

PARLIAMENT OF KENYA

THE NATIONAL ASSEMBLY

THE HANSARD

Tuesday, 13th October 2020

The House met at 2.30 p.m.

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

PRAYERS

MESSAGES

NOMINATION FOR APPOINTMENT AS DATA COMMISSIONER

Hon. Speaker: Hon. Members, there is a Communication to be issued before we proceed to Order Nos. 12 and 13 on the Supplementary Order Paper for today. This is the Message from the President on the nominee for appointment as the Data Commissioner.

Hon. Members, pursuant to the provisions of Standing Order 42(1) of the National Assembly Standing Orders, I wish to report to the House that I have received a Message from His Excellency the President seeking the National Assembly's approval for the appointment of Ms. Immaculate Kassait as the Data Commissioner, in accordance with the provisions of section 6(4) of the Data Protection Act, 2019, as read together with section 5 (1) of the Public Appointments (Parliamentary Approval) Act, 2011.

Hon. Members, Section 6(4) of the Data Protection Act, 2019, requires the President to nominate, and with approval of the National Assembly, appoint the Data Commissioner. Further, Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011, provides that:

“Unless otherwise provided in any law, a Committee shall consider a nomination and table its report in the relevant House for debate and decision within fourteen days from the date on which the notification of nomination was given, in accordance with Section 5.”

Hon. Members, pursuant to the provisions of Standing Order No. 45, I hereby refer this Message, together with the *Curriculum Vitae* (CV) of the nominee to the Departmental Committee on Communication, Information and Innovation to undertake the necessary approval hearings and table its report to enable the House to consider the matter within the statutory timelines. The Committee is, therefore, advised to expeditiously proceed to notify the nominee and the public and thereafter, commence the approval hearings. Noting that the fourteen days period within which the Committee is expected to consider the nominee and table its report for debate will lapse during the period of the short recess, the Committee is at liberty to seek extension of time for consideration of the nominee in accordance with the provisions of Section 13(1) of the Public Appointments (Parliamentary Approval) Act, 2011.

I thank you, Hon. Members.

Next Order.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House, today, Tuesday, 13th October 2020:

The Reports of the Auditor General and Financial Statements in respect of the following institutions for the year ended 30th June 2019, and the certificates therein:

- (i) The Parliamentary Service Commission (PSC);
- (ii) The Regional Pastoral Livelihood Resilience Projects, IDA Credit No. KE53880 – KE;
- (iii) The Strengthening Fertilizer Quality and Regulatory Standards in Kenya Project for the State Department for Agricultural Research;
- (iv) Office of the Registrar of Political Parties;
- (v) The Ministry of Foreign Affairs;
- (vi) The Independent Electoral and Boundaries Commission (IEBC) and;
- (vii) The State Department for Petroleum

Annual Report for the Independent Electoral and Boundaries Commission for the year 2019/2020.

The Legal Notice No. 194 of 2020 relating to the Adjustment of Excise Duty Rates for Inflation in line with Section 10 of the Excise Duty Act of 2015, and the Explanatory Memorandum from the Kenya Revenue Authority.

I thank you, Hon. Speaker.

Hon. Speaker: Chair of the Departmental Committee on Transport, Public Works and Housing.

Hon. David Pkosing (Pokot South, JP): I thank you. Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Addendum on Public Participation to the Report of the Departmental Committee on Transport, Public Works and Housing tabled on 10th September 2020 on Consideration of the National Aviation Management Bill (National Assembly Bill No. 18 of 2020).

I thank you, Hon. Speaker.

Hon. Speaker: Chair of the Departmental Committee on Health.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you. Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Health on its consideration of:

The Kenya National Blood Transfusion Bill, 2020; and

The Public Petition Regarding Withdrawal of Harmful Chemical Pesticides in Kenya Markets.

Thank you, Hon. Speaker.

Hon. Speaker: Chair of the Departmental Committee on Lands, Hon. Nyamai.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you. Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Lands on its consideration of:

Public Petition Regarding Compulsory Acquisition of Land in Marsabit County by the Kenya Defence Forces;

The Public Petition Regarding Settlement of over 25,000 Shareholders of Mutukanio Gwataniro Company Land in Nakuru and Laikipia Counties;

Public Petition Regarding Regularization of Land Allocation in Ngwelini Settlement Scheme.

Thank you, Hon. Speaker.

Hon. Speaker: Chairman, Departmental Committee on Sports, Culture and Tourism.

Hon. Patrick Makau (Mavoko, WDM-K): Thank you. Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Sports, Culture and Tourism on:

Inquiry into the Status of Stadia in Kenya;

Consideration of the Kenya National Library Service Bill, 2020.

Thank you.

Hon. Speaker: Next Order!

NOTICE OF MOTION

STATUS OF STADIA IN KENYA

Hon. Patrick Makau (Mavoko, WDM-K): Thank you. Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Sports, Culture and Tourism on the Status of Stadia in Kenya, laid on the Table of the House on Tuesday, 13th October 2020.

Thank you.

Hon. Speaker: Next Order!

STATEMENTS AND QUESTIONS

Hon. Speaker: The first segment is on Questions. The first Question is by the Member for Baringo County, Hon. Gladwell Cheruiyot.

ORDINARY QUESTIONS

Question No. 198/2020

UPGRADING OF RAVINE-SIGORO-OCHI ROAD TO BITUMEN STANDARD

Hon. (Ms.) Gladwell Cheruiyot (Baringo CWR, KANU): Thank you very much, Hon. Speaker. I rise to ask Question No. 198/2020 which is directed to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

- (i) Why has the Ministry failed to upgrade to bitumen standards the Ravine-Sigoro-Ochi Road in Eldama Ravine Constituency, Baringo County, which is currently in a deplorable state?
- (ii) What plans have been put in place to have the said road upgraded to bitumen standards and what is the project completion timeline?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing. The next Question is by the Member for Kimilili, Hon. Didmus Mutua Barasa.

Question No. 245/2020

BENEFICIARIES OF INFRASTRUCTURE DEVELOPMENT
FUNDS IN KIMILILI CONSTITUENCY

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker for giving me this opportunity to ask Question No. 245/2020 to the Cabinet Secretary for Education:

- (i) How many schools in Kimilili Constituency benefited from Infrastructure Development Funds for the Financial Years 2018/2019 and 2019/2020?
- (ii) What was the criterion used in identifying these schools?

I thank you.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Education and Research. The next Question is by the Member for Marakwet West, Hon. Kisang.

Question No. 275/2020

COMPENSATION FOR COMMUNITIES DISPLACED BY
CONSTRUCTION OF CHEPTONGEI-KAPSOWAR ROAD

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Speaker for giving me this opportunity to ask a Question to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development.

- (i) What step is the Ministry taking to ensure that the B77 Cheptongei –Kapsait Road is well marked and has access culverts installed and stone pitching done?
- (ii) When will the residents of Kapsowar and Kipsimatia communities in Marakwet West Constituency who were displaced by the construction of the Road C664 Cheptongei -Kapsowar be compensated for loss of land that was acquired during the construction of the road by the Government?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing. The next Question is by the Nominated Member, Hon. Godfrey Osotsi. Hon. Oundo will ask the Question on his behalf. I got the Communication.

Question No. 282/2020

STATUS OF INVESTIGATION ON TENDER AWARDED TO MS/EXPORT
TRADING COMPANY LIMITED FOR SUPPLY OF FERTILIZER

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM), on behalf of Hon. Godfrey Osotsi, Hon. Speaker. On behalf of Hon. Godfrey Osotsi, I rise to ask Question No. 282/2020 to the Cabinet Secretary for Agriculture, Livestock and Fisheries:

- (i) Could the Cabinet Secretary explain why the National Cereals and Produce Board (NCPB) awarded Ms/ Export Trading Company Limited a contract to supply and deliver about 30,000 metric tons of Diammonium Phosphate (DAP) fertilizer through direct procurement, even after an adverse advisory of the Attorney-General?
- (ii) Under what circumstances was the Tender No. NCPB/ FERT/DAP/01/2012 for the said contract initially annulled?
- (iii) Could the Cabinet Secretary further confirm whether the process of annulment of the initial tender and the subsequent award to Ms/ Export Trading Company Limited was within the requirements of procurement laws and regulations?
- (iv) Could the Cabinet Secretary also confirm whether the supply was eventually received by NCPB, whether any investigation or charges were ever preferred against the firm and its directors, and if so, provide the name(s) of the persons under investigation or against whom charges have been preferred and the status of the investigations?
- (v) What other action has been taken to recover the public funds lost in the contract and ensure value for money?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Agriculture and Livestock.

The next Question is by the Hon. Geoffrey Omuse.

Question No.283/2020

ASSIGNMENT OF A CODE TO AMUKURA POLICE STATION

Hon. Geoffrey Omuse (Teso South, ODM): Hon. Speaker, I beg to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary explain why Amukura Police Station in Teso South Constituency, which was gazetted on 14th February, 2020 has not been assigned a code?
- (ii) When does the Ministry plan to assign a police code to the said station to enable it operate as a separate police station so as to effectively serve the area residents instead of operating under the Adungosi Police station which is about 20 kilometres away?

Thank you, Hon. Speaker.

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

The next Question is by the Member for Mavoko.

Question No.284/2020

SUBSTANDARD WORKS AT MLOLONGO PRIMARY SCHOOL

Hon. Patrick Makau (Mavoko, WDM-K): Hon. Speaker, I beg to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question:

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- (i) Could the Cabinet Secretary explain why the Kenya National Highways Authority (KeNHA) did substandard works allegedly at a cost of Ksh240 million in the construction of the new Mlolongo Primary School following its recent relocation to allow for the expansion of Mombasa Road?
- (ii) What action is the Ministry taking to avert occurrence of structural weaknesses to the foundation structures of the school, part of which have been laid on a soak pit?
- (iii) Could the Cabinet Secretary confirm whether the newly constructed school has been approved for occupancy, and if so, provide evidence?
- (iv) If the response to paragraph (iii) is in the negative, could the Cabinet Secretary indicate the timelines for the reconstruction and completion of the school so as to accommodate the over 1,700 pupils, who were accommodated in temporally makeshift tin classrooms before closure of the learning institution in March 2020?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Kiambu, the Hon. Jude Njomo.

Question No.285/2020

DELAYED PAYMENT OF SALARIES OF NON-TEACHING
STAFF IN PUBLIC SECONDARY SCHOOLS

Hon. Jude Njomo (Kiambu, JP): Hon. Speaker, I beg to ask the Cabinet Secretary for Education the following Question:

- (i) What action is the Ministry taking to ensure that non-teaching staff in public secondary schools, who have not been paid salaries since April 2020 receive the salaries without any further delay?
- (ii) Could the Cabinet Secretary confirm whether it is a Government policy to compel non-teaching staff to proceed on unpaid compulsory leave during the period of COVID-19 pandemic?
- (iii) If the response to question (ii) is in the negative, what action will the Ministry take against school administrators and school boards who are found to have compelled non-teaching staff members to proceed on unpaid compulsory leave?
- (iv) Could the Cabinet Secretary explain the progress, if any, of implementation of the Ministry's resolution to develop a scheme of service for school non-teaching staff as undertaken before the Departmental Committee on Education and Research earlier in the year?

Thank you, Hon. Speaker.

Hon. Speaker: The Question to be responded to before the Departmental Committee on Education and Research.

We will move to the second segment of that Order which is Requests for Statements. The first one is by the Member for Igembe North, Hon. Maoka Maore.

STATEMENTS

GOVERNMENT DIRECTIVE ON CIVIL SERVICE RECRUITMENT FREEZE

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, pursuant to Standing Order No.44(2)(c), I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the Government directive to freeze recruitment and hiring of new civil servants for a period of three years.

The Government through the Public Service Commission is the leading employer in Kenya with one million employees. Further the public servants offer key and essential services to the citizens of the Republic of Kenya. Recently, the Cabinet Secretary for the National Treasury issued a directive concerning freezing of recruitment and hiring of new civil servants for the next three years. The said freeze is likely to have an adverse effect on the livelihoods of the citizens.

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

- (i) What are the circumstances that led to the freezing of recruitment and hiring in the public service?
- (ii) State whether the freeze in recruitment and hiring affects independent offices, commissions and State corporations such as the Kenya Revenue Authority.
- (iii) State whether the freeze will affect the ongoing recruitment process in the public sector.
- (iv) What specific mitigation measures are in place to replace public servants who have left the service on account of natural attrition in the last 20 years?

Thank you.

Hon. Speaker: Hon. Koinange, that is directed to your Committee. You can respond to it when the House resumes because we know the House is supposed to go on recess.

Hon Maore, to which Committee is your Statement directed to?

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, it is directed to the Departmental Committee on Administration and National Security because it is about the public service.

Hon. Speaker: Yes, because it is about the public service. Exactly.
Member 001.

APPOINTMENT OF PERSONS WITH DISABILITIES TO STATE OFFICE

Hon. David ole Sankok (Nominated, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Select Committee on National Cohesion and Equal Opportunity regarding appointment of persons with disability to State office.

You know I have a world record having served the shortest period as a Member of a parliamentary select committee on National Cohesion and Equal Opportunity only for two months and 14 days. I am proud of my record.

Article 54 of the Constitution, the Persons with Disabilities Act, Sessional Paper No.14 and the United Nations Convention on the Rights of Persons with Disabilities, which Kenya ratified in 2008, give affirmative action as a consideration in achieving employment and inclusion of persons with disabilities in social-political representation.

The achievement of the 5 per cent employment of persons with disabilities (PWDs) as enshrined in Article 54 of the Constitution appears to be just a mirage, especially if affirmative action is not undertaken by the same House that makes such laws and policies. It is against this background that I seek a Statement from the Chairperson of the Select Committee on National Cohesion and Equal Opportunity on the following:

(i) Could the Committee explain how the 5 per cent affirmative rule for appointment and nomination of PWDs to various State and public offices can be achieved as the National Assembly considers nominees with disabilities?

(ii) Could the Committee explain how access to Government procurement opportunities set aside for PWDs can be achieved considering that, currently, less than 2 per cent of Government tenders are allocated to companies owned by persons living with disabilities that supply items like toothpicks and toilet papers, which are not economically viable?

I sit in this House to represent PWDs. Hon. Shamalla represents women while Hon. Gideon Keter represents youth. I do not know whom the Chairperson of the Select Committee on National Cohesion and Equal Opportunity, Hon. Kamanda – who is also a Nominated Member – represents in this House. I have analysed him from all angles. He is not a woman and for youth representation, his identification number betrays him. For PWDs representation, I never registered him as a person belonging to the community when I was the Chairperson of PWDs organisation. However, I will consult him so that we know whom he represents in this House. There are hidden disabilities like inability to do what men do. Anyway, I will have to consult him.

Thank you.

(Laughter)

Hon. Speaker: Hon. Sankok, Article 97 of the Constitution talks about 12 Members representing special interests. All those are special interests, including what you are trying to allude to. Who needs to be informed about this? The request for Statement will be answered by Hon. Kamanda. I am sure he will be able to even answer your question.

Hon. Members, this House must never fall into the trick of imagining that everything is business. I can see that very many of you want to address this matter. This is not business.

(An Hon. Member spoke off record)

He was not out of order. He was merely expressing his ignorance about...
The next Statement request is by Hon. Kamket.

CRITERIA USED BY TEACHERS SERVICE COMMISSION DURING RECRUITMENT OF TEACHERS

Hon. Kassait Kamket (Tiaty, KANU): 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 regarding the criteria used by the Teachers Service Commission (TSC) during recruitment of teachers in the country.

In recent months, the TSC has been undertaking recruitment of secondary school teachers in a manner that does not take cognizance of the actual realities and interests of local residents in

specific constituencies and counties, particularly in Tiaty Constituency. Further, there is no adherence by the TSC to the affirmative action principle as provided in the Constitution.

A big percentage of teachers from my constituency were not able to compete with their peers from other constituencies, who may have completed their courses earlier than them. Therefore, the use of graduation-year criteria by TSC has proved to be a major obstacle for them. It is on account of these concerns that I seek for a Statement from the Chairperson on the following:

- (i) Were key stakeholders consulted during the drafting of the criteria or policy for recruitment of teachers?
- (ii) What particular factors informed the adoption of the criteria used during recruitment, and which particular entity approved the criteria?
- (iii) What measures has the TSC put in place to amend the recruitment policy in view of the fact that certain requirements, under the criteria, such as internship have disadvantaged many candidates?
- (iv) What specific measures is the TSC undertaking to protect the interests of local communities during recruitment of primary and secondary school teachers?

Hon. Speaker, I seek your indulgence that the Chairperson responds to this before we go on recess.

Hon. Speaker: That is before Thursday?

Hon. Kassait Kamket (Tiaty, KANU): Yes, Hon. Speaker.

Hon. Speaker: Let us hear from the Chairperson of the Departmental Committee on Education and Research, Hon. (Ms.) Florence Mutua. I hope she has not forgotten that she is the Chairperson. Where is the Vice-Chairperson, Hon. Ngunjiri Wambugu? Now, Hon. Kamket, you are even in bigger trouble because both the Chairperson and the Vice-Chairperson are absent. The Leader of the Majority Party will refer the request for Statement to that Committee and he will indicate that your preference is to have an answer for the Statement request on Thursday since we do not sit on Wednesdays.

The next Statement is by the Member for Matayos, Hon. Odanga.

INTENDED LEASE OF LAND L.R. NO. BUKHAYO/NASEWA/1500
BY GOVERNMENT IN MATAYOS DIVISION

Hon. Geoffrey Odanga (Matayos, ODM): Thank you, Hon. Speaker.

(Hon. Babu Owino walked into the Chamber)

Hon. Speaker: The diminutive Member for Embakasi East, Hon. Babu Owino, the rule of the House is that when a Member like that one is speaking, you either go down on your knees or you just freeze.

(Laughter)

Hon. Geoffrey Odanga (Matayos, ODM): More so a ranking Member.

Thank you, Hon. Speaker. Before I go back to the business you have asked me to deal with, let me also say that I have taken note of the Statement request that has been directed to my Chairperson. I will pass it over to her. The response can only be available after the recess.

Thank you.

Hon. Speaker: Very well.

Hon. Geoffrey Odanga (Matayos, ODM): Hon. Speaker, pursuant to Standing Order No.44(2)(c), I seek to request for a Statement from the Chairperson of the Departmental Committee on Lands regarding the intended lease of plot Land Registration No. Bukhayo/Nasewa/1500 in Matayos Division, Busia County.

The Government compulsorily acquired about 843 acres known as Land Reference No. Bukhayo/Nasewa/1500 from the residents of Nasewa Location of Matayos Division in Busia County for agricultural purposes, and specifically for establishment of a sugar factory. Currently, the parcel of land is registered in the name of the Principal Secretary of the National Treasury, who is the custodian of the title deed.

The National Treasury began the process of leasing the whole parcel of land measuring 843 acres, as registered, to Busia Sugar Industry, a private entity, for 50 years. The process was undertaken without the involvement of the National Land Commission (NLC) as required by law, and in particular on issues relating to change of user and in complete disregard of the constitutional requirement on public participation and due diligence. The community within which the land is located had proposals for the use of land for their benefit, including establishment of special economic zones to boost manufacturing and food security, which is among the Big Four Agenda of the Government.

It is against this background that I seek a Statement from the Chairperson on the following:

- (a) To provide details of the intended lease, including processes that the National Treasury has applied in leasing the said parcel of land to a private firm – Busia Sugar Industry – for the next 50 years?
- (b) To indicate whether public participation and due diligence on change of user was carried out, including whether procurement procedures were followed?
- (c) Was the National Lands Commission involved?

Thank you, Hon. Speaker.

Hon. Speaker: Chairperson, I also think you can respond to this, about the famous Busia Factory. Has Busia Factory ever taken off? Many of you who have been here long enough will recall it was there since the 1990s but it has always remained in the imagination of some people. Hon. Nyamai, are you in a position to give an indication?

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Speaker, we can respond to him in the first sitting when the House resumes.

Hon. Speaker: I see, very well. Hon. Koinange. Press the intervention button.

STATUS REPORT ON QUESTIONS AND STATEMENTS

Hon. Paul Koinange (Kiambaa, JP): Thank you, Hon. Speaker.

Sometimes on Tuesday 6th October, you directed that the Departmental Committee on Administration and National Security tables the status of Questions and Statements and I wish to table them this afternoon.

Hon. Speaker: It is the Statement on?

Hon. Paul Koinange (Kiambaa, JP): You requested or directed that I table all the Statements and Questions that have been forwarded to the Committee and that is exactly what I was going to do this afternoon.

Hon. Speaker: Are they the ones that you have responded to?

Hon. Paul Koinange (Kiambaa, JP): The ones I have responded to and the Statements which we have already dealt with and the ones which are pending.

Hon. Speaker: How many are pending?

Hon. Paul Koinange (Kiambaa, JP): With Statements, they were 19 in this Session. All of them have been done but there is one which was pending which was from Hon. Duale. The reason is that when the Statement came, I realised it was not clear. There are some details and clarity that we needed. They were very sensitive. I have spoken to Hon. Duale and we have agreed it is good that we get that done by the Ministry.

On the issue of Questions, we had quite a number of them. I would like to say that about five Questions were dropped in line with the provisions of Standing Order No. 42C (5). Those are Question No. 008/2020 by Hon. Gideon Keter, MP. It is on prevention of torture by the Kenya police officers. The second one was Question No. 012/2020 by Hon. Paul Nzengu, the Member of Parliament for Mwingi North. It was on an investigation into a road traffic accident involving a motor vehicle of Registration Number KBM 881V. The third is Question No. 102/2020 by Hon. Vincent Kemosi, MP, on the disappearance of Mr. Evans Kubwa Mokaya on 5th November 2020 and Question No. 128/2020 by Hon. Joash Nyamache in regard to Internally Displaced Persons (IDPs). The fifth Question No. 121/2020 by Hon. Tindi Mwale of Butere was on deployment of more police officers in Butere Constituency.

One Question which was for the Ministry of Devolution which is Question No. 161/2020 by Hon. Bishop Kawira Mwangaza on provision of humanitarian support to households affected by floods in Meru County was dropped after the Member on 2nd and 22nd September 2020, without the Chairperson's permission, failed to appear before the Committee for reply.

Hon. Speaker, those are the pending Questions. There is Questions No. 071/2020.

Hon. Speaker: Just give the total. In fact, Hon. Koinange, just give the totals. Members are assumed to know their Standing Orders, even those who do not appear. That is so that when Hon. Koinange, or any other Chairperson of a Committee says that this Question was dropped pursuant to the provisions of Standing Order No. 42C(5), you know it is because the Questioner failed to turn up without the permission of the Chairperson. So, for avoidance of doubt so that we do not have to repeat that because you were not there, when you hear 42C(5), you know it is because the person who asked the Question did not turn up and, therefore, the Question was dropped. So, Hon. Koinange, give us the total of Questions remaining. You are doing well. I think you can just table the Statement and the ones which are pending. You said they are three.

Hon. Paul Koinange (Kiambaa, JP): Okay. The ones pending are three Questions. One is by Hon. James Wamacukuru of Kabete, another by one by Hon. Tom Odege and one by Peter Mwachhi, MP of Limuru. There is another one by Hon. Joseph Kipkosgei and Hon. Robert Mbui. I have also returned these Questions because they were not given the information that was required by the Members.

Finally, we have those Questions by Private Notice. We are trying as fast as we can to get them answered within 14 days. But when it comes to security issues, it becomes extremely difficult to get the answers within two weeks. But we are trying our level best to make sure they are answered within 14 days.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Now, Member for Suna West, what is your issue? Why are you raising your hand?

Hon. Peter Masara (Suna West, Independent): Hon. Speaker, I am raising my hand because this mask is not very comfortable with us. It is not easy for you to identify us easily.

Having said that, my able Chairman has mentioned the Questions which are remaining. You can remember there was a very important Question by Private Notice concerning the Legio Maria of Got Kwer which has not been answered to date and the four people who died in that incident will be buried tomorrow. So, it is important that we get this Question answered in time for the benefit of the public.

Hon. Speaker: What do you mean? Is it talking about Legio Maria or something?

Hon. Peter Masara (Suna West, Independent): Yes. There was an incident which happened at Got Kwer in my constituency. It involved the Legio Maria members and the Kenya Police. I raised a Question by Private Notice here which was to be answered within the shortest period of time because some people are still in hospital. They were injured by police officers. Some died and some will be buried this week in my constituency. So, my constituents are really pressing me to get answers from the Government concerning what transpired in the actual incident.

Hon. Speaker: Hon. Masara, did you indicate that you are also a member of the Departmental Committee on Administration and National Security?

Hon. Peter Masara (Suna West, Independent): Yes, but the Chairman cannot answer from his wisdom. He has to be given answers from the relevant Government agencies.

Hon. Speaker: Now, just walk with the Chairman to those relevant agencies.

(Laughter)

Hon. Peter Masara (Suna West, Independent): That will not be for the benefit of the public. That Question was not my own.

Hon. Speaker: You know I am unlikely to be that agency. What you are saying is raising a concern with your Chairperson. So, Chairperson, you hear that those people are going to be buried tomorrow. So, link with the relevant Government agency and respond to your Member. Is that not so, Hon. Masara?

Hon. Peter Masara (Suna West, Independent): Their souls will rest in peace once their families get the response from the Government. Maybe they will not disturb me where they will be laid. If they are buried before the answers, I may get troubles.

Hon. Speaker: Hon. Masara, anyhow, you have raised the issue of concern to the people, not the ones who have died but their relatives. The Chairman of that Committee should come to the aid of his Member.

Next Order!

PROCEDURAL MOTIONS

EXTENSION OF TIME FOR CONSIDERATION OF A PETITION

Hon. Speaker: Hon. Koinange, this is a Procedural Motion. Press your intervention button.

Hon. Paul Koinange (Kiambaa, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Order 227(2) (Committal of Petitions), this House resolves to extend the period for consideration of a public Petition regarding insecurity in Marsabit County presented by the Hon. Ali Dido Rasso, MP, Saku Constituency, by the Departmental Committee on Administration and National Security by a further period of forty-five (45) days with effect from 13th October, 2013.

Hon. Speaker: 2013?

Hon. Paul Koinange (Kiambaa, JP): Sorry, 2020.

Hon. Speaker: That ought to be very strange.

Hon. Paul Koinange (Kiambaa, JP): Hon. Speaker, Standing Order No. 227(2) provides thus: "Whenever a Petition is committed to a Departmental Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the House".

Petition No. 30 of 2020 on insecurity in Saku Constituency and the larger Marsabit County was presented to the House on 12th August 2020 by Hon. Dido Ali Rasso, Member for Saku Constituency. The 60 days' timeline within which the Committee is required by the Standing Orders to consider the Petition and report back to the House lapsed on Monday, 12th October 2020. The Committee is indeed considering the Petition and Hon. Dido Ali Rasso has appeared and made a submission.

Arising from his submission and subsequent deliberation by the Committee, the Petition raises a lot of weighty issues that require adequate time to investigate, including meeting several witnesses one on one and going to the ground to hear from the general public. The Committee is scheduled to meet the former Marsabit Governor, Amb. Ukur Yatani, and the incumbent, His Excellency Mohamed Mohamud Ali, tomorrow, Wednesday, 14th October 2020 from 10.00 a.m.

In light of the foregoing, it is my humble prayer that the House extends the time within which the Departmental Committee on Administration and National Security should consider Petition No. 30 of 2020 and report to the House by another 45 days from 12th October 2020.

With those remarks, I beg to move. I would like to ask Hon. Makali Mulu to second.

Hon. Speaker: Hon. Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Speaker, I rise to second this Procedural Motion. Just as my Chairman has said, Hon Rasso appeared before the Committee and from our interaction, we felt it was important to listen to other leaders from Marsabit. We also saw the need to visit the area in order to find a lasting solution to the insecurity in the county. It will not be fair to only meet Hon. Rasso without the other leaders. We are pleading with the House to approve this extension by 45 days to give the Committee enough time to sort out the matter

With those remarks, I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Hon. Members, please take your seats. Look at this one. Is it time for greetings? Take your seat and then greet later. He is just behind you and he is a young man.

(Laughter)

(Question put and agreed to)

Hon. Koinange, you have your 45 days, starting today. You will not have any more time, and so, you should finalise. Let us move to the Next Order!

EXTENSION OF PERIOD FOR CONSIDERATION
OF STATUTORY INSTRUMENTS

Hon. Speaker: Chairman, Committee on Delegated Legislation, Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, in furtherance to the provisions of Standing Order No. 210(3) relating to the mandate of the Committee on Delegated Legislation, and notwithstanding the provisions of Section 15(2) of the Statutory Instruments Act, 2013 relating to the period of consideration of Statutory Instruments by the Committee, this House resolves to extend the period for consideration of the following four (4) Statutory Instruments submitted to the House on 22nd April 2020, by a further period of twenty-one (21) days with effect from 13th October, 2020-

1. The Law Society of Kenya (General) Regulations, 2020, (Legal Notice No. 32 of 2020);
2. The Special Economic Zones (Amendment) Regulations, 2020, (Legal Notice No. 33 of 2020).
3. The Capital Markets (Coffee Exchange) Regulations, 2020, (Legal Notice No. 40 of 2020); and
4. The Capital Markets (Commodity Markets) Regulations, 2020, (Legal Notice No. 41 of 2020).

Hon. Speaker, we are seeking extension because after the outbreak of the pandemic, we had a period of three months in which we were unable to meet. The Committee also gave priority to regulations concerning COVID-19, and as a Committee, we have passed 23 regulations that concern this pandemic. We also had a problem of availability of meeting rooms. There was a challenge of virtual meetings because these are new matters that we are getting into.

With those remarks, I request my Vice-Chairman to second.

Hon. Speaker: Hon. Njagagua, press your intervention button.

Hon. Charles Njagagua (Mbeere North, JP): Thank you, Hon. Speaker. Like my able Chairman has said, we were not able to consider those statutory instruments. The reasons are clear. Before I get to that, I must state that the Statutory Instruments Act, 2013 was amended in 2015. We amended Section 15 and it was clear that any instrument brought before our Committee must be considered within 28 days. If that is not done, then it is assumed that that instrument will be passed without the consideration of Members. We ask this House to decide in our favour on the reasons for seeking extension of time. It is not that we slept on the work that was placed before us, but other matters of national importance were brought before us, for example, considering the COVID-19 related statutory instruments. We had to deal with about 23 of them. So, they took precedence over other matters that we were to consider. I pray that Members will decide in our favour, so that we get the days we are seeking for extension to consider the statutory instruments that are before us. With those few remarks, I second.

(Several Members stood on the aisle)

Hon. Speaker: Order Members! It is not done that way. Just freeze where you are. When you start hovering all over, it causes confusion.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes.

Hon. Speaker: Very well.

(Question put and agreed to)

Hon. Speaker: Hon. Kamket, you have your 21 days from the date hereof.
Next Order!

BILL

Second Reading

THE PUBLIC FUNDRAISING APPEALS BILL

(Hon. Jeremiah Kioni on 8.10. 2020)

(Debate concluded on 8.10.2020- Afternoon Sitting)

Hon. Speaker: Hon. Members, the debate on this Bill was concluded last week and what remained was for the Question to be put which I hereby do.

(Question put and agreed to)

Maybe we should be having Bills in both English and Swahili. I read some things that many of you were saying. This is the Bill that deals with what you popularly call “*Harambee*”. When it is called the Public Fundraising Appeals Bill, it does not come out clearly to many of us. This is the one dealing with what we call “*Harambees*”. You will be dealing with it in the Committee of the whole House. So, please do not disappear. Many of you come and make useful, intelligent and brilliant contributions during debate in the Second Reading stage, but those ideas are nowhere during the Committee of the whole House stage, which is the critical time you input to a law. All of you say you have passed a law after debate. You will go home and say you have passed a law on *Harambee*. It is not yet over until you go to the Committee of the whole House stage. The Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, before the next Order is called, I would like to propose that you use your discretion under Standing Order No. 40(2) to reorder the sequence of the order of business appearing as order numbers 11 and 12 by swapping them for the convenience of the House. After consultation with the two Chairs, the Chair of the Departmental Committee on Defence and Foreign Relations will not be available after about one hour due to other pre-arranged Committee business. The Chairperson of the Public Investments Committee is happy to wait. So, for the convenience of the two and the House, we can dispose of the Motion under Order No. 12 first, then move to Order No. 11. On Order No. 12, the Motion had been canvassed and it was only supposed to be replied to. However, because of time, it has to be repeated

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again. It is important that we dispose of this matter as soon as possible then we move on to the second matter which we will dispose of today. So, I appeal to you to use your discretion under Standing Order No. 40(2) to alter that sequence.

Hon. Speaker: Sorry, Hon. Members. You know, it is not for you... About 95 per cent of all the business that you transact here, I have no vote but on this one, I do not just have a vote, I have an overriding one.

(Laughter)

Hon. Abdullswamad, what do you want to say?

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Speaker. I am glad that the Leader of the Majority Party has said I will be glad to be here. Usually, I am someone who is active and I do not mind being here, but that will be at your discretion. I was not consulted, but I will respect the Standing Orders and the position of the Leader of the Majority Party on this matter. The Chair who is about to move his Motion informs me that his is an issue of replying. I know the international issues in his Report. I plead with the House leadership and the Chair of the Departmental Committee on Defence and Foreign Relations to be quick on this matter. The Committee desires to table other reports.

Hon. Speaker: Well, the Chair of the Departmental Committee on Defence and Foreign Relations, Hon. Katoo, had already made a request to me. Just like we do with all Chairs whenever you have other engagements and you need to catch flights, we always give accommodation to one another. So, I do not think it is an unreasonable request. Therefore, I accede to it and order that the business appearing as Order No. 12 take precedence over the business appearing as Order No. 11 in today's Supplementary Order Paper.

Before you move to that Order, the Leader of the Majority Party moved too fast. The Clerk-at-the-Table was not able to read the Public Fundraising Appeals Bill for a Second Time, which for purposes of our *Hansard* records needs to be captured as having happened. Proceed.

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

MOTION

ADOPTION OF REPORT ON THE LUIGI-BROGLIO MALINDI SPACE CENTRE

Hon. Speaker: It is true the report of the Committee was tabled in the House on 26th June 2019 and debate thereon commenced on 23rd July 2019. By the time debate was interrupted, a total of eight Members had contributed as we went into the Zero Hour. The seconder was Hon. Ali Rasso. By the time the Motion was adjourned, the person on the Floor was Hon. (Dr.) Nyikal, who had a balance of three minutes. Of course, Hon. Katoo, you have to move it again because you have given fresh notice, given that this is a new Session. It is only that you do not have to repeat everything that you said.

Hon. Katoo ole Metito (Kajiado South, JP): Hon. Speaker, I thank you so much for giving me this opportunity to move this Motion. I also thank the Leader of the Majority Party and my colleague, the Chair of the Public Investments Committee for indulging me for a few minutes. Because this Motion lapsed, I have to reintroduce it afresh.

Therefore, I beg to move the following Motion:

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THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi-Broglio Malindi Space Centre, laid on the Table of the House on Wednesday, 26th June 2019 and, pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Agreement between the Government of the Republic of Kenya and the Government of the Italian Republic on the Luigi-Broglio Malindi Space Centre.

As you have clearly said, Hon. Speaker, I had moved this Motion. Therefore, I would just want to say that this is a facility in Malindi, Kilifi County, operating under the 1995 Agreement which has limitations. The new agreement has addressed those limitations. The Committee is satisfied that if this House adopts this Report, the limitations of the 1995 Agreement have been taken care of. The Italian Government has ratified the agreement. It is now upon this House to ratify the same on behalf of the Government of the Republic of Kenya.

Hon. Speaker, I beg to move and, with your permission, request Hon. Dido Rasso to second. Thank you.

Hon. Speaker: Hon. Rasso, press the intervention button. Oh, you do not have a card and you are just fumbling. Why do you not say you do not have a card?

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Speaker. As my Chairman has said, debate on this particular agreement was done and it was really extensive. One of the important things I want to bring to the attention of this House is that lack of ratification of this agreement means that we will continue to operate under the 1995 Agreement. That means Kenya will be losing out.

Secondly, the current agreement might not be the best, but it is good considering what has preceded it. Up to now, the Italians are the ones with the advantage in operating the Luigi-Broglio Malindi Space Centre. Thirdly, what I want to say in seconding this agreement is that the House must do what is good for the nation. The House must consider the wider interest of this nation as opposed to the triviality of what is in this particular instrument that we seek to ratify.

With those few remarks, I second and call upon my colleagues to agree with the Committee and ratify this document.

(Question proposed)

Hon. Speaker: Let us hear the Member for Kilifi North.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Speaker. This Report is of importance to me and the people of Kilifi. Therefore, in support of this Report, I would like to state as follows: One, I am surprised that the County Government of Kilifi did not make a presentation on the same despite taking time to inform the Governor that it is an important thing coming up in Parliament. When the advertisement for public participation was done, I actually expected that the County Government of Kilifi would take this matter as seriously as it ought to and make a presentation before the Committee, and make recommendations. I am surprised that they did not do so. I think we need leadership that rises to the occasion on such matters.

Secondly, if you look at the Report, there is an opportunity to appoint a Deputy Chief Executive Officer (CEO). Kenya is supposed to appoint a Deputy CEO for the space centre. However, this has never been done. I do not think the Italian Government has ever considered ensuring that a Deputy CEO was appointed. This is one of the aspects that the Departmental Committee on Defence and Foreign Relations needs to monitor in terms of oversight to ensure that the things are done at that institution.

Thirdly, many times, the Italian Government has brought many people to work in this country. Some of them have work permits while some do not have permits. This agreement says that Kenyan professional staff will be appointed to serve at the centre and also learn. However, as at now, you cannot pinpoint any Kenyan who was trained at that centre. You cannot say “This guy has qualifications in space knowledge because he is trained at that centre.” San Marco Space Centre has been there for many years but it has not benefited the community. Neither has it benefited the country. The US\$250,000 that the space centre pays the Government each year is for the land. If you go to Ngomeni now, you will not see any economic activity around that centre as a result of its presence there. We know that such developments become stimuli of economic growth. However, in Ngomeni, where this centre is situated, there is nothing that can be attributed to the existence of that centre. The Italians use that space centre to make a lot of money but it is not helping the local community.

Fourthly, in Article 8 (2), the agreement says that the centre will undertake training programmes for Kenyan nationals in Aerospace Science and Space Science Technology and Research. However, as we stand, I do not think this country has benefited from the alluded training programme. I love the recommendations that have been made by the Committee. The Committee has made three observations, the second of which is important, that neither the Government of Kenya nor the Italian Government has invested in the development of human capacity to take over the management of the space centre. It is time that, as a country, we started thinking of taking over the management of that space centre. If Kenyans had been undergoing training as provided in the agreement, by now we would have built sufficient capacity to manage that centre. However, as it is, we have not been able to do so.

The Committee also observed that the centre has not effectively undertaken corporate social responsibility for the benefit of the local community. The Italian Government makes billions of shillings out of the space centre. They sell satellite pictures and do many things for the world and make a lot of money out of that centre. However, corporate social responsibility has not been forthcoming. It has not been undertaken. The people of Ngomeni, where this facility is located, are very poor. They depend on fishing only. The economy is still performing badly.

I urge the Departmental Committee on Defence and Foreign Relations to oversee what is happening at Ngomeni. When I was teaching at Pwani University, we made an application for this centre to open a faculty at the university so that it could pass over knowledge and capacity to Kenyans.

Hon. Speaker, therefore, while I support this Report...

Hon. Speaker: Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, let me go on record that I oppose this Report. I would like to remind hon. Members that our Constitution has given this House powers to ratify any agreement between the Government of Kenya and any other foreign nation.

Hon. Speaker, during the 10th Parliament, a joint Parliamentary Committee of the Departmental Committee on Communication, Information and Innovation then led by Hon. Rege, and the Departmental Committee on Education, Science and Technology then led by Hon. Koech, to which I was a Member, visited San Marco Space Centre, but we were denied entry. The centre is so huge. It sells data worth billions of US Dollars to the Chinese, Europeans and Americans. What does the Government of Kenya get? We are being told that we will be given Kshs50 million per year. The centre is in the middle of the sea. We are now being told that the only thing they want to give us is the position of Deputy Chief Executive Officer. I want this House to rise to the occasion.

When we were debating a defence agreement between the Government of Kenya and the Government of the United Kingdom (UK) during the 11th Parliament, *miraa* farmers raised an issue because the United Kingdom had banned exportation of *miraa* to the UK. The British Ambassador to Kenya had to sit down with Members of Parliament from the *miraa* growing areas. Our colleagues from Samburu and Maasai, where the British Army conducts training, had issues. British Government officials had to sit down with Members of Parliament from that area as well.

Hon. Speaker, the Member for Malindi should come out openly. The people of Ngomeni in Kilifi County, the people of the Coast Region, and the people of Kenya at large, are getting a raw deal in this matter. Even if this House approves this Motion, I want to go on record as having been in the 10th Parliament and 11th Parliament that declined to ratify this agreement. They just went round and changed the name of the facility from “San Marco Space Centre” to Luigi Broglio Malindi Space Centre. That is bullshit, Hon. Speaker.

(Laughter)

Hon. Speaker, this thing is the same San Marco Space Centre. In addition, let us think as a country. People come to our country and use our resources and infrastructure to sell data worth billions of shillings. As a parliamentary Committee, we were not allowed to enter into the facility during the 10th Parliament. I am surprised that the Chair and the Deputy Chair of the Defence and Foreign Relations Committee are not here. I want to challenge the Committee to tell us whether they have entered into that facility. It is in the middle of the sea. The people of Ngomeni are poor with no school infrastructure for their children. Today you are being told to ratify an agreement for this facility. Moreover, I was amongst the people who enacted the Treaty Making and Ratification Act, 2012. I was in this House. Our children will judge us harshly.

Hon. Speaker, I urge my colleagues that, unless we are told how Italy is benefiting, we ensure that the revenue accruing from that facility is shared 50/50 between Kenya and Italy, if not more for Kenya we should consider our position. Here we are, being told: “You will take the Deputy CEO’s position”, yet our researchers are not allowed to get in there. The amount of money we are getting is not there.

Hon. Speaker, we are being duped. We are being given a complicated Italian name which is San Marco. I want to go on record - and I will be judged - let me remain the only one. I oppose this Treaty. The Italians are ripping off our country. In fact, they are the guys who are involved in dams. We must oppose this Report and tell the Ministry for Defence to go back. A Committee’s recommendation is invalid. What we are approving is the Agreement. Our recommendation will not be considered. Let us just tell the Ministry for Defence that we have nothing against...

Hon. Speaker: I add you one more minute.

Hon. Aden Duale (Garissa Township, JP): I want Hon. Kimunya, my colleague and the Leader of the Majority Party to look at me in the eyes. He was with me in the 10th Parliament. We even rejected it in the 11th Parliament. We are asking for an equal share. Italians cannot come, have a complicated technological site in our country, sell the data to Chinese, Europeans and Americans and give us Kshs50 million per year. That is not why the Constitution gave this House the powers of ratifying any treaty the Government enters into.

Today, it is Kilifi, tomorrow it might be in Homa Bay. Next time, it might be another foreign country or in Garissa. Let us take it back and ask the Ministry of Defence to go and get value for this thing.

I beg to oppose.

(Applause)

Hon. Speaker: Hon. Kimunya, kindly have the Floor.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I rise to support this Motion and the Report by the Committee. I want to confirm that I have gone through this process from the 10th Parliament. This was tabled in the 11th Parliament. I have looked at the Report on what was recommended in the 11th Parliament, which are all the issues Hon. Duale is talking about. I wish he could have taken time to look at the new agreements so that he does not base his argument on the 1995 Agreement. The 2016 Agreement takes into account the guidance by the National Assembly in terms of the things to be done.

Just to highlight a few, the rent was improved from USD50,000 to 250,000 Euros. The scholarships have been increased from 15 with 5 million Euros also included for science programmes in Kenyan universities within the 2016 Agreement, which was not there in the 1995 Agreement.

On community development, the 1995 Agreement, which Hon. Duale wants us to continue with, has only Kshs240 million. If you do not approve the 2016 Agreement, we will go by the 1995 Agreement.

Hon. Speaker: He is looking at the Agreement. Let us hear the point of order.

Hon. Aden Duale (Garissa Township, JP): On a point of order. I have the Floor.

Hon. Speaker: There is nothing out of order!

Hon. Aden Duale (Garissa Township, JP): I was the Leader of the Majority Party in 2016. I am the one who received this Agreement. What I am talking about is the 2016 Agreement.

Hon. Speaker: Hon. Duale, fortunately, I found this Agreement when I finished the function of which many of you were present. Hon. Kimunya is reading what is factual. If you compare the 2016 Agreement with the 1995 one, the 1995 Agreement has no reference to Parliament or the National Assembly. The 2016 Agreement places the National Assembly as the first oversight body.

Hon. Katoo has not actually helped this House. He ought to have tabled this new Agreement, so that Members can debate from a position of knowledge and facts. Hon. Katoo just went through the Agreement and rushed to go to the airport with his Vice-Chairman, Hon. Rasso. He is the one who should be giving us this information and not Hon. Kimunya. Most likely, I know Hon. Kimunya must have got this information at the same time that I got it. Everybody has been wondering why this Report is not being debated.

Hon. Baya, kindly have the Floor.

Hon. Owen Baya (Kilifi North, ODM): I went to the Table Office and requested that they upload it online. So, if you want this Report, you can get it online. They did that and I got it.

Hon. Speaker: The Agreement not the Report.

Hon. Owen Baya (Kilifi North, ODM): I also asked them to do the Report. I do not know whether they have done that.

Hon. Speaker: The Agreement?

Hon. Owen Baya (Kilifi North, ODM): The Agreement. I asked them to upload the Agreement.

Hon. Speaker: The facts that Hon. Kimunya is reading out are contained in the Agreement. It was given to the Committee. Hon. Kimunya, kindly proceed. Let us, first of all, get the facts.

Hon. Amos Kimunya (Kipipiri, JP): The Committee was given this Report which was signed in 2016. It is in the public domain. It was signed between the two Governments but requires ratification.

I was just going through some of the highlights. When we say that it has not provided the same concerns that were raised in the 2011, because I have gone through it... When we discussed it in the House Business Committee, I took interest to see why we are not ratifying this Report. I picked through the issues, then I challenged the Ministry which gave me a Report showing how each of those was disposed of and referred me where it appears within the Agreement.

The issues we are talking about in terms of the community – the 6.4 million Euros, which is close to a Kshs1 billion, is for community development within that area, namely, Ngomeni area. If you look at the other issues, you will find that there will be access to the data centre, third party residence fees, and 50-50 share, which is what Hon. Duale is asking for. It has already been agreed upon for all third parties plus a Kshs50,000. Basically, all sorts of things are captured within this Agreement. The first thing to confirm is that the issues that had been raised by the 11th Parliament that Kenya was not benefiting from this Agreement have been taken care of. Again, to the extent possible, it is work in progress. Previously, an Italian was the CEO. Under the new Agreement, a Kenyan will be the Deputy CEO and various professionals. The Government of Kenya is to recruit and second. So, there is progress being made in terms of utilisation of this Space Centre.

One thing we must ask ourselves as a House is whether we continue with the old 1995 Agreement which does not favour Kenya or make some progress and ratify the new one, then continue negotiating for more. If we do not, we are going back to where we were. It is a very complicated process. You might not get everything you need or you want, but if we made some progress, bank that progress and then move onto the next Agreement. This is not forever. In the next round of renegotiations, we can ask for more. However, if we do not do that and get ourselves stuck in the 1995 Agreement, we will continue losing and we will be stuck like a record just moving around. It is in the interest of the other people for us not to move forward into this new commitment.

As long as we pass this law on the Treaty Making and Ratification Act, and Section 2(1) prohibits the Italians from doing anything that would be prejudicial to this Act, they cannot do anything. They cannot even hire TOs and they cannot implement all these things for the people of Ngomeni until we have ratified it. It is really not rocket science. It is easy.

Hon. Speaker, let us ratify, start getting the benefits and continue negotiating for a better situation. If we get stuck where we are, the people of Kilifi will continue suffering. The Kenyan scientists will continue suffering. Kenya as a country will continue suffering because the Italians will continue using the centre without benefitting us.

So, Hon. Members, I wish to ask that we all agree. Let us ratify it, make progress and move into the next round of negotiations.

With those words, I beg to support.

Hon. Speaker: There cannot be a point of order here. The fact that you may not like something that somebody is saying does not mean that everything is out of order. What procedure? We have already sorted out the issue of procedure.

Let us have Hon. Muli please.

Hon. Fabian Muli (Kangundo Muungano): Thank you, Hon. Speaker. I support. This facility was established in 1964 by Prof. Mogolio of Sapienza University of Rome. So, even the name given to the agreement is from the person who started the facility.

This facility is operating under the International Lease Territory Agreements (ILTA). So, even if we do not make agreements, it has to operate within the ILTA. This Agreement is also giving our country an equal use of the facility. The equal use will give our country access. In 1967, the first satellite to be launched in Africa was within that facility. So, in my view, it will be important to, first, take this Agreement, and move ahead by enjoying equal use. We can then do indemnification for our people that in any case there is any dispute coming from the facility, we know whether it is our country that is supposed to compensate or the Italian Government. This way, it will give us more benefit than saying that we reject this Agreement. So, I support

Hon. Speaker: Let us have Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. I fully concur that from the issues arising from what has been said by the Leader of the Majority Party and his immediate predecessor, it appears this matter has a lot more weight to it than was given by the Mover and the Seconder. Many of the Members do not have the benefit of either the Report or the Agreement as to comment in details. However, it appears to me the support or lack of support to this Motion must turn on two things and that ought to be very clear.

First, what would be the effect of rejecting this Motion? The Leader of the Majority Party says the effect would be to revert to the 1995 Agreement. I am not sure by operation of what that would be, because if a new agreement would be signed, even though it has not been ratified, it appears to me that the old agreement automatically lapses and cannot be re-invented by a mere rejection of a Motion in Parliament. That, therefore, needs to be made very clear. I do not know by what operation, either of law or treaty, would revive the 1995 Agreement.

Having said that, I also caution myself that it is for good reason that even Article 2(6) of the Constitution gives Parliament the authority to ratify treaties and conventions signed by this country. As a Parliament, we may not always equip ourselves with the details of why it has been proposed or agreed to sign a certain treaty or convention. So, I would be very cautious of readily rejecting such an agreement without good reason. From what I have heard from Hon. Duale's lips, it does appear that a lot of the concerns raised by the 10th and 11th Parliament appeared to have been tackled in this Agreement. It appears it is in a much better form now than it was previously. I am cautioning and asking myself one question: If we reject such an opportunity, is it necessarily so that the Italian Government will be so desperate as to want to renegotiate or is it possible that we could also lose the opportunity including the small gains that come with that renegotiated agreement?

Hon. Speaker, we are in a country that has lost many opportunities. We could have done much better. Ready rejection of such an improved Agreement may make us think that we are going to get a better one and then lose even the little that we may gain from it. So, on a balance of probability, I would go with adopting that Agreement, agreeing and ensuring that we always work to improving it much more.

Hon. Speaker, I support the Motion.

Hon. Speaker: Let us have Hon. Kizito

Hon. Justus Kizito (Shinyalu, ODM): Thank you, Hon. Speaker for this opportunity. I support this Report and Agreement on the premise that the Agreement of 1995 did not have our input. It was an Agreement done out there. Now that we have been given an opportunity to do an Agreement here, pass it through our report and Parliament has a say on this. In case anything goes wrong, we have an opportunity to input our suggestions so that this Agreement can be good for our people now that we are their representatives and the ones who can recall it. We can put it on the Floor of this House and deal with it. So, I support.

I support my brother Hon. Otiende Amollo. At times when you want to reject something, you must have very good reasons. Sometimes you can lose an opportunity and look like you are just being repugnant to things that come. So, information is power. I would like to talk from knowledge and point of information, so that I can either reject or support. On this one, there were many concerns.

I was in the 10th Parliament with Hon. Duale, who is also my brother in-law, and we know one another well. This Agreement came, but was not as good as the one we are seeing. I am sure most of the concerns that were raised then have been addressed. So, it will be good for Kenyans and the people of Kilifi for this Agreement to go through. It is we the representatives who want it to go through. So, I urge my colleagues and Hon. Duale who had a contrary opinion to support this Agreement. I am sure it will be for the good of our people, so that we can move forward.

I support this and thank you.

Hon. Speaker: Hon. Members, even before I put the Question, issues have been raised by Hon. Otiende Amollo and Hon. Kimunya. You all have your Ipads. However, none of you is looking at this Report. I am informed that this Agreement is in the Report. It even indicates that in the event of any dispute, the applicable law is the law of Kenya. Now, why do I get the sense that perhaps we turn down this business, so that you can read. This is important. It is not right that you have not read, but if you have read... Hon. Sankok says he has read because he is very fast.

It is important for you to look at the comparison provided between the 1995 Agreement, the provisions thereof, the terms of the 2016 Agreement and even the Memorandum. This is not a procedural matter. This Report was tabled on 26th June 2019, it has been there. Sometimes, I know reading can be difficult. Can we stand down this business because it is a very important matter, and begin with it on Thursday?

Hon. Members: Yes!

Hon. Speaker: Please, ensure you read. Very few of you have read it. Since we have said it is there, read it. Tomorrow the House is not sitting. I will stand down this Order until Thursday to allow as many Members as possible to read it. You are required to approve the Report of the Committee. So, it is important for you to read the Agreement. By adopting the Report of the Committee, you will be approving. So, read that Agreement.

Therefore, without putting the Question, the business appearing as Order No.12, which had been given preference, is stood down until Thursday, 15th October at 2.30 p.m., this week. So, you will have the whole of tomorrow and Thursday morning to read that Agreement. Proceed.

(Motion deferred)

ADOPTION OF REPORT ON PROCUREMENT OF PRE-EXPORT
VERIFICATION OF CONFORMITY TO STANDARD SERVICES BY KEBS

Hon. Abdullswamad Nassir (Mvita, ODM): Hon. Speaker I beg to move:

THAT, this House adopts the Report of the Public Investments Committee on its consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by the Kenya Bureau of Standards, laid on the Table of the House on Tuesday, 2nd June 2020.

In the amended form, and I will briefly explain the amendments, it reads:

THAT, in moving, the Motion is amended by inserting the following words at the end thereof “subject to amending the Report as follows —

(a) deletion of Recommendation (i) appearing under Committee recommendations under Chapter 5 on Page 63 of the Report;

(b) deletion of recommendation (ii) appearing under Committee recommendations under Chapter 5 on Page 63 of the Report and substituting therefor the following-

“(ii) In line with the recommendations of the Auditor-General in the Special Audit Report dated 10th July 2019, KEBS’ due diligence report on Tender No. KEBS/T057/2014-2015, and the findings of this Committee, the Public Procurement Regulatory Board, pursuant to Section 41 of the Public Procurement and Asset Disposal Act (No 33 of 2015,) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations, 2020, immediately commences debarment proceedings against M/S EAA and MS ATJ for violating the Public Procurement and Asset Disposal Act in TENDER No.KEBS/T019/2017/2020 and Ms. EAA in Tender No. KEBS/T057/2014-2015.

(c) deletion of Recommendation (v) appearing under Committee Recommendations under Chapter 5 on Page 63 of the Report and substituting therefor the following new recommendation—

“(v) The Ethics and Anti-Corruption Commissions (EACC) investigates the circumstances under which KEBS entered into a contract with MS/EAA Company Limited and M/S Auto Terminal Japan and submits its findings hereon to the National Assembly within sixty (60) days of adoption of this Report.”

Hon. Speaker, it is important I brief the House the reasons and intentions of these amendments. First, is the deletion of Recommendation (i). Hon. Speaker, protect me from the Members. When we tabled this Report, recommendations regarding debarring had not been done by the CS, National Treasury. The Regulations had not been gazetted and there was need for us to include that they be gazetted as soon as possible and the same has been done.

Hon. Speaker, you will recall very recently in your own ruling that there was a Committee that had brought their Report and you were quite clear on this matter, that committee reports need to be very specific. It is for this reason that in (b), we deleted Recommendation (ii) and made it very clear. The previous one talked about upon the gazette of the regulations. Now, that the Regulations have been gazette, we have listed what needs to be done in a more direct manner.

Lastly, the EACC to investigate the circumstances under which KEBS entered into a contract with EAA and Auto Terminal Japan and submit its finding hereon to the National Assembly within 60 days of adoption of this Report. Again, this was through your guidance when you indicated and informed us rightfully that we need to be very specific if it is an EACC matter or a matter involving the Director of Criminal Investigations (DCI). Equally, I think it was going to be very prudent for us to put that timeline. In moving this Report...

Hon. Speaker: Have you indicated that you are moving it in an amended form because it is important?

Hon. Abdullswamad Nassir (Mvita, ODM): Yes, I have Hon. Speaker. I want to emphasis again that I am moving this in an amended form. The amendments were very minor but important considering the ruling you made on the same.

I want to give Members the gist of what exactly transpired. For those who probably are not aware, due to the public interest this has been receiving, this Committee did the right thing. We

tabled a status Report and a progress Report was tabled and approved by you on 27th February 2020. In this Report, we were very categorical on the issues we saw, what was going on and every single warning based on the Standing Orders that give PIC the powers to ensure that State Corporations are run prudently.

Let us not dwell on anything else because I want my colleagues to hear me and appreciate what was entailed in doing this Report. I remember one of the first things that triggered this was when the CEO misled this Committee. I remember at that time the current Chairman of the Departmental Committee on Finance and National Planning asked the simple question. You are looking at bringing other players into this industry. He said this is not a tender, but a prequalification. Hon. Gladys Wanga will bear me witness on those words. Other Members here realised things that the Auditor-General had actually said, that there was faked documentation by the said companies. If I start getting into the nitty-gritty and the details, I will not finish any single one. However, we have documented all these matters. We have explained. We did not even stop there. We asked: Have you been able to seek the concurrence and advice of the Attorney-General of this country? We did not ask once, twice or thrice. We saw a situation where things were going haywire when Parliament was summoned to court by stakeholders regarding the same matter. We said this matter has a danger. Did you seek concurrence of the Attorney-General? The Attorney-General's concurrence was done after every mishap had already happened.

I want to read what the Attorney-General of this country says. The Attorney-General says it is unfortunate that KEBS forwarded draft addenda to the contracts to this office for review and legal clearance without disclosing that there was a fresh tender for enlargement of services. The Attorney-General is the chief legal advisor of the Executive and we are the ones who pass the laws. It is important for State corporations to seek legal advice from the Attorney-General. It further goes ahead and says: "From the letter dated 21st February 2020, it is noted that the tender process for the enlargement of service was challenged at the Public Procurement Administrative Review Board (PPARB) and through a petition filed in the High Court." The KEBS did not give that information to the Attorney-General. The KEBS was summoned by PIC and they were asked to answer questions and give guidance to this office. This is something that KEBS did not do. I can see time is not on my side, but to round it all up, forget about the words of the Attorney-General, the Members of Parliament or even those who came and misled this Committee. I want you Members to listen to the words of KEBS itself in their report.

Hon. Speaker: You have one minute. Sorry, I am the one with the discretion.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Speaker. This is an official document tabled in the House. It forms part of this Report. This is a document from KEBS and not us. This Reports says that the due diligence team recommends that KEBS enter into a contract with so and so. The team also found that EAA lacks the requisite infrastructure in the UK and UAE. In addition, it presented forged and falsified documents in their tender bidding which enabled to erroneously attain minimal technical scope for advancement of financial evaluation. Do not listen to me. Do not listen to the Attorney-General. Do not listen to all the witnesses who misled every single person. Listen to KEBS themselves who are affirming that an illegality was...

Hon. Speaker: Are you moving? I always advise Members to look at the light. When you see the yellow, you have one minute. When you see the red, you have 30 seconds. So, you organise yourself that way, Hon. Abdullswamad.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you very much, Hon. Speaker. I beg to move and request that my able Vice-Chairperson seconds me on the same.

Hon. Speaker: Hon. Abdisalan, you have the Floor.

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Hon. Ibrahim Ahmed (Wajir North, ODM): Hon. Speaker, I beg to second that the House adopts the PIC Report in its amended form, its consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by the KEBS laid on the Table of the House.

The Special Report was conducted pursuant to Article 229(6) of the Constitution of Kenya that obligates the Auditor-General to audit and confirm whether or not public money has been applied lawfully and in an effective manner. This Committee, under Standing Order No.206, is allowed to do that. If I remind Members, Standing Order No.206 is about examination of audit report laid before the National Assembly to ensure probity, efficiency and effectiveness in the use of public funds. The Committee is mandated to examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.

Without wasting time, I think the Chair has been clear on the objectives of the audit. I also add that we wanted to review the procurement process in line with the provisions of the Public Procurement and Asset Disposal Act 2015 and the attendant Regulations 2006. We also wanted to identify, if any, whether there was misrepresentation on documents used in the tendering and procurement process by any of the bidding companies. We also wanted to review due diligence and internal audit reports by KEBS to assess the level of performance and current bidders. We also wanted to understand whether there were any irregularities and culpability about the process.

Going straight to the findings of the Committee, it recommended that the managing director be held responsible for:

- (a) Failure to have the procurement plan approved by the National Standard Council before invitation of tenders contrary to Section 69(2) of the Procurement and Asset Disposal Act of 2015 and Regulation 20(5).
- (b) Procuring without any indicative or approved budget contrary to Section 53(5) of the Procurement and Asset Disposal Act.
- (c) Procuring without purchase requisition contrary to Section 73 of the Procurement and Asset Disposal Act.
- (d) Failure to declare, in the invitation to tender, that the tender was only open to those who met the requirements for eligibility and serialisation of age contrary to Section 74(1) of the Procurement and Asset Disposal Act.

Besides that, the Committee also recommended that the Director of Criminal Investigations and the Ethics and Anti-Corruption Commission expeditiously investigate the circumstances under which KEBS had entered into contract with firms that had been recommended for deferment. The Committee also recommended that as much as possible, KEBS should ensure full implementation of future contractual obligations to avoid unnecessary litigation and loss of resources.

Hon. Robert Pukose (Endebess, JP): On a point of order, Hon. Speaker.

Hon. Speaker: Order! Hon. Pukose has a point of order.

Hon. Ibrahim Ahmed (Wajir North, ODM): The Committee also recommended...

Hon. Speaker: Take your seat.

Hon. Robert Pukose (Endebess, JP): Hon. Speaker, the Chairman of the PIC moved this Motion in an amended form. The Secunder is still seconding it in the original form. The recommendation which he is making has already been amended. Therefore, I think it is good if they can put their act together and move it in an amended form.

Hon. Ibrahim Ahmed (Wajir North, ODM): Hon. Speaker, I have seconded the Report in an amended form and I was cognisant of all the amendments we have made. Probably the Member was not following closely.

That said, the Committee also recommended that future international tenders be widely advertised in leading international media houses to enable fair competition and service provided.

Finally, the Public Procurement and Regulatory Authority should expeditiously investigate the entire tendering process.

Hon. Speaker, I second.

Hon. Speaker: Why have you indicated Page 63? It is actually Page 61. Unless you are careful about these things, they look a bit untidy. Hon. Abdullswamad, can you check that it is on Page 63 and not Page 61 or it is on Page 61 and not 63?

Hon. Abdullswamad Nassir (Mvita, ODM): Hon. Speaker, you are right, it must have been a typo. I did indicate rightfully that it is Page 61.

Hon. Speaker: You see, the Motion as amended reads Page 63.

Hon. Abdullswamad Nassir (Mvita, ODM): We had indicated which particular clause it is. It was a typo.

Hon. Speaker: Anyway, let me propose the Question.

(Question of the amendment proposed)

Hon. Speaker: Hon. Members, I want to first of all understand because there are other proposed amendments. There are proposed amendments by Hon. Kaluma and Hon. Maanzo. As you can see, the Committee has had to make several amendments though it appears to be quite untidy. Of course, the House has liberty to make certain recommendations. I am just wondering, when you make a recommendation to an investigatory body like the EACC, which is a constitutional commission, and you tell them that within 60 days they report back to the National Assembly, if they find a crime has been committed, should they bring the report back to us to dance with it here or should they forward it to the Directorate of Public Prosecution to prosecute? I do not know, but it is like this thing is not well informed.

We have just extended some Motions to the Committee on Delegated Legislation because the committees responsible were not able to do what they were supposed to have done, even within our own Standing Orders. Hon. Koinange had a similar situation on the Question raised by Hon. Rasso. Now you are giving a constitutional body, a constitutional commission, 60 days to report to you. I do not know. I thought they report annually. They give their annual reports of the work they have done to Parliament. They know where they take their investigations. It is obvious that as a House, you could easily be acting in vain and embarrass yourselves, when you begin to issue this kind of... It is possible you can amend this so that you give them the latitude to investigate. When they bring their report of the work they have done to the House, as they are required to do as per the Constitution, that is when you are able to interrogate them and take them on using the powers of Article 251. But now, this is setting yourself up for some interesting situation. Let me also get this, Hon. Kajwang'. Are we talking about the same thing?

Hon. T. J. Kajwang' (Ruaraka, ODM): Hon. Speaker, I thank you for recognising me. I have looked at this Report for some time now. As you know, it has been before us for a while. I have also looked at the amendment by the Member for Homa Bay which has also been with us for some time. Today, I have seen the amendment that is proposed by the Chairman of the PIC. You know that in this House, I stand for procedure and for administrative law to take place. Sometimes

when I see some of these things, I get the impression that we have not learnt from history. We are hauled in court every single day. The Speaker is always made a respondent to so many cases because of things which we could have done better so that when they leave our hands, whoever would want to look at them, it will be their problem and would make their own decisions and we would comfortably go home feeling that we have done our bit. But when we consciously make mistakes that we could easily bridge, I get the feeling that we give ourselves a bad name for no reason.

Looking at the recommendations and the amendments sought by the Chairman, they are good, but some of them, if we leave them to go the way they are, they will even spoil what is good. You have the opportunity, even before we commence on this debate, to clean up in such a manner that if then we debate and pass them, we will not mind or care what other institutions, if they were to look at this thing again, would come to.

For example, you have just stated correctly that we are asking the EACC to investigate and come back to us within 60 days. As you say, EACC only gives us annual reports, but more interesting, once EACC has investigated a subject, they must pass it to the DPP for prosecution. What would EACC be bringing back to us, having investigated and having formed an opinion whether somebody is guilty or not guilty? If somebody is not guilty, that will be the end of the game. But if somebody is guilty, why would they bring them to us? Are we a court of law? Can we constitute a court martial and convict somebody? That information cannot come back to us even if it was to be done within 60 days.

(Applause)

Hon. Speaker, this is a constitutional commission. I wish we had understood that we respect everybody's role. It is very untidy to direct an independent commission like the Ethics and Anti-Corruption Commission. If we continue doing these kinds of things, we will be in court every single day and people will think that we do not know our roles under Articles 94 and Article 95 of the Constitution. Look at our recommendations. Equally, there is a recommendation, for example, that says certain people who have been named be held responsible. I have never understood what "held responsible" means. What is this personal responsibility? I mean everything is personal responsibility.

I suppose the Committee wanted to say that they should be responsible for certain acts, but that does not come out in that Report. If it comes out the way it does, we are acting in vain because the guy will go on whistling because of his personal responsibility, but what is that personal responsibility? It is just a matter of couching this thing in appropriate language. Probably, if we referred them to our legal experts, they would have helped us to tighten it in such a manner that it would do what we are supposed to do.

Now, the person is being held responsible for doing what? For neglecting a Public Investments Committee report? Anybody who has neglected a report...

Hon. Speaker, let me just have a minute.

(An. Hon. Member spoke off record)

Hon. Speaker: He is also on a point of order. When a person is on a point of order and you also want to rise on a point of order, that is chaos.

Hon. T.J. Kajwang' (Ruaraka, ODM): Thank you, Hon. Speaker. If somebody has neglected a PIC report on a matter, this House can act. For example, in this case, somebody seems

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to have neglected the Committee's directive of getting advice from the Attorney-General, which is a very serious thing. This House has its mechanisms of enforcing its procedure through the Committee on Implementation. A person who has ignored a committee's report is not enforced the way we are doing. This is guillotine. The only way is to take it back to the Committee on Implementation, so that he also gets another opportunity of saying why he ignored the report. If we go this way, it is guillotine and it is chaos. That is what that report is all about.

Hon. Speaker, there are several things which I would have demonstrated, but respectfully, I urge you to use Standing Order No.1, your own discretion and something which will help all of us. We want to debate this thing. We do not want to lose sight of it. It should come before us. Let us debate and if we find these public officials culpable of something, we must say so and we must get them responsible for what they are. Let us do something which makes us get them where they belong.

I urge you to find that this is one of those Motions which you can take back and either send it back to the Committee, so that we tighten it up, or you can, by your own, make a determination as to whether the tenets of administrative law and fair rules of the game has been met. How can you, for example, want to debar somebody using rules which came to effect after the offences have occurred? It cannot work *ex post facto*. The rules came into effect on some day. By the time these acts were said to have happened, those rules were not there.

Hon. Speaker, under Article 50, which you are very conversant with, how would you want to predate these actions and find somebody to be debarred on actions which were done when that thing was not law? Look at this. It is going to embarrass us. I think it can still be taken back to the Committee. We still have experts, and we still have the will. When we return it to this House, it can be a missile which is guided and a missile that will succeed in its purport.

I thank you.

Hon. Speaker: The issues that are being raised here are quite important. Hon. Abdulswamad Nassir, you know you are the Mover of the debate on this Report and you should wait for the Mover to Reply, if we ever get there. You are nearly spent because there is a point that has been raised by Hon. T.J. Kajwang'. There are some regulations that you are calling for 2020. The issues you are raising here are about the 2014/2015 Financial Year. The recommendation on debarment proceedings using the Public Procurement and Asset Disposal Regulations 2020, do you want to bail it immediately?

Hon. Members, there may be a number of issues that need to be raised here. Hon. Kimani Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I was keenly listening to both the Chairman and the issues that have been raised by Hon. T.J. Kajwang'. I want to agree with Hon. T.J. Kajwang' on one aspect and disagree on another aspect. The aspect I want to agree with him on, which you touched on, is the question of us seemingly directing institutions that are independent, like the EACC, and where we ask them to report back to the House. I request the Chairman to amend that aspect, or if the other two Hon. Members who have amendments could alter that recommendation, to have the EACC to investigate and instead of submitting their findings to the National Assembly within 60 days of adoption of the report, if there are people who are found culpable, to forward their findings to the Office of the Director of Public Prosecutions to take action.

Secondly, if we are to argue that if someone is found culpable, action must be taken against them, we will be assisting in the fight against corruption, as a House. I speak about this issue with authority because I was the Vice-Chairperson of the Public Investments Committee in the last

Parliament under the able Chairmanship of Hon. Adan Keynan. We had started looking at some of the issues that have been raised in the Committee's Report, but the term of the last Parliament came to an end before we finalised. There were issues to do with fraud and forgery by the companies that have been named. Therefore, we must ask ourselves: If we are saying that we investigate and recommend to the DPP for action, if in the same circumstances somebody has been found to have flouted the Public Procurement and Disposal Act in terms of even forging documents and fraudulently getting into tender business in this country, are we then saying - if we were to agree with what Hon. T.J. Kajwang' said - that we cannot take action because the Regulations had not come into force by then?

The Public Procurement and Disposal Act allows Government and institutions to debar. The only thing that was lacking is the means within which to debar because the Regulations were not in place then. Therefore, I absolutely find nothing wrong now that we have the Regulations in place. If someone has committed a crime, the law should be followed to the letter and that person should be debarred. Otherwise, we will just be encouraging people that today I can steal your jacket because I know the Penal Code or what is there in law does not stipulate how I should be punished.

Hon. Speaker, in the course of the proceedings of the court case, should Parliament enact either regulations or legislations that stipulate how I should be punished, I feel that action should be taken. I support some of those recommendations. I also disagree with Hon. T.J. Kajwang' in the argument that he advanced. He said that since the Regulations had not been published at that time, there was a mechanism still... We have all done this in our quarters. When we were patrons of the NG-CDF committees, there were people who breached the procurement laws. We blacklisted them.

The Committee is simply saying that anybody who flouts the law and engages in forgery and fraud should be debarred from conducting business with the Government of Kenya. The World Bank and the International Monetary Fund (IMF) are very keen on what we do. I saw an article today that said that they debarred a Kenyan company in the Information Communications Technology (ICT) sector. They have done that. We have had issues with that. Hon. Keynan can tell you that when we were in the Public Investments Committee, we had companies that had been debarred by the World Bank and the IMF because of forgery and fraud in procurement processes. Therefore, this House must not, in any way, entertain forgery and fraud in procurement processes. If there is corruption in this country, it starts from the procurement process. We should not fight corruption in the Office of the Director of Public Prosecutions. If you engage in fraud and forgery, you will no longer do business in the Republic of Kenya.

Therefore, I support the Committee's recommendations.

Hon. Speaker: Forgery is a crime in the Penal Code. If there is forgery, you do not even need to wait for regulations. Those are people who should be taken straight to court under the Penal Code. I wish this Committee can listen to this. Are you able to differentiate between the Public Procurement Regulatory Board and the Public Procurement Regulatory Authority? You need to be careful with this recommendation in your amendment. You may be recommending to people who have no authority to do the things you are telling them to do. The Authority is separate from the Board.

Can I get an indication from Hon. Kaluma on his proposed amendment, so that we know whether we are debating the Motion as amended and seconded by Hon. Abdisalan? If there are further amendments, we need to get them, so that we can know where we are. Let me get the indication from the Member for Homa Bay Town, Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. As the House is aware, I engaged the leadership of the PIC on how best to address the amendments. In the course of those discussions, we realised that the Public Procurement and Asset Disposal Regulations, 2020 which the Committee recommends to be promulgated under their recommendation No.1, had been gazetted and came into force. That necessitates that recommendation No.1 be deleted. I agree with the Committee to that extent.

That acknowledgement by the Committee has some ramifications on recommendation No.2. There are Regulations 21 and 22 of Public Procurement and Asset Disposal Regulations, 2020, which deal with the matter of debarment, how it is initiated and proceeded with. I discussed this with the leadership of the Committee. Essentially, I have no problem with the manner in which they drafted or re-did recommendation No.2. I only take solace in the fact that a look at those regulations entitle whatever entity to be disbarred to some formalised hearing. There are a lot both in the Act from Section 115 to those regulations at the provisions that I have mentioned. I do not have a problem with that to that extent.

The amendment I had preferred to recommendation No.5 before I met the Committee is not adequate to cure what the House is now dealing with. If you look at my amendment, you will note that I still mention the Director of Criminal Investigations. We had agreed that we should single out a body which should investigate appropriately. When you look at the end of my proposed amendment, I also fall short in the same manner. I propose that the Report of the Committee should come back to the National Assembly. In our subsequent discussions with the Chair of the Committee, I mentioned that this Report should go to the DPP for appropriate action. In short, I am saying that we are in a situation where both the amendments by the Committee and those I had proposed to bring forth do not cure everything we want to cure. If we lose a report of an oversight committee of this House, I would be worried. It pushes me, therefore, to request something. This is what I asked the Chairman of the Committee. I do not know whether the House will permit these Regulations to be brought to the House. They need to be looked at to cleanse the procurement process. In the exercise of your powers, we are pushing you to give directions on the lawfulness and constitutionality of these few matters that the Committee needs to clean-up, so that we do not lose the goodwill of the Committee.

We should give the Committee time. I do know where Hon. Kajwang', who is now raising these matters, was when the Committee came up with these recommendations. I now know that he is a Member of the Committee. I am doing this when we are anxious that this matter should end. We should give the Committee time to consider the matter tomorrow. Then, we say that we have to conclude this Motion on Thursday. The Committee will sit and do their technical clean-up. We will come to support them straightaway as an oversight Committee of this House. That is my request. There are some challenges which can be cleaned-up. My prayer is that we clean them up without losing a Report of an oversight Committee of this House. It will be a wrong thing to do.

I thank you, Hon. Speaker.

Hon. Speaker: Hon. Nyasuna, you appear to be in an unusual corner today.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Yes, Hon. Speaker. Thank you for giving me this opportunity to contribute. The PIC has to do a very thorough job always because Hon. Speaker was the Chairman of the Committee. Therefore, he looks at their reports with a fine-tooth comb.

I served in the Committee when we were doing this Report. The matter that you raised that we recommend the EACC investigates and reports back to us is a valid matter not only for PIC, but also for every other Committee which deals with these matters. I agree with you totally on that

matter. If the Chairman can agree with you and the Report can be amended and cleaned-up so that we do not act in vain, as you raised, then, that will be in order.

There are other recommendations, including the matters of holding people personally liable. We were in the process of dealing with a special audit of the Auditor-General that was thoroughly conducted. The Auditor-General went to Japan, UAE and UK to find out if three companies had actually provided the right information. They found that these companies had given very wrong information. When they came back, they proposed debarment in their report.

How were we interacting with KEBS at this point? We had invited them to respond to the issues that had arisen in the special audit. By the time they came, there was an advertisement in the newspaper where they advertised for an expansion of the existing contract. They came to us with a status update showing that the very companies that the special audit was recommending debarment for were the very companies they had shortlisted for purposes of award of a new contract. Therefore, we asked them to consult the Attorney-General on that matter. The reason why the MD is being suggested to be held personally responsible is because all that was ignored. Despite having had this special report for six months since 2019, he did not pay any attention to the report. He proceeded to award the contract to the companies that recommendation had been made for debarment.

I want Hon. Kajwang' to understand that this is the point from which we were coming. He did not consult the Attorney-General. Even when he consulted, he provided wrong information. This is why we went ahead to say that in the event there is any loss of public money because of this matter, he must be held personally responsible because it is not for not knowing.

Hon. Speaker, some of these recommendations go to the very heart of how some of these people are working in this institution. Sometimes, they say they do not know but sometimes, they actually know what they are doing.

Hon. Speaker, whatever way you rule today, it is important that the House interacts with the special audit report by the Auditor-General that provided damning issues. The Public Procurement Oversight Authority told us, when we invited them, that the only reason they had not debarred these companies was because of lack of regulations. Therefore, we said that when the regulations are put in place, they should be debarred. We should not let them off the hook just because when this was happening, the regulations were not in place. It was not that there were no provisions for debarment. It is only that the how of debarment had not been defined in regulations. We want to protect this country. When we are given a job of overseeing, we want to do a thorough job, so that this country does not lose money. We plead with the House to read the Report and see where we are coming from as a Committee, so that we do not just say that this or that should be removed or just drop it on the basis of a technicality. On technicality, I am glad that Hon. T.J. is now in the Committee and is able to advice on some of these legal issues, but on the others, the Committee has a big point.

Thank you, Hon. Speaker.

(Applause)

(An. Hon. Member raised his hand)

Hon. Speaker: Stop raising your hand up. You are not in a high school. I need to get an indication from Hon. Peter Kaluma. Hon. Kaluma, apart from suggesting that the Committee goes

to clean up, is it that you are dropping your proposed amendment to (ii), (iii) and (iv)? Largely, they are in tandem with what the Committee has suggested.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, the position I had given to the House when I committed to engage the Committee was that if we can come to an agreement with the Committee on the substance of the amendments, then there would be no reason on my part to continue with my amendments. In that case, Hon. Speaker, I did not just communicate that fact on the Floor of the House, but I also remember I wrote to your Office saying that if the Committee can carry my thinking forward, then I would have no reason to stand in its way.

We are in a situation where there are a few challenges. I request that if we are to stand down our amendments, let us have the Committee do its work. If I am accommodated, well and good. If not, I will be moving further amendments to my Report. I am still concerned on the drafting of some drawings and this is something I spoke to the Chairman just to make it more pointed. I request that if you are standing it down, you do that so that everybody who has concerns about the recommendations can harmonise them with Committee. If not, a person like me who was proceeding on principle, can further amend or withdraw my amendments and submit with a proper amendment which can speak to the matters, Hon. Speaker, is guiding us on.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Kaluma, your proposed amendment is that subject to deletion of recommendations (ii), (iii) and (iv) appearing under the Committee recommendations under Chapter 5 on Page 61 of the Report, that is the first one and you do not have any issues with that. Then you also have (b), deletion of recommendation (v) appearing under the Committee recommendations in Chapter 5 Page 63. Here, your only difference with the Committee is that you are not giving 60 days, but the Committee is giving the EACC 60 days. You have it that the Directorate of Criminal Investigations and the EACC should expeditiously investigate the circumstances which KEBS entered into contract with M/s EAA Company Limited and M/s Auto-Terminal Japan and report their findings to the National Assembly.

As I have said before, when you send this to two bodies, you can bet that you will wait until 2027. Who is going to act? When you will call any, they will say that they have been very busy with COVID-19 investigations thus they thought the DCI would do it and the DCI, on the other hand, will say the same. So, in the process, none of the bodies will investigate the matter.

Hon. Members, when you suggest that an investigating body, either the DCI or the EACC, undertakes investigations and reports back to you, the impression created is that you do not want to let off the matter. It is like that there is something you are enjoying in it. So, you want them to investigate and bring to you a report. What will you do with the report when they bring it to you? They might bring it to you then you begin another investigation and come up with another report.

Hon. Kaluma, I agree with you that there may be need to tidy up the Report. Recommend investigations to be done by one of the investigative bodies. In fact, recommend they investigate and if they find anybody culpable, take the necessary action as appropriate. Why are we not finding it easy to do something like that so that we, as the National Assembly, through our Committee on Implementation, can then call those people to appear before it? They should then be told that there is a report that was adopted by the House, they were meant to carry out investigations and ask what they have done. They may tell you they investigated and found it was hogwash or after investigations they forwarded the file to the Directorate of Public Prosecutions and people have been taken before court. That will be a satisfactory answer either way. They can tell you that they investigated and found there was nothing. *Mlikuwa mnapiga siasa yenu ya kawaida*. Remember these bodies can tell you that. It is also an answer. Do not take it in bad faith if they tell you that

they found you misunderstood or misapprehended this and that these were all stories. They are the ones with the technical competencies to do thorough investigations. They could also give you a report that they investigated, and they were very happy and found certain people culpable and recommended them for prosecution and forwarded the files to the DPP, and maybe people have been taken before courts. That is an answer.

As Parliament, we will have done our bit. We will leave the rest to the Director of Public Prosecutions and the courts. It is up to them. Whether people are convicted or not, that is not part of our worry. We should be a bit clearer. If we send it to the DCI and the EACC will find so many of our reports lying out there and nobody will be acting on them.

Hon. Kaluma, yours is recommending these two. Thinking aloud, my proposal would be, with respect, Hon. Kaluma, that perhaps you should drop your proposed amendment and, possibly, if I heard you correctly, propose a further amendment to the Committee's amendment about the 60 days. That accommodates your intention here, then send the matter to whoever is supposed to do the investigations. The Committee proposes that it goes to the EACC and they report back to the National Assembly within 60 days, but I do not know what we are to do with it. So, we can do that. Even those who are going to do debarment, our Committee on Implementation will follow up to see whether the debarment was ever done. So, the Public Investment Committee, once the Report is adopted, you become spent so that you can do other... You cannot deal with only one organisation.

Hon. Kaluma, let me hear you.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, that is why I explained that if you look at my proposal on how to amend Recommendation (v), I said that my version is even worse than that of the Committee because I was still mentioning the DCI. So, that needs to go out so that this can be investigated by a single body that Parliament can properly oversee in doing it.

I was just picking with Hon. Abdullswamad and I agreed that if there is any place where the report of the investigations ought to go, then it should be to the DPP for appropriate action. The thinking is whether we need it or we just remove the requirement of the report being taken anywhere. So, the EACC to just investigate and it ends at that.

There is a question that we need to deal with. If the EACC is investigating, we will experience something which I have seen in this House. I sat in the Departmental Committee on Justice and Legal Affairs with the Deputy Speaker sometimes in the 11th Parliament. I remember falling short of requiring the investigating body to report back. Nothing was happening on some very sensitive corruption cases which ended up in court. I was thinking that there is a way we can balance reporting so that if it is not to the National Assembly, then it should be to a body which can undertake appropriate action. This should be subject to the consideration that the report be only taken to the DPP if the EACC finds that there is some wrong doing. That can be redrafted.

However, there is a bigger problem; the reason as to why I was saying that just amending this thing on the Floor may not help. There is a ramification of Recommendation (v) in its amended form. With regard to Recommendations (iv) and (iii)... Hon. Speaker, get what I am talking about. There is an obvious ramification. That is why we need to look at them because somebody may ask: "As much as you are recommending investigations, are these actions being prematurely recommended or not?" So, we need to look at the Act. These regulations are new. Give the Committee time to look at Regulations No.21 and 22, so that in the text, if we are deleting Recommendations (iii) and (iv), as I proposed, I will let Hon. Abdullswamad.

I have a problem with Recommendation (iv) as drafted. I was asking, "Is it even a recommendation?" That was my first annoyance with it. We have the first part of the

recommendation, then it goes on to say: “Potential areas of litigation.” I was telling the Chairperson of the Committee that why do we not take this to the findings so that we have an incisive amendment or Recommendation at (iv), which is actionable? He reported to me that there was no enough time to consider those. If we are to do a good job, my cry is that we should not be ashamed by not supporting a report of, particularly, oversight committees. Let us give the Committee a chance to go, sit and look at this thing.

I had committed in my letter to you, which I copied to the Chairperson of the Committee, that if those issues of principle and concerns of law are properly addressed, I would be the last to stand against a Committee I have engaged on a matter to re-pursue it. I would be withdrawing if it is accommodated. I did say, without prejudice, that if something remains in principle, then I would still be entitled to help the House rectify it. So, I request that we allow the Committee to do their work. If there is any need for me to bring my amendments, I will do so. When the Committees agrees to negotiate with Members on particular things said before the House as we did, they can do so in good faith and seriousness.

Let me confirm that I want to withdraw my amendments following our discussions. Kindly allow the Committee to relook at this. If the Committee does not accommodate it fully, my liberty to bring amendments subject to your approval is not taken away under the Standing Orders.

Thank you, Hon. Speaker.

(Hon. Peter Kaluma withdrew his amendment to the Motion)

Hon. Speaker: Hon. Abdullswamad, you are not pressing the intervention button, but you are raising your hand.

Hon. Abdullswamad Nassir (Mvita, ODM): Hon. Speaker, I am trying to press it, but it seems like it is not working. First and foremost, there have been a lot of issues that have been talked about. I am not saying that they are misleading, but I want to state that they are on a misinformed position. One of the issues that had been raised was about these regulations that were done...

Hon. Speaker: Let us not go there. Let us finish with the proposal by Hon. Kaluma. The issue of regulations will be a matter of substance. The House can vote on that.

Hon. Abdullswamad Nassir (Mvita, ODM): Hon. Speaker, the recommendation of Hon. Kaluma is a simple issue. We feel that there is nothing wrong in identifying the areas of possible litigation. However, what he is talking about, and this is something you have given guidance on, is to delete the words: EACC to report back. That is something acceptable to all the Members who are currently here. I believe there is nothing wrong with that. All we are asking for is that, as a Committee, we want to deliberate and finalise on this matter because we cannot have too many reports. As active as we are, we have more reports. By the way, if this is deemed to be something hot, wait and see the Kenya Medical Supplies Authority (KEMSA) report that is going to be tabled here.

Hon. Speaker: Just take your seat. If you start telling me about hot things, they will become hot than what? I have heard what you and Hon. Kaluma have said. So, there is no need for us to adjourn from your point. I hope nobody is saying that this is hot. It is very cool.

Now, can I get an indication from Hon. Maanzo? His proposed amendment is to delete Recommendations (ii), (iii), (iv) and (v). The Committee on its own Motion deleted Recommendation (i). So, Hon. Maanzo is helping them to delete everything. He took a cue from

the Committee since the Committee deleted Recommendation (i). Let us give Hon. Maanzo a chance, so that we know where we are.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker. Following my deliberations with the Committee, it was clear that if that was what they were to come up with, my amendments would automatically fall. For that reason, I agree with you about the new amendment about the 60 days. We still have an issue with that. I want to propose that you clean up and then proceed. Otherwise, on my part, following the amendments they made, my amendments drop.

Hon. Speaker: Hon. Maanzo, for purposes of record, you are formally withdrawing your proposed amendments.

Hon. Daniel Maanzo (Makueni, WDM-K): Yes. I withdraw my amendments as it is for now.

(Proposed amendments by Hon. Daniel Maanzo withdrawn)

Hon. Speaker: Very well. The Committee deletes (i) which Hon. Kaluma has no issues with. The Committee deletes (ii) but substitutes it in the new format. So, Hon. Kaluma, (ii) of recommendations has been deleted and substituted with the new one. Hon. Kaluma, you are also proposing to delete (iii) and (iv). Maybe, perhaps, recasting (iv).

Hon. Kaluma, have you read the new recommendation (ii) by the Committee?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, I have read the proposed recommendation (ii). I would not have a problem with it to the extent that I confirmed that if we are proceeding under regulation 22 as specified, then the entities being debarred will have a right to hearing before whatever board it is that is going to deal with the matter of debarments. I will not have a problem with it. Of course, it is not the text in which I would have preferred, but I would not have a problem with it substantively.

Hon. Speaker: So, then you are left with (iii) and (iv) and maybe (v) to the extent. You would be willing to go with the Committee's except for the 60 and reporting back to the House.

Hon. Peter Kaluma (Homa Bay Town, ODM): On (iii) and (iv), particularly on (iv), there would have been need for an amendment on my part putting the full stop after the first sentence of the recommendation number (iv) so that all those matters of potential areas of litigation go to the finding.

So that we do not cherry pick and so that this matter can then be debated on merit, I can withdraw my amendment herein so that we proceed to support or oppose this Report in entirety, which is what I feared. If that is easy for Members, my only fear is that if I drop my amendments, I am not prejudicing my right to take my position. The misfortune is that those positions may either be a total rejection or total support, which is what I was avoiding.

On recommendation number (v), I am fine with the version of the Committee subject to removal of the portion I raised a concern on.

Hon. Speaker: Hon. Kaluma, can you go on record as withdrawing your proposed amendment to (ii) and (v)?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, I withdraw my proposed amendments to (ii) and (v) without prejudice to my right to take a position on the merits of the Report.

(Proposed amendments to (i) and (v) by Hon. Peter Kaluma withdrawn)

Hon. Speaker: So, it means your proposed amendment which was for deletion of (iii) and (iv) remains. That is what it means.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, I am hearing myself to be saying: “I withdraw all my amendments subject or without prejudice to my position.” Now to contribute substantively on what I feel about the recommendations on the merits...

Hon. Speaker: Which is okay. So, you withdraw your amendments.

Hon. Peter Kaluma (Homa Bay Town, ODM): I thank you, Hon. Speaker. That is the position.

(Proposed amendments by Hon. Peter Kaluma withdrawn)

Hon. Speaker: Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Hon. Speaker, before and without contributing substantively, just procedurally, it appears to me that to do justice both to the Committee, to the law and to this House, the Committee might well stand guided to rationalise the Report first, for a number of reasons. One, it is the dangers that you pointed out. The dangers of recommendations to multiplicity of bodies. It has consequences. Two, as long as it is not stood down to be rationalised, it means even the ideas of directing independent constitutional bodies on how to do their work, within what time and what to do later, still remains. That stands as a very delicate constitutional angle.

Thirdly, is the question of retroactivity. The Committee means well by trying to adopt regulations that have since come into place. For you to adopt those regulations, you must first give the opportunity to that person, what in law we would call “a show cause”. These regulations have since come into place and we are entitled to invoke them. What do you say about it? It might actually involve the Committee reinventing the person and say: “Show cause why we should not recommend your being debarred.”

Lastly, procedurally, it is a question of perjury. I listened carefully to the Chairman. What he is saying is that there are people who actually committed perjury before the Committee. That is actually contempt of Parliament. We must take a very serious view of it. The Committee must decide what they want us to do with the people who lied before them. I say this because the Public Investments Committee (PIC) is a very important oversight Committee. I also sit in the PAC. When amendments come to a Report such as this, there are two folds. There are some that are well meaning to tighten the Report so that it is foolproof. But others are not well meaning. They want to kill the Report. I have always seen that. We need to give the opportunity to amendments that are well meaning to tighten the Report.

(Applause)

We will need to make a more fundamental decision in respect of reports from the Public Investments Committee and the Public Accounts Committee. Article 95(2) of the Constitution says that the National Assembly deliberates and resolves matters of concern to the public. So, we must always ask ourselves on a matter of concern such as that, does the Report resolve it? We must and we can create two distinctions. Where a Committee finds that there are certain administrative wrongs – and it could be maladministration or it could be whatever - you can make a finding. It can include a recommendation to debar, surcharge or whatever. But where it appears to amount to a criminal offence, then you cannot because we are not competent. We must refer it elsewhere. I have always believed that committees such as PIC and PAC must ask themselves what concrete

administrative resolution we are recommending to the whole House which, if adopted, is complete in itself.

I think that we need to support PIC and PAC to have teeth so that, as a Parliament, we can have teeth. Otherwise, we will be doing these investigations and then we recommend an investigation and people will ask why we spent a whole year and all that money. That is not helpful.

However, that only must mean that we must sharpen and tighten the administrative loopholes so that, that Report does not collapse. We must tighten the resolutions. It appears to me that this is a case where it will do well to the Committee to stand this discussion down, rationalise its recommendations and tighten the procedures, tighten the recommendations, including discussing with those with amendments like Hon. Kaluma, and then we come back and adopt something that is watertight that anybody looking at will say, Parliament did what it ought to do.

That is my respectful submission, Hon. Speaker.

Hon. Speaker: Now, you know Hon. Members, the Report has been moved and seconded.

An Hon. Member: Tabled!

Hon. Speaker: No, the Report was tabled long ago. The House is always at liberty to make adjustments to reports. We have done that with the other Committees. The position of the Committee is that we need to clear this Report, either to accept or reject it as amended. I am seeing a lot of areas that are so grey, but the Committee does not appear to want to take the route of tidying up the Report. The amendments that were proposed have been dropped. I propose that we proceed to debate the Report, as confused as it is. I can assure you that if you take this Report to anybody, they will just take it and throw it away.

Hon. Duale, you have the Floor.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, this afternoon, while I was coming here, I wanted to listen to the amendments by Hon. Kaluma and Hon. Maanzo. Once a Report has been tabled and has come for debate, there is nothing like rationalisation. I want to indulge Hon. Otiende Amollo. Chairpersons of Committees and the leadership must be very worried. If we go that route, we will have many people wanting to rationalise every report that a Committee brings. We had a similar case the other day. Going forward, if in the opinion of the Speaker amendments have been approved and are on the Floor, the Member must convince the House and the Question is put.

(Applause)

This afternoon, I just wanted to know the rationale for the amendments. Coming back to what you have said, knowing that you were at some point the Chairman of PIC and I am a member of PAC with Hon. Otiende Amollo, these are two unique Committees. These Committees deal with reports of the Auditor-General and conduct special audits. There is a lot of stuff in this Report. The Auditor-General's opinion is well documented. He has done a special audit. On the corridors of Parliament, we were wondering why, in the last three weeks, this Report had been taken back and forth. We do not want Parliament to be viewed in bad faith. Hon. Kaluma raised an important matter, and we have been doing that since I joined Parliament. We only recommend to the EACC and the DCI, but we have no powers on the timelines that they can take. Three-quarters of the reports that have been brought to this House have only recommended to the EACC, because we do not have the capacity to investigate. Even if this Report is passed, the EACC and the DCI can bring their reports in the 13th Parliament. Now that these two amendments have been dropped, and Hon. Kaluma made a lot of sense in his last statement; in good faith, the Chairman of PIC can

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move that important amendment on his behalf. We do not have rationalisation. When it comes to a Bill, and there are a lot of amendments, Members can sit and discuss. I have been unable to move the Refugees Bill because the Chair said that I must sit with Hon. Millie Odhiambo, and that has taken two weeks. We can sit when it comes to a Bill. While we are back to debate the Report of PIC, let us not set a bad precedent because tomorrow, Hon. Wanga will bring a report of the Departmental Committee on Finance and National Planning, and Hon. Kigano will bring a report of the Departmental Committee on Justice and Legal Affairs; and because of our interests, we will talk about rationalisation. You have a right to bring amendments, but there is no way we can ask the Chair to withdraw. If the Speaker feels that certain constitutional issues have been raised, he can give us powers to withdraw or re-arrange the report. Parliament should not look bad. Why are we delaying this Report? At the end of the day, a Question will be put and if we agree with the PIC Report, so be it. If we do not agree with it, it will be like the other reports that have been rejected in the House. We need to move with speed because we only have Thursday to carry out business. For the first time, I have heard of the word “debarment.”

Hon. Speaker: Member for Wajir East.

Hon. Rashid Kassim (Wajir East, WDM-K): (*Inaudible*)

Hon. Speaker: We cannot hear you. I think your microphone is faulty. Give him another microphone.

Hon. Rashid Kassim (Wajir East, WDM-K): Hon. Speaker, with your direction, I propose that we proceed with the Report as amended. However, I am not sure whether I can weigh on the earlier discussions.

Hon. Speaker: We are debating the Report as amended.

Hon. Rashid Kassim (Wajir East, WDM-K): Hon. Speaker, as a member of PIC, we have dwelt so much on this Report. I support the findings, resolutions and recommendations made by the Committee. The Committee has exhaustively looked at the three firms which had initially been brought through a Special Audit Report by the Auditor-General. In the Report, we have ascertained that the two firms, EAA Company and ATJ, have not presented their views correctly. They misrepresented the information they gave out. One of the requirements for the tender was that they should have a minimum of eight holding centres in Italy and UAE, but the information given out in the Report is null and void. They do not have specific holdings they own as the two firms. We noticed that the information with regard to the acquisition of the tender was faulty. In their report, we noted that the Managing Director of KEBS initiated another tender process that had been flouted. The initiated tender process was capturing some of the firms such as EAA and ATJ that had been recommended for debarment. They brought in another tender process against the advice of PIC and without consulting the Attorney-General and yet, there was an ongoing tender.

So, they went ahead and initiated a tender process again which brought in the firms that had earlier been debarred from providing services as required by law. Certainly, we have realised that the Managing Director has not been able to conform to the advice of the Attorney-General and Public Investments Committee as required. The information he gave to the Attorney-General, with regard to some of the firms, was faulty. First, he said that they were going to make a variation; then he said they are going to have an addendum to the initial tender. We finally realised that it was neither an addendum nor a variation of the first contract, but a new contract that was awarded at the expense of Kenya Bureau of Standards. So, we have recommended as a Committee that those two firms be debarred as indicated in the Report. The Managing Director of KEBS should be held culpable for putting in costs that were unwarranted, particularly in trying to initiate another process of tendering which was uncalled for, and for contravening the advice that was given by

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the Attorney-General and Parliament. As a member of the Committee, I support the Report in its entirety as amended.

Thank you.

Hon. Speaker: Hon. Kamket. You see, that is the problem. You have left your card there. Speak from there.

Hon. Kamket Kassait (Tiaty, KANU): Hon. Speaker, I placed my card because I wanted to rise on a matter of procedure. Now that we are in debate, I want to request you to... Listening to Hon. Kajwang' and the Chair, I got the impression that they were not speaking the same language and they are members of the same Committee. It looks to me that under Standing Order No. 48, the amendments that have been brought by the Chairperson materially alter the meaning of the Report. Therefore, as a matter of procedure, I have not seen evidence of an addendum from the Chairperson on whether there was concurrence from the membership of the Committee on the amendments that they have brought. That is what I intended to bring to your attention. It is clear from the Order Paper that there is no evidence of concurrence from the Members. All we are seeing is the Chairperson and, maybe, the Vice-Chairperson saying a few things here. But there is no evidence of concurrence and yet, the amendments materially alter the original meaning of the Report.

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

Hon. Kamket Kassait (Tiaty, KANU): I am standing under Standing Order No. 48, Hon. Speaker.

Hon. Speaker: You know many of you may not be following some of these things. I do not know how many times I have to be telling you to be looking at your Standing Orders. He is raising a procedural issue. Hon. Abdullswamad, did you hear the issue he raised?

Hon. Abdullswamad Nassir (Mvita, ODM): Hon. Speaker, I heard him and he is misinformed. He is saying that we have raised matters that have materially altered the Report. I think Hon. Kamket has not read that Report. What we have done has not done that.

This is a matter that today--- Hon. Speaker, correct me for following your lead on this issue. These were minor changes. They cannot change the substance of this Report. Today, Hon. Kajwang' was kind enough to raise this matter. It seems Hon. Kamket has sat on the seat of Hon. Kajwang' to raise an issue for him. I believe he is not doing it on behalf of Hon. Kajwang'. We discussed this matter in the Committee today.

(An Hon. Member spoke off-record)

I am on a point of order. It is a problem when people do not understand the Standing Orders. There are so many issues that will be touching on a number of Members. In future, it will be important to allow them, if they write, to come to our Committee and see how deliberations are done.

Hon. Speaker, you have already made a ruling on this matter. I kindly request you not to take us back again. This is something we discussed in the Committee when Hon. Kajwang' raised it. We had a decent forum with all Members who were there. These amendments were approved by you based on your guidance and communication.

Hon. Speaker: I can see the Member for Nandi Hills is on intervention.

Hon. Alfred Keter (Nandi Hills, JP): Hon. Speaker, from where I sit, I have seen the issues that have been raised by most of the Members here. This is putting Parliament in an awkward position. The number of issues that have been raised are grave. They are forgeries and other issues. On the amendments that have been proposed by our colleagues, Hon. Kaluma and Hon. Hon.

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Daniel Maanzo, it is unfortunate to have had a scenario where we gave them time to tell us that they want to delete three or four articles from the recommendations. This issue has been there for the last one-and-a-half months. The Committee must have given itself time to interrogate many witnesses and read the Auditor-General's Special Report. Today, when they come to raise issues of deleting three and four...

Hon. Speaker: Those amendments were dropped when you went to have tea. There are some people who threatened to occupy Parliament.

(Laughter)

Hon. Keter, did you see those gentlemen who wanted to occupy Parliament? They were offered tea and *mandazi* and they were happy after that. They have since gone to occupy their offices. They are in court but they still want to occupy Parliament. *Kumbe*, they wanted to have a cup of tea. They have been envious about the kind of tea and *mandazi* that is eaten in this place.

(Laughter)

They are good guys.

Hon. Keter, those amendments were withdrawn. The proposed amendments by Hon. Daniel Maanzo and Hon. Kaluma were withdrawn. So, now it is a procedural issue that Hon. Kamket raised. There is nothing else. That was the debate. Hon. Kassim has just contributed to the debate on the Motion as amended.

Hon. Alfred Keter (Nandi Hills, JP): Thank you, Hon. Speaker. Allow me to now make my contribution to the point of order that was raised by Hon. Kamket. I think it is not in order to say that the Report is not properly before the House, because all the recommendations that were raised by Hon. T.J. Kajwang' were not affecting the Report. If Hon. T.J. Kajwang' is a member of the same Committee, then he should have come with a minority report to challenge the Committee's Report.

Thank you, Hon. Speaker.

Hon. Speaker: What is it? Are we now going to have a ping-pong game or what? Hon. Kamket.

Hon. Kamket Kassait (Tiaty, KANU): Hon. Speaker, there is a principle in law that he who alleges must prove. The Chair of PIC is insisting that the amendments they have made are very minor. How minor are those amendments when, indeed, they are proposing deletion of recommendation (ii) about the regulations? This amendment is materially different from what is in the original Report. So, I rise on a matter of procedure. What they are doing is that they are amending the Report fundamentally without following the correct procedure. That is what I am saying. The procedure is that there must be evidence of an addendum. That is the procedure. It is as simple as that.

Hon. Speaker: Member for Mandera East.

Hon. Omar Mohamed (Mandera East, EFP): Thank you, Hon. Speaker. At the outset, I wish to support the Report as amended. As has been said in the Report, this is a very serious issue. If you look at the Report of the PIC in the 11th Parliament, the same companies—EAA and ATJ—were singled out as entities that presented forged documents during the inception of this tender at that time. This Report brings out the fact that heads of parastatals can do anything that they wish in procurement. Therefore, it is my request to the House to adopt this Report as amended. I support.

Hon. Speaker: Member for Mogotio.

Hon. Daniel Tuitoek (Mogotio, JP): Thank you, Hon. Speaker, for giving me this opportunity. I was listening to the contributions. One which is interesting is that when a Motion comes here, I thought the Members are supposed to get more time to ventilate on the Report, give their ideas, maybe, bring amendments that are approved by the Speaker and decide on those amendments. But since the amendments have been dropped, I would like to say that there is no harm in moving to debate this Motion. We can then decide among ourselves whether the Report is credible or not. I think in as far as the recommendation to the EACC and others agencies are concerned, it is always normal for them to carry out further investigations because we do not have the capacity to investigate those particular aspects of wrongdoing. It is right, as you have said that we cannot deliberate in vain over something we cannot control. In this particular case, the Chair has agreed that they can recommend to the EACC to investigate. As to whether the EACC can submit their report to the House, that is their prerogative. They can as well send it to the DPP for action or they can terminate the investigations if they feel there may be no adequate information on the allegations.

I really do not want to contribute much on this. Therefore, I beg to support.

Hon. Speaker: Hon. Oduol.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Speaker, for giving me the opportunity to speak on this Report. These issues speak very directly to our responsibilities as Parliament. The issues that have been raised in this Report by PIC are issues of concern. As has been clearly indicated, some cases appear to get lost on technical ground. I would like to support the Report in principle. I would like to refer specifically to the recommendation that sought to identify loopholes in procurement procedures and failure to adhere to the defined and accepted way of engagement. When we are looking at the PIC Report, we would want to make reference to other institutions such as the Office of the Auditor-General.

As we look at this Report, we cannot ignore the fact that there are areas being highlighted. We can see that institutions charged with various responsibilities seem to have demonstrated a failure to adhere to the required standards. Therefore, when we look at the PIC Report, we want to keep our eye on the ball, which would be the extent to which we address the clear areas of oversight. There are areas and issues that we cannot ignore. When we deal with these matters, as much as technicality and interpretation would be seen to be of use, it is extremely important that we do not ignore some areas. We should not only be seen to be undertaking our oversight responsibility but, as a matter of fact, our Report should show that we have done our work. The other institutions, be it EACC or DPP, should be in a position to take up the matter. So, it is a bit unfortunate that there seems to have been some degree to which there was no clarity of what was causing this miscommunication or lack of clear understanding. But I think from the discussions we have witnessed on the Floor, we can see that the Committee has, indeed, done its work.

As I conclude, I would want to make an observation: It might have been useful for the Committee to have provided us, as has been done in other cases, with minutes of their deliberations. The minutes would not only help us to interpret what is presented, but would also help to ensure that we do not get the impression that there might have been cases or issues that were not exhaustively consented to by all the members of the Committee.

Therefore, I want, as I contribute to this matter from the point of view that there are in this Report...

Hon. Speaker: I will give you one minute.

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Speaker. I would like, as I conclude, to indicate that we cannot really lose opportunity to go on record that in terms

of public financing and public investment, there are officers who have flouted regulations. We should hold them accountable.

Thank you. I support.

Hon. Speaker: Member for Wajir South.

Hon. Mohamed Mohamud (Wajir South, JP): Thank you very much, Hon. Speaker. I stand to support this Special Audit Report by the Public Investments Committee. I am quite elated that I was part of this Report. I contributed to it. This Report has done well and has proposed thorough investigations with regard to the import systems of Kenya. I am talking about the gadgets that are used to inspect motor vehicles. Kenya is not a highly sophisticated manufacturing country. It is important that we have checks and balances to ensure that what we import is considerably looked into. The Auditor-General has identified a considerable number of things that this Report has captured.

I do support this particular Motion. I say thank you very much to the Committee that I was previously a member of. Thank you very much, Hon. Speaker.

Hon. Speaker: Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker for giving me this opportunity to contribute to this Report. Let me first start by stating that I belong to the Departmental Committee on Trade, Industry and Co-operatives that generally oversees this particular Government agency. Yes, we are aware that there have been issues concerning KEBS, but I have various concerns on the issues that are being raised in this Report.

Hon. Speaker, if you look at page 13 of the Report, the crux of the matter is that KEBS allowed a company that presented fraudulent and misleading information. Those are two companies. We need to pause and ask a question: How does that become a problem of KEBS? Issues of fraudulent or fake documents fall on the realm of criminal law and are punishable under the Penal Code. Such issues cannot be dealt with by Parliament.

Hon. Speaker, concerning the recommendations, and I must say this with a lot of respect to the Committee... The Committee has done tremendous work. We appreciate that the PIC is an oversight committee and, at any given time, we should never try to challenge its reports. However, honestly speaking, the recommendations are contradictory. One, you want to hold the Managing Director (MD) personally responsible. What that means, I have not understood. What does it mean to say, 'personally responsible'? Looking at the issues at hand, there is no financial loss. There could have been impropriety probably in the processes, but KEBS stands to make no loss at all because it is involved in expenditure of public funds. Those who are importing are the ones who pay.

Third, there is a recommendation to debar the two companies, a recommendation which had not been actualised. There is the law of natural justice. How then would you expect KEBS to decline to receive bids from those companies and yet, the process of debarment had not happened at all?

Finally, when you look at recommendation number four, I would say, again with due respect to the Committee, it is just preposterous. These are fishing expeditions. You are anticipating something that will happen or will not happen. How do you know there are going to be legal issues? You are as well usurping the powers of the court and the criminal investigation system to determine there is going to be an offence that is likely to happen. It is just like, you are walking in the streets and the police officer looks at the way you are walking and determines you are likely to commit a fraud or an offence. Hon. Speaker, we are a House that should be respected.

We are a House that has got a lot of internal capacity. We need to make our recommendations and reports flow in a systematic and organised manner.

Under recommendation number five, they are proposing investigations and yet, they have already condemned under recommendations three and four. You have already condemned. So, what investigation are you going to undertake? Hon. Speaker, matters are not coming out clearly. Yes, there could have been impropriety; there could have been administrative lapses, but that does not belong to Parliament to resolve basic administrative lapses like missing minutes and missing this-and-that. Those are issues that can actually be dealt with administratively by the standards council, by the board and others. Let Parliament deal with serious issues. These petty issues, let us leave them to the relevant committee. Let me go on record, Hon. Speaker, with a lot of respect, I oppose the Report.

Thank you, Hon. Speaker.

Hon. Speaker: 001 is just...

Hon. David ole Sankok (Nominated, JP): Thank you very much Hon. Speaker, for giving me this opportunity and, at the outset, I want to say that I support the Report in its amended form. Before I even contribute, let me congratulate you for hosting the Law Society of Kenya for a cup of tea. That is because they came thinking that they will take over Parliament. They did not know that we have the third in command, that is, the third most powerful person in this country who knows how to handle such issues. They should have just called me that they wanted tea, and I would have even personally bought it for them. Anyway, Hon. Speaker, I do support this Report. The fact that you had approved it means that you have already checked most of the issues that have been raised from the Report and you saw it fit to be moved on the Floor.

We are the representatives of the people. I read the Report and realised that there was misinformation from some people who were interviewed and by the Committee. We need to stand by the people. I know sometimes we may be a bit overboard, but it is because we are the representatives of the people and we want the best for this country.

Therefore, with those very many remarks, I would like to support and also congratulate Hon. Kamket because his wife has been nominated by the President as a Data Commissioner. Congratulations my brother. Thank you.

Hon. Speaker: Hon. Ongili.

Hon. Babu Owino (Embakasi East, ODM): Thank you very much, Hon. Speaker. In Article 159 (2) (d) of the Kenyan Constitution, it is clear that procedural technicalities cannot override substantive justice. Because of that, we cannot subject this House to ridicule by opening a can of worms. In the foreseeable future, such happenings will be taking place in this House in bad faith. This is where when a report will be brought before the House; somebody will come with serious amendments just to fight that report.

In the Public Investment Committee (PIC), we did our investigations, toiled and moiled, spent sleepless nights and found the Managing director of KEBS culpable for misappropriation of funds, embezzlement, inferring and expropriation of public funds. As a result, we recommended that the appropriate action be taken and further investigations be done by EACC. Therefore, I stand to fight against the vice of corruption in this country. I actually advise my fellow Members not to support such a nefarious, unbecoming conduct, irresoluteness, frivolousness and the fickleness of the MD for KEBS.

I rest my case. Back to you, Hon. Speaker.

Hon. Speaker: It must rest.

(Laughter)

Let us have the Member for Kipkelion West.

Hon. Hilary Kosgei (Kipkelion West, JP): Thank you, Hon. Speaker. I rise to support the Motion in its amended version.

You must be aware that, at one point, I brought a Question that the Report on this Committee is going to cure. To begin with, KEBS is a very important institution in this country. For every product that is imported and consumed by Kenyans, we must have credible firms that are going to inspect those products so that the Kenyan people can be safe all the time.

When a Report of PIC like this comes up with evidence that some companies did not have technological and infrastructural capabilities to do this works, you can only understand the fears of the Committee in pushing even that the EACC should report back to this House in 60 days. This is because as Hon. Duale alluded to, the EACC can take a year. It can take the entire term of this Parliament without bringing it. But, because of the seriousness of this matter, the Committee felt that it is important they put that rider so that progress in this thing begins. I think it was in good faith. More than that, the Auditor-General's Report is enough proof that there were wrongs, and things that KEBS deliberately overlooked in the process of that tender.

In the process of an ongoing tender, they went ahead to actually float another illegal tender for the said companies that were proposed to be debarred by the Auditor-General and went ahead to award them. There is a lot of worry in this House. If we do not reign in on this, this country is not going to get it right in terms of even the fake goods that come in. We need to support KEBS so that we are no longer going to get fake phones and products coming into this country by engaging credible companies to take charge of the lives of the people of Kenya.

The PIC Report is straight forward. Attempting to go against it is actually proving that you are part and parcel of the cartels that are bringing down this country. In the interest of fighting corruption, let us support the PIC Report.

I rest my case. I support this Report in its amended version.

Hon. Speaker: The Member for Suba North, you have the Floor.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker, for giving me this opportunity. At the outset, yesterday we saw a man praying saying that Suleiman is the one who killed Goliath with one stone and Goliath fell "pungulu."

As Parliament, if we are not careful in the way we deal with issues, we will be like those bishops who do not even understand the Bible – who actually think that somebody called Suleiman killed Goliath.

The reason I am saying that is because I have actually had an opportunity to sit through even the other time when this Report came and we had to adjourn the House because of lack of Quorum. Sometimes, and because I have been in this House for long, it pricked my interest that, sometimes, when we want to call quorum, we do it when we think we do not want to pass... I got an opportunity to look at this Report and I support the Committee and the amended Report on its consideration of the Special Audit Report on procurement of the pre-export verification of conformity to standard services for used motor vehicles, mobile equipment and used spare parts by KEBS.

If you look at the mandate of PIC in general, it is to ensure probity, efficiency and effectiveness in the use of public funds. What they were trying to do with this Special Audit was to test the veracity of the findings of the Special Audit. Some of the things that they picked up were the issue of conflict of interest, except that at some point, I was concerned about some of the issues on privacy. They seemed to put privacy above the issue of conflict of interest. For me, privacy stops where you disabuse the Constitution and the law. You cannot put your privacy

primarily above the Constitution. Therefore, if you have an issue of conflict of interest that goes against the law, then the issue of privacy must fall aside.

There were issues of misleading information, fraud, forgery, and blatant impunity in this thing. As a country, if we are serious in dealing with corruption, then we must support this Report. I know there are some Members who have said that the issue of personal responsibility is amorphous. I am now doing my Third Term and we have passed many Reports with the issue of personal responsibility. This would, therefore, mean that the investigating authorities, should they find that there is money lost, do not make it a Government business for it to pay that money. If it is Government paying that money, then Hon. Millie Odhiambo, who did not do this, will pay through her taxes. Let the culprit pay directly for where you have gone wrong. I think if we take very stern action on issues of corruption, then the country will forge ahead.

I am also speaking firmly because the persons affected most with issues of corruption are women. That is because we are not represented. The one-third representation does not apply to issues of corruption. I am not saying we are not there. Some of us are there, but we are not one-third yet. I am not saying corruption is good and we do not want women to be represented, but where there is no fairness, the people who stand to suffer the most are women. For that reason, and because I support strongly the women agenda, especially women entrepreneurs to get into Access to Government Procurement Opportunities (AGPO) and others... I have noticed that even when we have AGPO where women should benefit, men go and register companies with the names of their mothers. They are the ones who do the work and benefit. For that reason, there is need for even higher probity than the one that we have set.

I want to congratulate the Committee. I agree with you on your amendment to Clause 1 and 2 because it has been overtaken by events. I wish they had even used stronger language with the National Treasury that you could see was dilly-dallying on the issue of rules and regulations. They have to wait for the Committee to bring the reports and that is when they pass rules and regulations. Where have they been all this while? Why have they been sleeping?

Hon Speaker we need ...

Hon. Speaker: Let us have the Member for Sirisia. Is that Hon. Serem? You can then take over from the Member for Sirisia. I think he still has not ...

Hon. Joshua Kutuny (Cherangany, JP): Thank you, Hon speaker. I rise to support the Motion as amended.

Hon Speaker, I was lucky to participate in looking at this issue when it came to the Committee, where I was the Vice-Chair. If the Members can look at the document, they will appreciate the fact that the Committee has done a good job. Those companies forged documents to support their bid to win the tender at the KEBS. I was one of the lucky Members of Parliament who travelled to Japan. I came right across the two companies. Both companies have no capacity whatsoever to even participate in giving services to Kenyans.

Hon Speaker, a couple of months now, KEBS has been appearing in papers for the wrong reasons, just because of the management that exists at the moment. I am sure if we adopt this Report, we are going to cure the mess that is being encountered at KEBS. It is for this reason that I rise to support this Report. Hon. Oundo has said that KEBS has not lost any money. By early this year, KEBS had spent Kshs14 million on litigation. So, to say that KEBS has not lost any money is not true. KEBS is losing money every single day trying to defend cases of irregularity in court.

With those remarks, I support the Motion as amended.

Hon. Speaker: Hon Members, it is good to avoid quoting names. Now you see, before you concluded your contribution, Hon. Oundo wanted to rise to intervene. You do not have to mention

who said this or that. You can just say that it has been said. I think the 12th Parliament has a bug that has bitten most of you such that, every time you hear your name mentioned in whatever light, there is something out of order.

Let us have Hon. Rozaah Buyu.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon Speaker for giving me this opportunity.

At the outset, I support the Motion of adoption of the PIC Committee. I support this Report because most recently, Members have been crying that reports that come to this House fall short of recommending possible actions that can be taken so that the reports are seen to move forward and take the country to a better place.

Hon Speaker, the only Committee that has been bold enough to mention names of persons who have been found responsible for certain action in its findings and Reports is the Departmental Committee on Environment and Natural Resources. Today I support this Motion because it takes the bull by the horns. It is not good enough to allow corruption to take place and then when the country has lost huge sums of money, people are taken to court and no action is taken against them.

Hon. Speaker, the Committee is bold enough to point out persons who they think are not adhering to good practices in the positions that they hold. A Member actually mentioned that neglecting advice from such constitutional bodies that have spent so much money... To ignore advice from the Auditor-General and the Attorney-General is to undermine those offices. If you undermine advice of a body that is mandated to ensure that we have good governance, you must be held culpable. Recently, the President directed companies to openly declare anybody who has applied for open tenders, how much they have tendered on such tenders and who has eventually been given the tender. His action was not in vain. It arose from the kind of actions that we have seen from the authorities in KEBS. People who have previously been fraudulent, who should not be winning any tender, were awarded a tender despite the fact that they have obvious shortfalls. That is an act that must be punished.

Therefore, I commend the Committee for being bold and for taking Kenya forward in the sense that they have noticed that it is better to nip corruption in the bud as opposed to waiting for corruption to take place and spend huge sums of money trying to bring people to book.

With those few remarks, I support the Motion.

Hon. Speaker: Let us have Hon. (Dr.) Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker for giving me an opportunity to contribute to this Motion.

First, I support this Report bearing in mind the concern that has been indicated earlier. Some commendable work has been done by the Committee, but the writing of the Report itself, more so the wording, as indicated, may render this good Report and recommendations impossible to implementable. That is the big danger I see. Despite that, I support the Motion.

On the two main recommendations – on debarment and on the CEO taking personal responsibility – again, there is a weakness. We are not quite sure what exactly is supposed to happen to the CEO when he takes “personal responsibility.” According to the Report, there are areas where the management gave false information or inadequate information to the Auditor-General. They also did not act on the advisory of the Attorney-General and the PIC. They ignored their information. If an organisation ignores their own information and goes ahead, like in this case, to get the bidders proceed when they have failed technical evaluation, it is immaterial how good their prices are, if they are technically incapable of delivering what is being requested to be done. Therefore, those are gross mistakes made by the CEO.

Secondly, I do not think the amendments by the Chairman made any much difference. It only made it a little better. The main amendment that would have made a big difference was that of Hon. Maanzo, which was eventually dropped. Hon. Kaluma's had some little difference. So, this is a big Report, but we have two issues that we need to address. We have good work done by the Committee, but the wording in its Report has led to a lot of debate. The Report should have been very powerful. We need to look into this aspect.

I would like to raise one issue because we have legal advisers in our Committees. How is it that the Committees recommendations can be legally questionable on how they are put in place? I think we need to look into this.

The other issue - which is general information - is the impunity of State Corporations CEOs. This is not the first time we are seeing serious impunity. We saw this with the Kenya Medical Supplies Agency (KEMSA), the Dams Report that was brought here and the Report by PIC auditing State Corporations. In all those cases, we have seen CEOs acting against their own regulations and procedures. The questions I am asking are: What does the State Corporations Advisory Committee do? Why are CEOs acting like this? What is the relationship between Boards and CEOs? What about the Ministries that supervise those State Corporations? How come those people are running a mockery of CEOs and nobody is bringing them to book or pointing out until this comes before the committees?

I think we have two major issues we should look into. One is how the Committees work. We need more legal advice. We have legal officers and they should do their work so that we do not get questionable reports. Two, the State Corporations Advisory Committee should work because the Ministries supervising State Corporations and Semi-Autonomous Government Agencies (SAGAs) are sleeping on the job.

Hon. Speaker, with that, I support this Report.

Hon. Speaker: Hon. Janet Ong'era, you have the Floor.

Hon. (Ms.) Janet Ong'era (Kisii CWR, ODM): Thank you, Hon. Speaker, for allowing me to contribute to this very important Report. At the outset, I support it and I will speak on two issues because a lot has already been said in this august House.

I was a former CEO of a parastatal. I think from my experience, I learnt that taking the Auditor-General's reports seriously and especially the professional report given to your parastatal is very important. This is what makes a good CEO. In this case, I have listened diligently to what the Chairman and others have said. It seems we have a rogue CEO who does not listen to professional advice given by the Attorney-General and neither does he respect the Auditor-General's Report.

It is high time this Parliament began taming rogue CEOs. If we do not tame them, I do not think there is any other body that can do so. Therefore, I support the recommendations that have been made that this CEO must be investigated by EACC and a report submitted to this House for us to take the necessary action.

The other point I would like to raise is the question of rogue companies. In the 11th Parliament, I was in the Senate and this matter was in the National Assembly. Those companies have been mentioned again and again in terms of how they are rogue. They do not comply with procurement and tendering issues but previous CEOs dismiss this. It is high time that those companies are debarred from doing business with us. So, we can begin to create an enabling environment in which any international company can participate and know it can get what it wants from KEBS.

I know there is a lot of rot at KEBS, particularly, when it comes to motor vehicle clearance. I know there is always a 10 per cent that is agreed on. Maybe, somebody is paid three or five dollars. It is high time we brought this to rest.

Hon. Speaker, with those few remarks, I support the Report and thank Hon. Kaluma and Hon. Maanzo for dropping their amendments. Let us move forward and accept this Report as a Report of this House without any harmonization and barring. This is because we do not want to water down what has already been tabled in the House.

Thank you, Hon. Speaker. I support.

Hon. Speaker: Hon. Arbelle, you have the Floor.

Hon. Alois Lentoimaga (Samburu North, JP): On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order, Hon. Alois Lentoimaga?

Hon. Alois Lentoimaga (Samburu North, JP): Hon. Speaker, this Motion has been deliberated for a long time. So, I rise under Standing Order No.95 that, the Mover be called upon to reply.

Hon. Speaker: Do not worry! The Mover will be coming in the next three minutes. Hon. Arbelle, you have less than three minutes before the Mover replies.

Hon. Marselino Arbelle (Laisamis, JP): Thank you, Hon. Speaker for giving me this opportunity to contribute to this Motion. First and foremost, I would like to correct Hon. Millie Odhiambo because she alleged that the person who killed Goliath was called Suleiman. Indeed, the person who killed Goliath was Daudi just to put the record straight. Even my first-born son is called Daudi...

Hon. Speaker: Relevance! We are discussing a Report and not about Goliath.

Hon. Marselino Arbelle (Laisamis, JP): Hon. Speaker, I support the Report because the Committee has done due diligence by coming up with it. They have indicated where there are flaws and gaps and recommended this House to look into this Report and come up with recommendations.

The market demand on importation of goods such as phones, spare parts and motor vehicles is high in this country. Therefore, we need to have procedures in order to get those goods in this country. The Committee has indicated the companies that are shortlisted to import goods by KEBS and it appears the process has flaws. It has recommended investigations to be done by EACC and DCI so that we can get to the bottom of this matter.

Indeed, the Attorney-General found the flaws because processes have not been followed. So, it is high time we joined hands with our brothers in the Committee in the good work that it has done. Other CEOs in parastatals need to understand that when a parliamentary Committee comes for you, the law will catch up with you.

For instance, the other day, we sat down with the National Security Committee (NSC) asking them how the police uniforms were procured. Today, you can walk anywhere in the street and ask any police officer because they are blue. They will tell you they are not happy with the uniforms. We failed to understand where public participation was done and how procurement was conducted in the first place.

Hon. Speaker, in summary, I support the Report. Thank you.

Hon. Speaker: Let us now have the Mover.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Speaker. For obvious reasons, I give a huge thank you to every single Member here. You have expressed your democratic right and views in the voice of the many who have spoken. However, in the spirit of bringing everyone on board, with your permission, there are two Members I would like to donate to 30

seconds or a minute each, and then we wrap it up. Hon. Mwashetani and Hon. Mishi have been here since 2.00 O'clock.

Hon. Speaker: Very well. They can even take one minute.

Hon. Abdullswamad Nassir (Mvita, ODM): And a minute to Hon. Nyaga because he is a member of the Committee. That means three minutes and we wrap this up. Thank you.

Hon. Speaker: Hon. Mwashetani, you have the Floor.

Hon. Khatib Mwashetani (Lungalunga, JP): Thank you, Hon. Speaker. I have gone through the Report and normally before a company is given a tender, there are some requirements which normally have to be fulfilled. Looking at the Report, the requirement of a company which needs to be doing pre-inspection in an exporting country ought or needs to have some other companies. This is because if a company is registered in a country, say Japan, then, for them to be able to handle all the vehicles that are imported in the whole world to Kenya, they ought to have companies in other countries.

However, looking at the Report, I notice that, that company does not have contracting companies in other countries. This being the case, it will be difficult for that company to be able to inspect those vehicles and if they are unable to inspect vehicles purposely because they do not have proper infrastructure, then it means that all the inspection that they have been doing has been on the table. Once a company starts doing inspection on the table, then definitely the results are not going to be pleasant. That is why you realise in the recent past that we have been having problems in inspecting vehicles and having vehicles which are more than eight years being imported into Kenya because of such infrastructure. So, I support the Motion as amended. Thank you.

Hon. Speaker: Let us have Hon. Mboko Khamis.

Hon. (Ms.) Mishi Mboko (Likoni, ODM): Thank you, Hon. Speaker. I also rise to support this Motion by Hon. Abudullswamad Sheriff Nassir. I am doing that because we have to set a positive precedent for future transactions. We have noted a lot of illegalities in the company together with KEBS and the entire transaction which was done. We have noted so many actions were done un-procedurally. We have also noted a lot of unethical actions which were done, be it lying to the Committee and the Attorney-General that the tender was just an addition to the existing tender; only to realize that it was a fresh tender. There were so many things which did not meet the requirements as per the regulations...

Hon. Speaker: The Member for Manyatta, you have the Floor.

Hon. John Nyaga (Manyatta, JP): Thank you, Hon. Speaker, for giving me an opportunity to add my voice to this Report. At the outset, I support the Report. I was in PIC in the 11th Parliament and part of the 12th Parliament. When the CEO appeared before our Committee, he was very nervous and mean with information. At some point, we found out that even the external lawyers had advised him not to proceed with that tender. His own Company Secretary was not aware that he was awarding a tender. Therefore, we have had a lot of mischief. We, as the Committee, advised him: "Please, do not proceed with this unless you get advice from the Attorney-General." He did not heed to any of our advice.

Therefore, I am happy that most Members of Parliament support...

Hon. Speaker: Let us have the Mover.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Speaker. I beg to reply.

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

Resolved accordingly:

THAT, this House adopts the Report of the Public Investments Committee on its consideration of the Special Audit Report on Procurement of Pre-Export Verification of Conformity to Standard Services for Used Motor Vehicles, Mobile Equipment and Used Spare Parts by the Kenya Bureau of Standards, laid on the Table of the House on Tuesday, June 02, 2020 subject to amending the Report as follows

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- (a) deletion of recommendation (i) appearing under Committee Recommendations under chapter 5 on page 63 of the Report;
 - (b) deletion of recommendation (ii) appearing under Committee Recommendations under chapter 5 on page 63 of the Report and substituting therefor the following—
 - “(ii) In line with the recommendations of the Auditor-General in the Special Audit Report dated 10th July 2019, KEBS’ due diligence report on Tender No. KEBS/T057/2014-2015, and the findings of this Committee, the Public Procurement Regulatory Board, pursuant to section 41 of the Public Procurement and Asset Disposal Act (No 33 of 2015,) and Regulation No. 22 of the Public Procurement and Asset Disposal Regulations, 2020, immediately commences debarment proceedings against M/S EAA and MS ATJ for violating the Public Procurement and Asset Disposal Act in TENDER No. KEBS/T019/2017/2020 and Ms. EAA in Tender No. KEBS/T057/2014-2015.
 - (c) deletion of Recommendation (v) appearing under Committee Recommendations under chapter 5 on page 63 of the Report and substituting therefor the following new recommendation—
 - “(v) The Ethics and Anti-Corruption Commissions (EACC) investigates the circumstances under which KEBS entered into a contract with M/S EAA Company Limited and M/S Auto Terminal Japan and submits its findings hereon to the National Assembly within sixty (60) days of adoption of this Report.”

Hon. Speaker: Hon. Members, we were supposed to go to Order No.13 which is, Consideration of Senate Amendments to the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (National Assembly Bill No.35 of 2020). Given that it is about two minutes to 7.00 pm, for the convenience of the House as well as the Communication which was to be made regarding that particular business, I put off that Order to Thursday 15th October, 2020.

(Motion deferred)

ADJOURNMENT

Hon. Speaker: Hon. Members, the time now being 6.59 p.m., it is appropriate for the House to adjourn. The House, therefore, stands adjourned until Thursday, 15th October 2020, at 10.00 a.m.

The House rose at 6.59 p.m.

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