rest of the political parties.

Another challenge I have observed is the changes or amendments proposed to the Elections Act. Here, the proposal is that political parties are supposed to ensure that one-third of the nominees to Parliament or county assemblies are of either gender. I am the organising secretary of the third largest party in the country and there is no formula you can use to do this. This House has attempted to pass the two-thirds gender rule for the longest time and it has been very difficult.

So, how do you tell a political party to decide that a third must be of either gender? What formula will they use? Yes, we know the numbers if we have 100, then it means 33 point something must be from either gender. But how do you determine the people that will vie? When people are vying for political office and nominations are through a free and fair electoral process, then you cannot stop men from vying for certain positions. I think this is a real challenge. I do not know whether there is a proposal on how a political party can do this and I do not think it works for me.

I wish to touch on the proposal of five per cent of nominees being people living with disability. In my political party, we have people living with disabilities who competed and won political office and there are those we nominated. But when five per cent of the nominees whose list will be given to the IEBC for competition must be people living with disabilities, then how do you determine this and make it happen? Who do you block so that the special interest groups can get an advantage? In this country, for those who go into office through nomination, it is very clear that we give more opportunity to special interest groups. When it comes to elective office and competition, this is an area I would have a problem supporting. Otherwise, the general idea and the intent of the Bill is basically positive.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Kathiani, you are the Deputy Organising Secretary of the largest party. This afternoon we have had many Vice-Chairpersons speaking. Hon. Kajwang', you have been here for long.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Thank you, Hon. Temporary Deputy Speaker. I am pleased to see we have a Bill in the Assembly to operationalise Article 100 of the Constitution. One of the things I must note is that not many of the women in this National Assembly are speaking to this Bill. This is what they should have spoken about in the last seven or eight years. They have been trying to find means and ways of amending the Constitution. We made response in this Assembly and told them that the Constitution has already given a mechanism through which issues of gender and marginalised communities can be dwelt with.

This is the only way in which issues of gender rationalisation and empowerment may be found. All those attempts they have done, and with a lot of respect in my view, have wasted a lot of time trying to beat the horse which does not sleep in the same stable. This is what I would

have expected many of the ladies in this Assembly and particularly those who are inclined to pursue the question of gender to come and support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kajwang', I am not cutting you short. This is resumption of debate from yesterday. If you were in the House, not that I am protecting the lady Members, but many of them spoke to this like Hon. Sara Korere, but I do not want to mention them. But you can carry on.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I appreciate, but I have not seen the strength and stamina which I saw from most ladies of this House as they pursued the question of amendments of the Constitution to provide for gender. That stamina is kind of lacking. But anyhow, I just want to make it clear that this is the only way in the architecture of the Constitution by which issues of gender can be mainstreamed in the Constitution.

You know that Judiciary took a rather deem view of the Constitution. I heard many judges saying that the National Assembly would be scrapped because we had not operationalised the issue of gender not knowing that Article 100 of the Constitution is the only one which expects the National Assembly to operationalise. Those others are in the hands of the State. The Constitution is very clear that it is the State organs and the Executive that need to operationalise those sections. It is only Article 100 which is in the hands of the National Assembly. When we amend this Bill suitably, in my view, the National Assembly shall have done its duty to operationalise sections of the Constitution which demand gender parity.

There is need to put more input to this Bill. One of the things I see that will give problems is the definition of "ethnic communities", "minorities" and "marginalised communities". I have seen the Bill has tried to explain what special interest groups are by lifting the Constitution's definition in Clause 4 and in Clause 7 on political parties. I do not know why the framers of this Bill fear the word "tribe". When you talk about "ethnic", you are really talking about tribe. There should be homogeneity of persons who speak the same dialect. When you say that ethnic and other minorities mean a group that is not the dominant one in a given society, that definition is boring to me because it does not explain what this ethnic and other minorities are. It should talk about the dialect or the tribe spoken by some homogeneity group within that community. This is a big problem. Where my mother was lucky to have given birth to me, I live amongst some people called the Suba. I am Luo living amongst the people called Suba. There is a lot of discussion as to what makes a person a minority and what makes a person dominant. It is a question which is left more on evidence which cannot be precise. I think there is need for some more precise definition on this term called ethnic and other minorities, so that we can know.

The Chairman of the CIOC is here. I will allow him to attend to me. I think this will enrich some of the things he is looking at. There should be a Schedule to the Act in which some communities are from time to time prescribed to be ethnic minorities. That can be done by the Cabinet Secretary in charge of whichever ministry it is, even if it is the Attorney-General. There should be a register or some kind of schedule from time to time which perhaps is brought before the Assembly and say Suba is a minority. For the purposes of whatever it is that will be done until that schedule has been amended, Suba will still be a minority. However, if you leave it open

to the whims of, for example, the political parties or people who make decisions, somebody can be a minority depending on the judgement of that political party. I think there is need for a schedule to explain the nomenclature that we have seen.

I think there is a problem again in terms of policy and law making in this country. We like using law to police outcomes. We make laws and then force *wananchi* to behave accordingly. That is not how law is done. Law cannot achieve much if we use it to police people. What I mean is this. For example, just like the Member for Kathiani has said, if you need a third or a percentage of people to be either of disabilities, youth or women, you cannot police it. You have to use another method to encourage that outcome to be a product. That is what they do in India. I think we need to understand this from a policy perspective. For example, what do they do in India? They have affirmative action for girls. There are schools right from kindergarten to tertiary education.

*(Hon. Wilson Sossion consulted Hon. T.J. Kajwang')*

I think this is out of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order! Order! Hon. Sossion, you are out of order to disrupt the Member for Ruaraka.

*(Hon. Wafula Wamunyinyi walked along the aisle)*

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Another one is standing between me and the Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): This one is not in any way disrupting you. Carry on.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): This is the problem that we have from a policy perspective. We try to use law to drive a process. In India, they would, for example, have girls' schools to encourage women to go to school. They have technical vocational education and training institutions (TVET) institutions which are designed for females. In that case, you will find several ladies who will have graduated and who have capacity to be in decision-making positions. However, if you tell a political party that you want them to bring a certain number, it is impossible. That is not how human geniality is done. I think we need to have a paradigm shift in how we do this thing and give more budget allocation to things which are gender sensitive and for the youth. Let us see how we can encourage these people and empower them both economically and socially.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You were about there. Where? Can I give you 30 seconds for you to arrive?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): That will be very kind of you. I was just finishing this bit to say that this idea of policing people is really not the correct thing to do. I think we have to have legislation. We need to move it to the budget line. We need to have institutions which will empower these people. Leadership is not the only indices for empowerment. Everybody is



talking about being in a political party or being elected. Why are we not talking about people who should be in institutions and schools? You must not be a politician to make a mark in this country.

I thank you, Hon. Temporary Deputy Speaker, but you may...

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kajwang', your 30 seconds are over. At least, you are there now.

Next is the Member for Kitui East, Hon. Mbai Mbithuka.

**Hon. Nimrod Mbai** (Kitui East, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak to this Bill. I rise in support of the Bill. The Bill gives clarity to the definition of special interest groups.

The strength of the Bill is that it gives clarity to the definition of special interest groups in our country. The words "interest groups" have been taunted to mean more about women or the two-thirds gender rule. In this instance, we have a clear definition of special interest groups and where they fit. The other strength of the Bill is its intention to institutionalise the affirmative action in terms of representation of special interest groups. We have had instances where when we talk of the two-thirds gender rule, it has been seen to be more skewed towards representation of either men or women leaving out people with disabilities, marginalised communities and other special groups. However, in this instance, we have all special interest groups defined and they have been institutionalised to be in existence in terms of definition in the Bill.

The other strength of the Bill is that it draws the whole discussion away from the traditional discussion on the two-thirds gender rule that has been seen to mean two-thirds of either gender in any formal meeting as we have been trying to address the challenge in the constitution of the House. On this one, the discussion is now being moved from the gender-related matters to special interest groups. Somebody can live with disability or be challenged. It can be a lady, a man or a homosexual.

Another thing about the Bill is that we have had the perennial challenge from the last Parliament of not addressing this matter to conclusion. We had an attempt last year to address this matter, but it now looks like it has the full support because it has tried to speak to the matters which brought challenges in passing the Bill in the other instances.

Hon. Temporary Deputy Speaker, this time, the Committee went ahead and tried to iron out all the issues. The Bill settles most of the issues that brought the challenges in the other instances when we had time to discuss it.

As I support the Bill, I will speak to the fellow Members in the House and persuade them to support the Bill, so that we can settle the matter of the two-thirds gender rule *vis-à-vis* Parliament being seen as not being able to address the challenge.

Thank you. I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Member for Butula, Hon. Oyula Maero.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this important Bill which operationalises Article 100

of the Constitution. It has come at the right time when we have been talking about gender equality.

This Bill mentions women as being under the special interest groups. It is high time women are left to compete freely with men in whatever activities they engage in. We should realise that the population of women in Kenya is very high. It may be more than 50 per cent. They should be allowed to campaign or compete freely with men and find their way out like it is happening now.

I also want to comment a little on the spending limits which have been proposed in the Bill. It may not be easy to control the spending limits in a campaign trail and to carry out a proper audit to determine whether somebody has used excess funds. If it is not looked at carefully, this can create victimisation by the opponents. As much as it is in the Bill, it should be looked at again to avoid victimisation.

I also want to mention a little on the use of bad language which is common. We still hear it even today. If it is not looked into properly, it might also create victimisation. Something should be brought in to make sure that anybody who uses bad language is properly identified to avoid victimisation. This Bill is important. It covers seven laws which were left hanging for some time. I believe the population of Kenya will follow this law very critically and ensure that during campaigns, there is peace in the country.

Hon. Temporary Deputy Speaker, with those few remarks, I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Nakuru Town East, Hon. Gikaria.

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Temporary Deputy Speaker, I want to thank you for giving me this opportunity to give some input into this very important. I do not know whether I will call it a Bill or an amendment. I am a little bit confused because if you look at the wording of the Bill, it talks about representation.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Gikaria, it is the Representation of Special Interest Groups Laws (Amendment) Bill (National Assembly Bill No.52 of 2019) as it is indicated in the Order Paper, Order No.9.

**Hon. David Gikaria** (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Speaker. That is where the confusion is. It has the word "Amendment", but it is a Bill. I support the Bill, more so what was said yesterday at the plenary on the aspect of the definition of special interest groups. It is important for us to look into that.

As the Leader of the Majority Party said, we might look at marginalised communities, but the Constitution does not specify whether it is within the country or region. That needs to come out very clearly. Hon. T.J. Kajwang' has said that Subas always claim to be marginalised on that side. Another tribe will be marginalised on another side. That is the most important aspect that we need to look at.

I was looking forward to an aspect under the IEBC Act of 2011, which the Bill seeks to amend. The Bill says that special interest groups means the groups specified under Article 100 of the Constitution. The first one is women. At some point, there will be a paradigm shift and men will be marginalised. We used to talk about the endangered girl-child, but now it is the boy-child.

At some point, men will be marginalised. The best word to use should be gender, but not women. I will talk to the Chair of the Committee and see whether he can explain this.

There is also the amendment to the Persons with Disabilities Act. We need to look at our laws. Are our laws meant for public institutions? The Government funds public institutions. What about the private sector? The private sector should be part and parcel of the laws of this country. Public institutions conform to the laws. However, what happens to the private sector which employs quite a huge percentage of the people and is included in decision-making in this country? I know the private sector might have a problem. As a country, we need to look at whether our laws affect the private sector, for example, the Companies Act. It is high time we not only mentioned people living with disabilities and their percentage in public institutions, but also in the private sector. We should make it mandatory for the private sector to conform to this law, so that we do not leave this to public institutions and Government agencies only. It is important for us to look at that issue when we bring some amendments.

There is also an amendment to the IEBC Act on parties' nominations. That is very critical. Once this amendment is passed, the IEBC must ensure that their nomination list conforms to Article 90 of the Constitution of Kenya. In the last Parliament, we had a disabled nominated Member of Parliament who was taken to court by his party to be removed. This was sad. Once the IEBC Act is amended, it will solve that issue.

The other bit is about improvement of voter education. The IEBC Act requires the IEBC to conduct voter sensitisation and education. Most of the time, they come without sign language interpreters. I was happy when I went for mass at Subukia Shrine during the National Prayer Day. The Catholic Church has made it mandatory that when the choir is singing, they have sign language interpreters so that people who have hearing impairment can understand. They are also Christians who need to understand what is being said and the songs being sung. That is what we need to do. When voter registration is being done, the officers in charge should come with sign language interpreters so that deaf people can understand.

On the Political Parties Act, I do not know how they will implement that a party that has a certain number of special interest group members, elected members of county assemblies or Members of Parliament will get 20 per cent of the Political Parties Fund. I do not know how practical that is. It is important it remains the way it is. Sometimes even if you want to have that, you may end up with only one or two elected people of special interest group. What percentage of the funds will be allocated to them? It may happen that the political party will only have one or two people. Will you then take 20 per cent of the Political Parties Fund and give it to the political party with one or two people from the special interest group? I do not know how practical that is. It is important for the Chair of the Committee to look at the reality of things when it comes to some of these proposals. Twenty per cent of about Kshs4.1 billion is a lot of money. It is important for the Chair to look at how practical it is that a party with the most elected special interest group Members is allocated 20 per cent of the Political Parties Fund. That will bring a lot of issues because some of the minorities may be at the Coast and not in Rift Valley.

Publication of special interest groups is important particularly for political parties. Whenever they make their publication, it has to be in line with the requirements so that persons living with disabilities can have seats.

I totally agree with the improvement of the mandate of the National Gender and Equality Commission. It should be given an additional mandate for it to monitor implementation of affirmative action. Sometimes, if you have a body that can do that, it is easier. This Commission will be making reports to Parliament and we will make follow ups.

On the Election Campaign Financing Act, if we give too much advantage to special interest groups, in terms of spending limits and we do not look at that... Elections are supposed to be free and fair. It is important for us to have that.

The memorandum says that this is a money Bill. It might affect some monies in terms of what will be forgone to encourage and improve the special interest groups.

I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Wilson Sossion.

**Hon. Wilson Sossion** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill and congratulate the Committee for coming up with it.

When we talk about the special interest groups, we are talking about efforts to bring about equity. This country has progressed very well democratically compared to other many nations. This is a great stride to give effect to the provisions of the Constitution. The Constitution to Kenya particularly the Bill of Rights recognises all these groups. It would be futile if the political parties, IEBC and other implementing agencies do not actualise the objectives of the Constitution.

As I raised in a point of order the other day, the special interest groups being referred to in this Bill are meant to address the concerns of Article 100 of the Constitution. Article 97(c) of the Constitution recognises workers. During the writing of the Constitution at the Bomas of Kenya, workers agitated for representation in this institution and that explains why I am here.

Hon. Temporary Deputy Speaker, you will agree that the workers' voice is the conscience of good governance and it is inevitable in any progressive democracy like Kenya.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Sossion, even as you debate, you recall the substantive Speaker made a ruling and communicated on that one. But this is a House of debate.

**Hon. Wilson Sossion** (Nominated, ODM): I propose that we will have to make that amendment so that this Bill considers both Articles 100 and Article 97 of the Constitution so that as a country we progress by having all groups on board.

I support this Bill. It is very progressive and strengthens the role of women. We cannot pretend that women in this country have attained the level where they can compete with men. Data by the United Nations Educational, Scientific and Cultural Organization (UNESCO) is clear that up to 80 per cent of girls in some parts of this country still suffer from female genital mutilation and other disadvantages. Therefore, strengthening the representation of women remains critical for many years to come and of course, persons with disabilities, youth and all the groups.

The challenge of identifying a group that is an ethnic minority should not be difficult if we are a progressive country that believes in true scientific data. We have a UNESCO office in this country that is charged with this responsibility. Of course, ethnic minorities is a major focus of the United Nations through UNESCO. Even within the teaching service globally, there is a campaign to ensure that all ethnic minorities have the necessary social services including teachers. They are specific about teachers. Do the known ethnic minorities in this country like the Elmolos and Ndorobos have all these? The reason for mapping these groups and identifying them correctly is for equity and inclusivity to be there across right across. Right now, the country is debating the Building Bridges Initiative that talks about equity. We cannot talk about national equity right across without moving down to ethnic minorities. It is not going to be difficult. Some communities can masquerade as minorities when they are not. This can be sorted out by proper scientific data and studies through the Government agencies we have.

I support this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member representing the people of Kapenguria Constituency, Hon. Chumel Moroto.

**Hon. Samuel Moroto** (Kapenguria, JP): Thank you very much, Hon. Temporary Deputy Speaker, for also giving me this opportunity to air my views and consider some issues that have been raised by colleagues in this House. I support the Bill. As Members have said, it has been here for long. It had some issues before. Time has come and there is now light at the end of the tunnel.

When we talk of special interest groups, most of the time people think of women. Throughout history, we have had very powerful women who championed their way to this House. We have the likes of Phoebe Asiyo, Chemutai from Rift Valley, Nyiva Mwendwa and others who came and did very well. These include those who were appointed Ministers such as Ngilu, Karua and others. I do not know why we refer to women as special interest groups or weak people who cannot make it, unless they do not want those positions. I can even refer to you, Hon. Temporary Deputy Speaker, as you sit there. You are doing very well. If we rate the way you chair things compared to the other men, you might be better. So why should we all the time say that women need special attention when we know they can do something?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Kapenguria, there is an intervention by the Member for Kanduyi. Let us hear what he has to say.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker. Is Hon. Samuel Moroto in order to insinuate that you normally chair things and not the House? You do not chair things. Is he in order?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Kapenguria, the Member is interested to know whether I chair things or the House.

**Hon. Samuel Moroto** (Kapenguria, JP): Thank you, Hon. Temporary Deputy Speaker. Sometimes you chair other things. You can still chair the House as you have been doing. That is what I was referring to. I have been here longer than this young man here. You cannot compare my age with his. He is a friend.

I have gone through the current Bill. Maybe, during the Committee of the whole House Stage, we might come up with amendments to improve it and make it better than it is now. The people who need special attention are the disabled. We had one in the 11<sup>th</sup> Parliament and another one in the 12<sup>th</sup> Parliament. Why should we only have one and yet they are many? We had better increase the number to two so that as one articulates an issue, another one can come in and add what the other one left out.

This weekend, I was in my constituency. We went to a school called St. Francis for the visually impaired. We took a bus there bought by the National Government Constituencies Development Fund (NG-CDF). Everybody knows the Member representing the disabled - Member 001. Everybody appreciates what he does. I gave him an opportunity to communicate with those people. If there were two of them - a man and a lady - they could help each other. When we were there, they were asking him to go to Kapenguria, Lodwar and other places. He cannot make it as one person. Those are the areas we should consider.

Those small communities that cannot even make up a ward are also special interest groups. If you come to my constituency, the popular community there is the Pokots. We also have Turkanas and other groups which need somebody to represent them in the House. Those are some of the areas this House should address more.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the nominated Member, Hon. Yussuf Halima.

**Hon. (Ms.) Halima Mucheke** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to add my voice in support of the Bill. It seeks to amend various laws so as to give effect to Article 100 of the Constitution which mandates Parliament to enact legislation to promote representation in Parliament of women, persons living with disabilities, the youth, ethnic and other minorities.

This Bill was brought to the Floor of the House by the Chair of the Constitutional Implementation Oversight Committee (CIOC), the very able and committed Hon. Jeremiah Kioni. I happen to be a Member of the Committee. For sure, I can tell this Parliament without blinking that the Committee conducted public participation with various stakeholders that included the IEBC, the former Attorney General (AG); Professor Githu Muigai, Professor Yash Pal Ghai, Abdulnassir and other groups who came with a wealth of knowledge and contributions that have been considered in making the amendments.

I am a beneficiary. I am here as a nominated Member. I believe these amendments mean well, especially for women, youth and other special interest groups. It is worth noting that the amendments have not tampered with the definitions therein. They are meant to empower special interest groups through the parties. This is positive and laudable. They are also meant to enable other political parties to benefit from the Political Parties Fund and especially, inclusion of political parties that show interest in the special interest groups.

The main intention of this Bill is to operationalise Article 100 of the Constitution. Since women have found it very difficult to compete and win in the field/community that is very patriarchal, once Article 100 is operationalised, we in the special interest groups, namely, women

and other marginalised groups shall be in a position to compete and win in the elections. The Committee did a lot and for sure I support the amendments as they are.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Member for Lari, Hon. Mwangi Mburu.

**Hon. Jonah Mwangi** (Lari, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill. I am now well-versed in this Bill.

As I support this Bill, I am more concerned about the 53 per cent that we are sharing out to the two big parties. We are creating two big monopolies which will receive 53 per cent of Kshs4 billion which is more than Kshs2 billion. This will leave all the other parties with very little amounts. It gives a lot of control to the two parties. I propose to the Committee to share out this money. Maybe they can give 40 per cent to the big parties in the House and then find a formula for apportioning the remaining 60 per cent to the other parties. The Bill does not give us clear guidelines on how to share out the other monies among the other parties. It talks about how a party must have five members.

I am also concerned about that party that does not send Members to Parliament but it fielded candidates in all the constituencies. Unfortunately, a National Super Alliance (NASA) or Jubilee wave came but that party had all the tenets of democracy. They had special interest groups like women and youth but none of their candidates won a seat to come to this House. They are also entitled somehow to get a share of the parties' kitty. I request the Committee to find a formula of how to include those people to get some money because they had invested so much in the party.

My other happy thing about this Bill is that we are trying to bring to par the equality of other people. When we go to dais, we need the people who are organising political parties to make ramps so that the disabled people can come and talk so that we have equal access to the facilities that we have in this country. When we are trying to bring equality and equity to all the people, the youth and the disabled should also be given a chance to talk. Today, I only see our disabled people staying back there, they cannot even be seen. We need to make sure that we bring them closer so that we are able to see them. We need to give them more opportunities to talk.

The other one is the nomination criterion. I am happy about this Bill because it has said that during nomination, the nomination list must have at least a third of each gender. It is not actually the people who will be nominated, but that the nomination list must have a third of each gender. Why? We do not want to contravene other parts of the Constitution. Section 38 says everybody has a right to choose their leader. If we present 100 candidates and we have 30 women and 30 men and women, then if the people who are choosing decide to choose all the 100, it is their right. We do not want to violate one part of the Constitution trying to amend the other part. I am happy about this part on nomination criteria which says we must have a third of either gender.

I am happy that we are talking about all categories of the people that we want to include in this Bill; the youth, the disabled and other groups, but I am more concerned about the marginalised. The Chairman is here and can hear me. We want a clear definition of the

marginalised. Today, we are saying some people in North Eastern are marginalised and Mt. Kenya people are favoured. Over years, you will find that we recruit 10 teachers in a population of 100. That means we have recruited 10 per cent. When we recruit 10 teachers in a population of a million, we have recruited 1 per cent. Over years, it turns out that every youth in a small community has been employed and 90 per cent of the youth in a bigger community in Kakamega or Kiambu counties are still lacking jobs in the name of marginalisation. Who has been marginalised at this point? The majority. If we talk about having 10 soldiers in each sub-county, in a sub-county of 10,000 people and another one of 200,000 people, what percentage is 10 soldiers? We are creating marginalisation for other regions and creating de-marginalisation in other regions. This should be a moving target. We should define marginalisation. For example, we can move it per three years, then we say this group is marginalised for these three years and we uplift them. After three years, we define the marginalised group and we write down so that our law can clearly state the marginalised groups. That is my concern. I am hoping the Chairman you hear me so that we can amend that.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Not even hearing, he is next to you, he is seeing you.

**Hon. Jonah Mwangi** (Lari, JP): He may decide to close his ears, that is why I am trying to be loud and clear.

The other part I am talking about is the private entities and private industries. When we talk about gender and categories of people that we have, today, the studios only call the likes of Hon. Wamunyinyi who have white hair and beards, broad shoulders and big money. They will never call the youth and women. We also need the private industry and political parties to practise what we say. We have seen a lot of appointments. There is a big outcry on the social media concerning appointments. We need it to be practised by our leaders and private industries. Practice makes perfect. So, when we say that we need a third, when we say that we are looking for a Kenya that has equal rights for everybody, then even the private industry should practise that.

The other part that I am talking about is party positions. When you talk about a third gender rule, let us see even from our big parties that being followed. Let us see the youth, not a youth wing. We do not want a party that shows us a youth wing. We want the higher hierarchy to adhere to the gender rule and cater for special interest groups.

We also need to encourage more women to form more political parties. Let them not only wait for the men-dominated political parties so that they have no opportunity of winning positions. We need more political parties even from the more disadvantaged groups. Today, if Hon. Member No. 001 formed a political party that is taking care of disability, I am sure we will have more than five who will come to this House. We need to encourage each other so that we can balance this House naturally without putting into law that we must have two-thirds gender rule in this House. We need it to come naturally because we do not want to contravene the other parts of the rights of the people to choose whoever they want.

The other part is about the categories that we are talking about. I have said a party for disability, youth, a youth movement and women movement. I am happy for the women of today.



The groupings that we are seeing in the country like *The Embrace* are trying to bring women to work together. We have a problem down there in the villages where women are crying to be given positions but they are not able to work together. When we go to women, they are the same people who will choose men. When they lose their women, they start crying that women are never given a chance to come to Parliament. So, the groupings that I am seeing today are a reflection of the future. Women can go to a constituency and campaign for their fellow women. We need these numbers balanced so that we can get the best candidate to come to this House and naturally we will balance the equation while in this House.

I am back to sharing of money. I have calculated those figures and they are huge. We have talked about Kshs4 billion and the 20 per cent that will go to other smaller parties, that is Kshs800 million. That is what I am encouraging the Chairman. If we can push that one a bit up, it will be good and the criteria should not only talk about the parties that will sponsor candidates who will win. We have a history in this country, a history of euphoria. If you formed a party and your party has worked so much, it has gone to tribunals, courts, it has sponsored candidates, women in political rallies, youth to do their campaigns, then at the end of the day, if all do not make it, that means those parties are not equal to the others. We need them to get money.

With those few remarks, I beg to support. I hope those amendments will be included.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Sigor.

**Hon. Peter Lochakapong** (Sigor, JP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. At the outset, I support the Bill as has been supported by my colleagues. The Representation of Special Interest Groups Laws (Amendment) Bill is good idea and it has come at the right time. We are talking about women, persons with disabilities, youth and minorities.

The marginalised need to be represented. I know in certain quarters people will say that they have already been taken care of elsewhere. We need to bring the idea of marginalised groups so that they are also represented here. The challenge is the identification of representatives by the parties. It would be important that we have a clear way of identifying how marginalised and special interest groups can be identified so that they get to represent their groups in a House like this one.

Many times, the minorities and the marginalised are left out. I have in mind people like the Sengwer in West Pokot and the Elmolo around Turkana. Being minority in nature, their voices are not heard and, therefore, they do not find their way here. A deliberate effort should be made through this Bill so that the right people, who actually deserve to be called special interest groups and probably have no connection to the bigwigs, get identified so that they can find their way to this House to represent their people. We have already seen that those who are representing special interest groups here are doing a good job. A good example is Nominated Member No. 001. He is doing a good job. He was properly identified. That is why he has the passion to talk on behalf of people with disabilities, which is quite good.

As for the nomination lists, we are saying that a third of either gender should be in this list. How do we identify them? That is where the issue should be. We do not want to have situations where people identify their friends and cronies and put them on the nomination lists. Where the rubber will meet the road is when this Bill will be operationalised as envisaged. The

Committee has done a good job. I support this Bill. My only fear is that even when we develop good regulations like these ones, their implementation is what raises questions. In this country, we have so many regulations.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Member for Sigor. We have an intervention by the Member for Lugari, Hon. Savula.

**Hon. Ayub Angatia** (Lugari, ANC): Thank you, Hon. Temporary Deputy Speaker. I am a Member of the Committee. I can see that we have exhausted this debate. It started yesterday. We have talked about issues of gender ever since. We are fixing the Bill and we are going for recess. I request, kindly, that you allow the Mover to reply so that we do not push it to the next stage because we are going on recess.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Which Standing Order are you standing on?

**Hon. Ayub Angatia** (Lugari, ANC): It is Standing Order No.95.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Standing Order No.95. Before I prosecute your intention, which you are rising under Standing Order No.95, Hon. Lochakapong, please just carry on.

**Hon. Peter Lochakapong** (Sigor, JP): Thank you, Hon. Temporary Deputy Speaker. This House passes very good laws and regulations. Many regulations have been passed in this country. The only issue is on implementation. Where the rubber meets the road is when we implement these regulations as intended. This is a good Bill. I only hope that when it comes to implementation, it will be done as intended.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, I am supposed to put the Question as requested by Hon. Savula. I can only see that Hon. Sabina Chege wants to contribute, but I cannot contrive the procedures of the House, even though I would want to use my discretion. Therefore, I will put the Question.

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

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Hon. Temporary Deputy Speaker, can I donate a minute or two to the Member for Murang'a County?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you for your willingness to donate a minute to the Member for Murang'a County, but according to the House procedures, you cannot donate time since the debate ended prematurely.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker. I was being kind. I have conceded to your guidance. This is not a good day for Hon. Sabina Chege from Murang'a.

I want to start by appreciating the very many Members who have contributed to this Bill. Out of a record of 50 Members who have spoken to this Bill, only one Member has had

reservations as to why we need to enact this Bill. I really appreciate the very passionate contributions that have been made by Members from across the board. Women Members of Parliament were very clear and passionate about this Bill. I want to confirm to this House and to the Members who have contributed that we have noted all the ideas they have put forth. They are on the HANSARD. When we retreat for public participation, we will certainly include them in the amendments that will come. I also know that Members will have an opportunity to introduce amendments during the Committee of the whole House.

At the outset, it is important to reiterate what the Speaker said and what a number of Members have said. There are those who had gone to court to try and get Parliament dissolved for the reason that we had not fulfilled the requirements of the Fifth Schedule of the Constitution. It is important that those people pay attention to what is expected of us, as Parliament, and to the requirements of the Constitution under the Fifth Schedule.

It is important for them to note that the 12<sup>th</sup> Parliament, building on what the 10<sup>th</sup> and 11<sup>th</sup> Parliaments did, is actually aiding the implementation of the Constitution by pursuing the legislative agenda that has been set out in the Fifth Schedule. Once we comply with Article 100, we can comfortably say that what was expected of Parliament has now been done 100 per cent. The aspect of implementation of the Constitution in terms of doing what is expected and delivering services to Kenyans, as provided in the Constitution, is the phase in which we are. Implementation is the most crucial phase as compared to just enacting the law. There is the issue of implementing the laws that have been passed by Parliament. That is the phase in which we are. The CIOC is now in the process of establishing how much of it we have done.

The 12<sup>th</sup>, 11<sup>th</sup> and 10<sup>th</sup> Parliaments tried to amend the law so that it could fulfil the requirements of Article 81(b). The attempts were not bad, but it was clear that it was not achievable. We did not achieve with the three Parliaments. It is not a requirement of the Constitution, but I think we are being imaginative. We were trying to do what was not possible. However, this Bill seeks to comply with Articles 81(b) and 27, which carry the aspiration of the Constitution in terms of the two-third gender rule and other minorities, marginalised and special interest groups as defined in Article 100. It helps address those principles. I hope when we come to the Third Reading, we will be able to include the amendments so that we can carry it through.

I do not intend to go through all the suggestions that have been made by the honourable Members of this House, but I think it is important to pay attention to the definitions as contained in Article 260 of the Constitution and as guided by the Speaker yesterday. We would want to have a clearer definition of the largest party. We would want to see why in our drafting we addressed the issue of county assemblies. That is another issue that was raised. It is provided for in Clauses 10 and 17 of the Bill. I think it is important we pay attention to that and see how we can address it.

There is quite a bit of concern on the requirements for a party to qualify for funding. We had proposed that it requires five Members of Parliament, one governor, 12 MCAs. But I want to mention to Members that if they had gone through the Report of the Committee, that is one of the areas that we have already proposed for amendments. So, instead of saying that you qualify

by having all those categories, you can qualify by having one of the categories. So, we will be saying 'or' instead of 'and'. That will help many parties in qualifying.

There was the issue of how possible it is to implement Clause 17. We look into it. But I think one of the concerns that were raised is that we will need to make it clearer. What Clause 17 provides is a party list of nominees before the primaries, not after the primaries. That would mean that you are offering to Kenyans more persons who fall within the definition of special interest groups. I believe that if persons falling within the SIGs are given equal opportunity to address Kenyans and tell them why they want to get an opportunity to represent them in various institutions, it will be difficult to defeat some of them. We have only beaten them because we have denied them the same opportunities that exist to those of us who are not in that category. So, I think we will need to make it clearer so that Clause 17 speaks to the concerns of Members who spoke to it.

There was an issue raised on a number of occasions by nominated Member Hon. Sossion on the issue of workers. I think that is clearly covered under Article 260. But that does not mean that we will not exercise our minds on it. We will try and see if we can address it if possible.

Towards the end of the debate, the Member for Lari has brought out some very important aspect: That even as we think of sharing the political parties' funds among the political parties that will have successfully fielded candidates to Parliament, we should not forget to look for ways of rewarding those other parties that will also have given an opportunity to others to expand the democratic space. They may not succeed by bringing Members to Parliament, but they help the country grow the democratic space that is available to these groups. I think it is an issue that we will need to look at and see whether there is room for it. I think it will help in growing that space.

In conclusion, this Bill seeks to bring more actors in helping the special interest groups have representation in Parliament. We will continue improving. It has sunset clauses in some of the areas. One of the things that Members did not quite capture is that there are sunset clauses that bring affirmative action to an end, because you cannot have affirmative action forever. When that comes to an end, Parliament is being given an opportunity to see whether they can extend the period if we will not have achieved what the Constitution requires us to achieve.

Because we will again have opportunity to address this Bill during the Third Reading, I wish to end my comments. I move and thank Members who have spoken to this Bill, one way or another, and who took their time to read through it and suggest improvements to it. I also thank members of the CIOC who worked hard to make sure that this Bill was available for Parliament to deal with. I again thank the Speaker for the guidance that he has continued to give us, and of course the session Speaker, yourself Madam Speaker.

I thank you and I reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Kioni, for your patience, being one of the Bills that have attracted a lot of interest from Members. We have seen you sit there from the beginning to the end.

Members, guided by our own Standing Orders, I will not be able to put the Question on this Bill till the time the House will be properly constituted for the same. Before the next Order,

it is important to understand our own Standing Orders, especially where the Speaker may use discretion. This is provided for in Standing Orders. It applies to cases where matters are not expressly provided for in the Standing Orders.

*(Putting of the Question deferred)*

## **BILL**

### *Second Reading*

#### THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Chairperson, Departmental Committee on Justice and Legal Affairs.

**Hon. William Cheptumo** (Baringo North, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move that the Petition to County Assemblies (Procedure) Bill (Senate Bill No. 22 of 2018) be now read a Second Time.

The Bill seeks to give effect to Article 37 of our Constitution on the right to present petitions to public authorities and to provide the procedure for the exercise of that right. Unlike the case where any Kenya can petition the House on a matter of concern to that Kenyan for the House to address, we do not have a law governing petition presentation to county assemblies. So, this Bill seeks to introduce the procedure on how Kenyans in the counties and wards can present petitions to the county assemblies.

The Bill was introduced in the National Assembly on 6<sup>th</sup> June 2019 and committed to the Departmental Committee on Justice and Legal Affairs for review and report to the House pursuant to the provisions of Standing Order 216(5)(c). The communication that has been given by the Speaker regarding Bills coming from the Senate is that upon receipt of those Bills, committees are supposed to satisfy themselves if indeed proper public participation was undertaken in respect of those Bills. That is pursuant to the provisions of Article 118(1)(b) of the Constitution, read together with Standing Order 127(3) of this House. That is on public participation on the Bill, which is mandatory. Under the Constitution, it is no longer optional to go for public participation. We need the public to come forth and give their views on any law that we intend to pass. Therefore, the Committee on Justice and Legal Affairs had to satisfy itself if indeed there was exhaustive, appropriate public participation undertaken by the Senate, so that in the event it was not done then it is the business of this Committee to order fresh public participation.

Before embarking on public hearings on the Bill, the Committee resolved to study the Report of the Senate Committee on Justice, Legal Affairs and Human Rights on public participation. I wish to report to the House that we observed that the Senate Committee conducted public hearings on the Bill on 17<sup>th</sup> October 2018 at the Kenyatta International Convention Centre and received memoranda from various institutions: the Kenya Law Reform

Commission, Kenya National Commission on Human Rights and The Institute for Social Accountability (TISA). So, we were satisfied as a Committee that proper and appropriate public participation was undertaken by the Senate. Therefore, there was no need for us to again undertake further public participation on this particular Bill.

We also observed that the Bill is largely based on the provisions of the Petition to Parliament (Procedure) Act (No. 22 of 2012) which regulates the processing of petitions to Parliament since the beginning of the 11<sup>th</sup> Parliament. So, there is a lot of borrowing in this Bill from what goes on in this House. We are satisfied as a Committee that if we pass this law, our counties... We have Hon. Chege here who represents a county, and we represent constituencies.

Hon. Temporary Deputy Speaker, we are all affected because there are matters in our counties and constituencies which need not be presented in this House. They can be done in our county assemblies. So, this law in my view helps to reduce petitions in this House.

Hon. Temporary Deputy Speaker, you have spoken about devolving everything down to the people. We receive a lot of petitions in this House from Kenyans in the counties and sub-counties just because there is no law in our county assemblies to enable Kenyans to present them at that level. I believe it will reduce that pressure of having petitions brought to this House.

Recently, my Committee received petitions from people all the way from North Eastern and Lodwar. People travelled all the way to Nairobi to come and defend their petitions. I think this is a good move by the Senate so that we do this in the sub-counties. So, indeed the Senate did sufficient public participation on the Bill and considered most of the recommendations by the major stakeholders as I have said. Therefore, we felt it was not necessary to undertake further public participation.

Hon. Temporary Deputy Speaker, Article 201 of our Constitution requires that public money should be used in a prudent and responsible manner. If we are satisfied that the Senate has done a good job in terms of public participation, it is wise and prudent for us not to commit further public resources to undertake public participation on this. So, Article 201(d) is coming to play in this one.

Hon. Temporary Deputy Speaker, I believe Hon. Members have a copy of the Bill. Clause 2 of the Bill is about interpretation of various items. For example, “the clerk” means the clerk of a county assembly, “petition” means a written prayer to a county assembly under Section 15 of the County Governments Act, “Speaker” means the speaker of the county assembly. So, the whole of Clause 2 deals with various definitions. As I said this is all about the county assembly.

Clause 3 outlines the contents and the form of a petition. What should a petition contain and what form should it take? If you want to present a petition to the county assembly, what form should the petition take? It should be handwritten, typed or printed, it will be in English or Kiswahili language, be written in respectful language and be free of alterations. So, the whole of Clause 3 is just to enable a Kenyan who would wish to file a petition to be guided on what is the content of the petition and the form, which is exactly again the situation even in our case in the National Assembly.

Clause 4 talks about the procedure for presenting the petition. It says the petition to a county assembly shall be submitted to the respective clerks by the petitioner or presented by a Member of the County Assembly (MCA) on behalf... So, it is either done by the petitioner himself directly to the county assembly through the clerk or through MCAs. Again, that is what happens in our National Assembly, where a Member can present a petition on behalf of a citizen and with the approval of the Hon. Speaker

Hon. Temporary Deputy Speaker, Clause 4 (1) (2) deals with the procedure. Then Section 5 is on consideration of the petition. It outlines what happens if the petition comes to the clerk. He is supposed to certify that the petition is indeed undertaken in the format that is set out in Clause 3 and the contents are in good language.

Clause 6 is about register of petitions. There should be a register for all petitions presented to the county assembly just like here where we have a register for petitions. Clause 7 talks about the amendment to Section 15 of the County Governments Act. The reason for that amendment is so that this new procedure of presenting petitions is captured in the County Governments Act.

So, those are the clauses in that Bill and they are that few. After we went through all these clauses, we found that Clauses 1, 2, 3, 4, 6 and 7 of the Bill had no problem. The Committee had a problem with Clause 5 (3) because the Senate has taken submissions from stakeholders, as I have said and it is observed that the Bill provides for mandatory public hearing with respect to every petition. We felt that this provision is not proper. There could be straightforward petitions which do not need to go to the public to seek views. So, this Bill in Clause 5 (3) makes it mandatory that every petition be subjected to public participation. We do not agree with that and in the Third Reading, we will make some amendments to that section. We observed that it is not foreseeable for the county assembly committee to invite a petitioner and conduct public hearing for every petition submitted before it. Some of the petitions availed before the committee may be fairly straightforward and the committee should make a decision without further reference to the petitioner and conclude.

Even in our case, and my colleague is here, all Chairs of Committees in this House can confirm that we deal with petitions as they appear before us. We invite the petitioner to appear before the Committee and prosecute his or her petition. Once this is done then we communicate the outcome of the petition to the petitioner through the Clerk and table the report in the House. So, we did not want to breach Article 201 of the Constitution in terms of spending resources of our country in a prudent manner. This is the part we need to amend.

In Clause 5(4) we observed that the provision allows county assemblies to debate committee reports on a petition and either approve, vary or reject the findings and recommendations of the committee. You have been here long enough serving as a Speaker in the House. Rarely, do we discuss petitions. This law wants to make it mandatory that the county assemblies must debate every report of a committee on a petition. Again, we feel this is extending too much. The rule is always that we debate Motions and Bills. It should not be mandatory that every petition should be debated. You should not vary the outcome of the petition when you did not have time to listen to the petitioner.

These are the areas which we feel, in the Third Reading, we will make recommendations in terms of amending those sections. Apart from that clause we found the others in order. In view of this, we recommend that this House approves Clauses 1, 2,3,4,6 and 7 of the Bill as passed by the Senate because we did not have a problem. We will move amendments on Clause 5(3), (4) and (5) during the Third Read of this Bill.

I would like to thank the Members of my Committee because we took time to study this and realised it is a law that is coming at the right time. We are still improving the devolution system in our counties.

Recently, we passed a law on the County Attorneys and there are still very many areas which both the Senate and this House need to help, so that our county assemblies can function effectively the way this House functions.

I move and request my colleague, Hon. Kioni, Chair CIOC to second.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Kioni for seconding.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second this very important Bill from the Senate. In doing so, I also want to take this opportunity to thank and commend the Departmental Committee on Justice and Legal Affairs and particularly the Chair who is doing what is expected of him. This Committee has also brought to this House very important Bills that go into the heart of implementing the Constitution that we gave ourselves as a country back in 2010. May I also say that you will hear from time to time many Members who would want to say that we have a Constitution that is not adequate or that was dealt with differently. Perhaps, it does not provide what they expected like what the Bomas Draft or Kilifi Draft had provided.

I take this opportunity to say that it is true that the Constitution we have is different from the Bomas Draft and the Kilifi Draft. As I contribute to this Bill, it is good to have it on record that there were many kitchens that the 2010 Constitution went through. The final kitchen seems to have been the one at Naivasha and I was there.

For the record, every single word, clause, provision and article, including the commas, were negotiated and agreed upon by the political parties that were represented at Naivasha and the politicians who sat at Naivasha. That was done given the prevailing political environment including the economic environment. That was the time when we were almost losing this country and we needed to salvage it. Some of the difficulties we are undergoing are what people kept picking here and there. It is good to identify the gaps, but they were really informed by the difficulties we were faced with and the circumstances that were there. We had quarrelling communities and people who were almost saying: "If we do not get a new constitution now we would rather cut the country into pieces." That kind of environment is what dictated the kind of Constitution that we have.

I say again for the record that without doubt, there were quite a number of areas that were left for leaders who come thereafter to make them good, improve on them, amend them or delete



them. Instead of now being in Parliament lamenting, look for ways of amending and I can assure you that when you attempt to amend it, you will be faced with the very difficult realities that to amend this Constitution is not easy. If you think it is easy, have a sitting with Dr. Ekuru Aukot. He will tell you how difficult it is and what you need to do.

So, as we support this Bill from the Senate, it will inform us of the need for us to address ourselves to the various statutes that are required to implement this Constitution. If we were to spend more time coming up with these kinds of Bills, then we will be able to deliver on the promises, the provisions and expectations of Kenyans as were given by the new Constitution. When the Mover, who is the Chair of the Departmental Committee on Justice and Legal Affairs, was moving he brought out another very important aspect of the work we are doing. Now that every Kenyan is aware that before anything is done you have to have public participation; I think we have now got to a point where we are overstretching it.

A Bill from the Senate went through public participation. To see the Departmental Committee on Justice and Legal Affairs going back for public participation to the same people is unnecessary duplication of work and unnecessary cost. This is where we actually need to *punguza mzigo*. It is not where the Bill that was before the county assemblies was focusing on. There are actual areas where we can actually, as provided under Article 201 and ably quoted by the Chair of the Departmental Committee on Justice and Legal Affairs, address ourselves and reduce the cost of doing things and implementing this Constitution.

If we do not do that, we will continue talking about a huge expense. I want to commend the Committee for finding it necessary to address themselves to that issue and giving leadership by showing us the way forward. When a given group has gone for public participation when formulating a Bill and you have a role to play in that process, you do not need to reinvent the wheel. You do not need to go back and talk to the same people. If we are not careful, this constitutional provision of public participation will introduce fatigue to Kenyans. When we ask for public participation, we will look like chiefs' *baraza*. Today, it is very difficult for a chief to call a meeting and people attend because they are tired of the very old way of going to a chief's *baraza* and you are given notices that have come from the chief, which is a very routine thing. If we are not careful with this requirement of public participation, it will fatigue Kenyans. It will defeat the purpose for which it was introduced in the Constitution.

I want to agree with the Committee that the requirement that county assemblies hold public hearings on a petition is too expensive and quite unnecessary. Through experience, we have seen that many petitions can be dealt with at the committee level by inviting the petitioner, exercising your mind on it and you come up with a satisfactory answer to the petitioner. I want to agree with the Committee that it is important to look at the provisions of Clause 5 (3) (b) to a point where we may need to delete it.

The Bill requires the county assemblies to debate all the petitions that are brought before them. The experience we have is that you can clog the Chamber or agenda of Parliament when you try to do such things. The very worst is that the petitions' time can lapse when they are still queuing for them to be debated on the Floor of the county assembly.

I want to thank the Committee for considering the Bill. I also want to thank the Senate for coming up with the Bill. We will support the amendments that they will bring during the Committee of the whole House or the second phase of this Bill. I also want to thank the speakership for the guidance they have continued to give us, as Members and Chairs of various Committees, in enacting and processing Bills before the House.

I second the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Kioni.

*(Question proposed)*

The first Member to contribute to this Bill is the Member for Kanduyi, Hon. Wamunyinyi Wafula, who is a senior Member of this House.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you very much, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to the Petition to County Assemblies (Procedure) Bill 2018. This is one of the very straightforward legislative pieces. It seeks to accord clarity and an opportunity for people to file petitions at the county assemblies in a prescribed manner. Therefore, it intends to fill the gap because there has been absence of mechanisms of filing petitions.

I want to thank the Departmental Committee on Justice and Legal Affairs, led by my brother, Hon. Cheptumo, for looking critically at this Senate Bill. From his explanation, we easily understand very clearly what it is all about. Therefore, Members will have easy time debating it and approving the same with amendments as proposed by Hon. Cheptumo.

This Bill also clearly provides for how the petition will be filed, its format and what is expected. This is ordinarily what you would look at. It emphasises on respect and decorous manner of filing a prayer. It also emphasises the need to ensure that the content of the prayer is clear and to the point so that it can be understood and prosecuted.

The Bill is also important because it opens up to members of the public when they have issues which they want to express themselves on or issues they want to lodge with leadership. This accords them the opportunity. We are the National Assembly and we undertake legislation that covers the nation, including county governments and county assemblies. But I am wondering whether the assemblies can come up with legislation at their level in this regard. I know it would take long, and it is cumbersome too, to have all the assemblies debating an issue. For us it is easy because once it is passed it will apply to all assemblies. Assemblies will have to address issues of legislation in their own counties as is expected. Each county assembly has its own peculiar issues. Sometimes they make law that is relevant and alive to their respective peculiarities. While we support this Bill, we should also explore alternatives and enrich the process of legislation.

I wish to comment on Clause 5 of the Bill which deals with consideration of a petition. It provides for, as the Chair said, mandatory hearing of the public. My two colleagues, the Mover and the Seconder have addressed this matter and I agree with them. We cannot have everything

everywhere going through the public even though it is important because of the reason of ownership. Indeed, people with public interest issues should express themselves on those issues.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Kanduyi, because of constraint of time, the debate on the Petition to County Assemblies (Procedure) Bill will resume in the next sitting. It will be provided for in the Order Paper. Hon. Wafula Wamunyinyi, you will have four minutes and you will be given priority to speak to it.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order Members! As per our Order Paper, you notice that we are proceeding for a short recess and the Speaker of the National Assembly gave notice to that effect.

Hon. Members, the time being 7.01 p.m., this House stands adjourned until Tuesday, 29<sup>th</sup> October 2019, at 2.30 p.m.

The House rose at 7.01 p.m.