

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Thursday, 30th September 2021

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Ring the Quorum Bell there is no quorum.

(The Quorum Bell was rung)

Very well. We may commence. Let more Members come in before I give the Communication, it is a long one.

MESSAGE

PASSAGE OF VARIOUS BILLS BY THE SENATE

Hon. Speaker: Order, Members! Pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding its passage of the following five Bills:

- (i) The National Flag, Emblems and Names Bill (Senate Bill No. 36 of 2020);
- (ii) The Wildlife Conservation and Management (Amendment) Bill (Senate Bill No. 30 of 2020);
- (iii) The Community Health Services Bill (Senate Bill No. 34 of 2020);
- (iv) The Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020); and
- (v) The Coffee Bill (Senate Bill No. 22 of 2020).

Hon. Members, the first Message relates to the passage of the National Flag, Emblems and Names Bill, and indicates that the Bill seeks “to amend the National Flag, Emblems and Names Act, to ensure that the National Flag is safeguarded.”

The second Message is in respect of the passage of the Wildlife Conservation and Management (Amendment) Bill, which seeks “to amend the Wildlife Conservation and Management Act to make further provision for the allocation of adequate facilities to County Wildlife Conservation and Compensation Committees established under the Act and to provide for a timeline for compensation for human death, human injury or crop and property damage caused by wildlife.”

The third Message relates to the passage of the Community Health Services Bill, which seeks “to provide for a framework for the delivery of community health services; to promote access to primary health care services at the community level and reduce health disparities between counties; to provide for the training and capacity building of the community health workforce; and for connected purposes.”

The fourth Message relates to the passage of the Parliamentary Powers and Privileges (Amendment) Bill, which seeks “to amend the Parliamentary Powers and Privileges Act to provide a structured mechanism through which Parliament is able to receive reports from public officers on the resolutions passed by Parliament”.

The fifth Message is in respect of the passage of the Coffee Bill, which seeks “to provide for the regulation, development and promotion of the coffee industry, and for connected purposes.”

Hon. Members, the Senate having considered and passed the five Bills now seeks the concurrence of the National Assembly. The Standing Orders require the Speaker to cause a Bill received from the Senate to be read a First Time upon conveyance of its Message. It is for that reason that the House Business Committee scheduled the five Bills for a First Reading in today’s Order Paper. After First Reading, the Bills will stand committed to respective Committees as follows-

- (i) The National Flag, Emblems and Names Bill (Senate Bill No. 36 of 2020) will be committed to the Departmental Committee on Administration and National Security;
- (ii) The Kenya Wildlife Conservation and Management (Amendment) Bill (Senate Bill No. 30 of 2020) will be committed to the Departmental Committee on Environment and Natural Resources;
- (iii) The Community Health Services Bill (Senate Bill No. 34 of 2020) will be committed to the Departmental Committee on Health;
- (iv) The Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020) will stand committed to the Committee of Powers and Privileges, pursuant to Standing Order No. 127(6); and,
- (v) The Coffee Bill (Senate Bill No. 22 of 2020) will stand committed to the Departmental Committee on Agriculture and Livestock.

In considering the Bills, the said Committees will be expected to, among other things, apply themselves to the provisions of Articles 109(5) and 114 of the Constitution relating to origination and definition of a ‘Money Bill’ and make appropriate recommendations to the House as indeed required by the Constitution.

Hon. Members, may I, at this point, remind the House of the existence of a Bill similar to the National Flag, Emblems and Names Bill (Senate Bill No. 36 of 2020), which is currently before the House, and which originated in the Senate and has been undergoing consideration in the National Assembly pending consideration in Committee of the whole House.

Hon. Members, in my view, the genesis of having two Senate Bills which are similar is due to the misinterpretation by the Senate of the High Court decision in Petition No. 284 of 2019, which as you may be aware, had earlier ordered the cessation of consideration of all Bills that were pending before either House, and for which joint resolution by the Speakers of both Houses as to whether the Bills concern county governments had not been demonstrated to allow for such Bills to be subjected to the resolution process, as contemplated under Article 110(3) of the Constitution.

Hon. Members, you will also however observe from the High Court judgment that the Court did not in any way direct or order for republication of any Bill. Certainly, the misinterpretation of the High Court decision will frustrate the legislative business of Parliament, its Committees and

individual Members. Further, it shall strain the comity between the two Houses and in the end, impede the legislative authority of the institution of Parliament as provided for in Articles 94, 95 and 96 of the Constitution. To illustrate this, several Bills of this House have suffered from this erroneous interpretation and their consideration has been halted by the Senate. These Bills include the Kenya National Library Service Bill, 2020; the Parliamentary Pensions (Amendment) (No.3) Bill, 2019; the Public Service (Values and Principles) (Amendment) Bill, 2019; and the National Youth Council (Amendment) Bill, 2019.

Hon. Members, it is not my wish to frustrate the business of this House and, to this end, I intend to engage my counterpart to consider the best way forward on these Bills so that we can move forward the legislative Business of Parliament as directed by the Court of Appeal, which vacated the High Court Judgment and ordered that both Speakers do hold consultations as may be necessary in the public interest so as to move forward with the respective business and mandates of each House. It is on this basis that the two Speakers made a resolution that all the Senate Bills pending at different stages in the National Assembly and all the National Assembly Bills pending at different stages in the Senate are Bills concerning county governments in terms of Article 110(1) of the Constitution and would proceed in accordance with the provisions of Article 109(4) of the Constitution. This resolution was arrived at in order to move forward the legislative business of this House and that of the Senate. Certainly, in my view, the National Flag, Emblems and Names Bill (Senate Bill No.8 of 2017), being one of the Senate Bills pending before this House, ought to proceed accordingly as per the resolution of the two Speakers.

Hon. Members, however, in light of the foregoing and the Senate having forwarded a republished Bill which is similar to the National Flag, Emblems and Names Bill (Senate Bill No.8 of 2017) that is already before this House, the Departmental Committee on Administration and National Security is required to recommend to this House which version of the two Bills that are now active in the House should be prioritised for consideration by this House. Similarly, there is already a Coffee Bill (National Assembly Bill No. 17 of 2021) before the House sponsored by the Leader of Majority Party, which was read a First Time on 8th June 2021, and which is clearly a Money-Bill given that its enactment shall occasion additional expenditure of public funds.

Further, regarding the Parliamentary Powers and Privileges (Amendment) Bill (Senate Bill No. 33 of 2020), the Committee of Powers and Privileges may wish to take advantage of the Senate Bill to address the existing concerns regarding Chairing of the Committee, particularly the fact that the Committee is currently chaired by the Speaker, who is also required to preside over deliberations on the Reports of the Powers and Privileges Committee in the House. In addition, the Committee may also consider proposing amendments to the Act to legislate on some aspects that have been pending before the Committee, among others being:

- (a) need to align the Act with the decision of the High Court in Constitutional Petition No. 472 of 2017 which declared Sections 7 and 11 of the Act No.29 of 2017 unconstitutional;
- (b) reviewing the composition of the Committee to include ranking members of the House;
- (c) providing for establishment of a position of vice-chairperson of the Committee; and,
- (d) defining the status of the Reports of the Committee of Powers and Privileges recommending any of the disciplinary action under Section 17(3) of Parliamentary Powers and Privileges Act, 2017.

However, the decision as to whether such amendments should be incorporated in the Senate Bill as further amendments or be contained in a separate Bill lies with the Committee.

Hon. Members, having said that, allow me to conclude by observing that the reports of the respective Committees shall guide the House with respect to the next stages and prioritisation of the said Bills. I, therefore, request the Committees to prioritise the five Senate Bills Messages in their respective agenda.

I thank you.

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Hon. Members, take your seats as I have something relating to a petition. Hon. John Paul Mwirigi, let us proceed with the business. If you want to sit next to the Member you are speaking to, take a seat. Let me resume my seat. Take a seat next to her.

(Laughter)

I do not want to discourage them from consulting.

CONSIDERED RULING: PETITION ON IMPLEMENTATION OF THE COMPETENCY BASED CURRICULUM

Hon. Members, you will recall that during the afternoon sitting of the House on Thursday, 23rd September, 2021, the Hon. Wilson Sossion presented a public Petition on behalf of parents and education stakeholders seeking the Scrapping of the Implementation of the Competence Based Curriculum (CBC). The Hon. Member, while noting that the matters forming the subject of the Petition were not pending before a court of law, prayed for the House, through the Departmental Committee on Education and Research, to—

- (a) consider scaling down changes in the education system from the extensive reforms being undertaken to a review to ensure sustainability and smooth implementation of the Kenya School Curriculum;
- (b) intervene with a view to scrapping the implementation of the CBC and, further, subjecting it to forensic audit and replacing it with the previously well versed and tested 8-4-4 Education Curriculum that has served this country for 36 years;
- (c) recommend for accountability and action to be taken against the State officers and individuals for their susceptible actions through investigation and prosecution for the current failure and mess of the curriculum; and,
- (d) make any other recommendations that may deem fit in the circumstances of this Petition.

You will also recall that an immediate question arose as to whether the matters sought to be addressed by the Hon. Sossion were active in court. Indeed, the Member for Rarieda, the Hon. Otiende Amollo, also rose on a point of order under Standing Order 89(3) (c) and informed the House of a pending Constitutional Petition before the High Court of Kenya dealing with matters substantively related to those canvassed in the Petition. The Hon. Otiende Amollo cited the High Court Case as number as No. E371, and sought the guidance of the Speaker on whether the Petition ought to be committed to a Committee of the House in light of the pending and active court proceedings.

The Leader of the Majority Party, Hon. Amos Kimunya, and the Leader of the Minority Party, Hon. John Mbadia also raised similar concerns, cautioning against the House being seen as

unnecessarily interfering with the mandate of another arm of Government or engaging in a process that may be rendered futile, and therefore a waste of parliamentary time and resources in the event the courts were to render a judgment that varies from the resolution of the House. The Leader of the Majority Party additionally noted that this House had approved Sessional Paper No. 1 of 2019 on the Policy Framework for Reforming Education and Training for Sustainable Development in Kenya, effectively approving the policy on the Competence Based Curriculum. Consequently, I directed the Hon. Sossion to avail copies of the pleadings in the cited Petition No. E371 for comparison against the prayers sought in his Petition. I also undertook to guide the House on the fate of the Petition and how it should proceed.

Hon. Members, I wish to confirm that I have received copies of the pleadings in Petition No. E371 of 2021 parties being, *inter alia*, Esther Awuor Adero Ang'awa – Vs – The Cabinet Secretary responsible for matters concerning Basic Education & 7 Others filed at the High Court of Kenya in Nairobi. In the pleadings, the National Assembly is listed as a Respondent and various acts and omissions are attributed to the House in challenging the implementation of the Competency Based Curriculum.

(Hon. Members stood at the gangways)

Let me allow Hon. Members standing there to come in. Please, do so quickly.

(Hon. Members walked into the chambers)

Hon. Members, the petitioner claims that the National Assembly had abdicated its duty to enact legislation and regulations necessary to facilitate the development and approval of a curriculum for basic education and failed to oversee the Ministry of Education in the development and sustainability of an inclusive, equitable, quality, relevant and acceptable basic education curriculum. This, as stated in the Petition before the court, has resulted in the denial, violation or infringement, or threat to deny, violate or infringe various persons on provisions of the Constitution relating to the rights of children to education and free and compulsory basic education. Ms. Adero concludes by seeking an order of the High Court directed to the Cabinet Secretary and the Kenya Institute for Curriculum Development to formulate regulations in respect to policy and guidelines on curricula in accordance with Sections 73 and 74 of the Basic Education Act and Section 4 of the Kenya Institute of Curriculum Development Act respectively, and to table the same before the National Assembly for approval within 90 days of the making of the order.

Hon. Members, I am further informed by the Clerk of the National Assembly, who was served on behalf of the House in the court matter, that the petitioner had sought various orders from the court pending the hearing and determination of the Petition to the effect that—

- (a) The Petition raises substantial questions of law under Article 165(3)(b) and (d) and (4) of the Constitution of Kenya.
- (b) The Petition be referred to the Chief Justice for assignment of an uneven number of judges, being not less than five to hear it.
- (c) An order of injunction restraining the respondents from further implementing the CBC curriculum; and,
- (d) A conservatory order staying further implementation of the CBC curriculum.

These orders were not granted and the matter is scheduled for the hearing of an application on the joinder of parties on 21st October, 2021.

Hon. Members, from the summary of the matter before court that I have given and the various orders it seeks, you will agree with me that the concern raised by the Hon. Otiende Amollo on the application of the *Sub judice* Rule as contemplated under our Standing Order 89 is valid. For clarity, Standing Order 89 provides, and I quote—

(1) Subject to paragraph (5), no Member shall refer to any particular matter which is *sub judice* or which, by the operation of any written law, is secret.

(2) A matter shall be considered to be *sub judice* when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.

(3) In determining whether a criminal or civil proceeding is active, the following shall apply—

(a) criminal proceedings shall be deemed to be active when a charge has been made or a summons to appear has been issued;

(b) criminal proceedings shall be deemed to have ceased to be active when they are concluded by a verdict, sentence or discontinuance.

(c) civil proceedings shall be deemed to be active when arrangements for hearing such as setting down a case for trial have been made until the proceedings are guided by judgment or discontinuance.

(d) appellant proceedings, whether criminal or civil, shall be deemed to be active from the time when they are commenced by the application for leave to appeal or by notice of appeal until the proceedings are ended by a judgement or discontinuance.

(4) A Member alleging that a matter is *sub judice* shall provide evidence to show that paragraphs 2 and 3 are applicable.

(5) Notwithstanding this Standing Order, the Speaker may allow reference to any matter before the House or a Committee.

The rule is premised on the constitutional principle of separation of powers in furtherance of which Parliament restrains itself from interfering in a matter that either falls under the purview of, or is actively under adjudication under a court by a court of law. The House voluntarily imposes *sub judice* rule on itself depending on the circumstances of each case.

As I see it, the following three questions must be answered in the affirmative for a matter to attract the application of Standing Order No.89 to preclude itself or its Committees from considering a matter:

(1) Does the matter refer to proceedings before the courts?

(2) Are the proceedings before the court active?

(i) With regard to criminal proceedings, has a charge been made or summons to appear issued?

(ii) With regard to civil proceedings, have arrangements for hearing of the case been made?

(3) Is the discussion of the matter by the House likely to prejudice the fair determination of proceedings before court?

Hon. Members, pursuant to the provisions of Standing Order No.89(5), the Speaker thereafter will exercise his or her discretion on whether to allow debate to proceed in furtherance of the constitutional imperative imposed on the House by Article 95(2) of the Constitution to deliberate on and resolve issues of concern to the people. The framers of the provision were alive

to the fact that a strict application of the rule had the capacity to hinder discharge of the mandate of the House by allowing a mischievous person to file frivolous and dilatory matter before court, obtain a hearing date and effectively stall any parliamentary processes seeking to address the matter for years.

Previous Speakers have guided as much. In fact, my predecessor, Hon. Kenneth Marende, is on record as having guided in his Communication on the Report of the Appointment of the Director of Kenya Anti-Corruption Commission on 10th September 2009 that, where the House begins to consider any matter before it that is the subject of litigation, the House will not give up jurisdiction of the matter unless for weighty reasons. Crucially, Hon. Marende proceeded to caution that:

“The discretion given to the Speaker or Chair [to allow reference to a matter actively before court] must be exercised with the utmost caution and must not be resorted to except where exceptional circumstances so require. In a matter of immense public interest where there is a doubt, unless sound grounds are advanced, a presumption should exist in favour of allowing debate in the House as opposed by application of the rule to suppress debate.”

The Hon. Members at the door, please, make your way in quickly.

(Several Hon. Members walked into the Chamber)

Hon. Members, I am cognisant that I have had occasion to guide the House in the Communication on violation of the labour laws and tax evasion by BIDCO (Africa) Limited issued on 27th October 2016 that the discussion of a relief sought from the House that is similar to a prayer sought in an active court process is likely to prejudice the outcome of the court process. An Interrogation of the Petition before the House and matters before the High Court answers all the three questions formulated to test whether a matter attracts the application of Standing Order No.89 in the affirmative as follows:

1. The Petition by Hon. Sossion does refer to proceedings before the court. Both the Petition before the House and Petition No.E371 of 2021 seek to either stay or stop of the implementation of the Competence Based Curriculum by the Ministry responsible for basic education as their substantive prayer.

2. The proceedings in Petition No.E371 of 2021 are active. As a matter of fact, Petition No.E371 of 2021 was filed on 17th September 2021. It is a civil matter and is slated for the hearing of an application on the joinder of parties in the case on 21st October 2021.

3. Would the discussion of the matter by the House likely prejudice the fair determination of the proceedings before the court? Since both processes seek a similar prayer and the National Assembly is listed as a respondent in Petition No.E371 of 2021 and has also been served with the relevant court pleadings, it would be impossible for the House or its Committees to deliberate on any or all the prayers sought in Hon. Sossion’s Petition without referring to matters canvassed in the Petition before court.

What remains therefore, Hon. Members, is the question whether the Petition by Hon. Sossion should benefit from the discretion granted to the Speaker by Standing Order No.89(5). In presenting his Petition to the House, Hon. Sossion noted and stated that he was doing so on behalf of parents “parents and education stakeholders”. On their part the pleadings in Petition E371 of 2021 describe the petitioner as a parent. In terms of choice of forum, both Hon. Sossion (and the citizens on whose behalf he is acting) and the parent, who elected to seek orders from the court,

are well within their constitutional rights. A fine balance must therefore be struck to allow the fair determination of a grievance that is common to the parties.

My considered opinion remains that the conduct of a parallel process in Parliament to consider a Petition in which the substantive prayer sought is similar to the prayer sought in a matter filed in court would definitely prejudice the outcome of the matter in court. The idea of sanctioning parallel proceedings becomes more unpalatable when one considers that the Petition before the court was filed earlier than the Petition before the House, and that the House is listed as a respondent and has been served with the pleadings.

Hon. Members, to my mind, the discretion given to the Speaker to determine the instances where Standing Order No. 89 applies is meant to shield the House from dilatory tactics adopted by a party intent on precluding a matter from being debated in the House for the simple reason that it is before the courts. Being a fresh matter filed by a public-spirited citizen and a fellow parent directly affected by a policy decision made by the Executive, the court process does not appear to be a frivolous or a dilatory attempt intended to stifle consideration of any business proposed or under consideration in this House. For those reasons, I am minded not to exercise the discretion granted under Standing Order No.89(5).

In arriving at this decision, I wish to clearly distinguish the treatment of another Petition also before the House despite the existence of active court proceedings. You will recall that during the Afternoon Sitting of Tuesday, 21st September, 2021, I reported to the House a Petition by a Mr. Antony Manyara and Mr. Joseph Wangai on the repeal of the Finance Act, 2018, to address increases in prices of petroleum products (The Fuel Prices Petition). I committed the Petition presented by the Hon. Stephen Mule on the same matter and various Questions and Statements related to the matter to the Departmental Committee on Finance and National Planning with specific instructions to table its Report within 14 days in view of the urgency of the matter of escalating fuel prices and to attach a draft Bill to its Report for meaningful consideration by the House in the exercise of its legislative mandate. Subsequently, a case was filed in court seeking the quashing of the provisions imposing the increased Value Added Tax on petroleum and petroleum products. The question that obviously arises is whether this scenario would invite the application of Standing Order 89 to preclude the House from proceeding with its consideration of the Petition.

Hon. Members, the circumstances of the petition on fuel prices differ significantly with those of the Petition presented by Hon. Sossion when one considers the ability of the House to resolve the prayers made with finality. The petition on fuel prices sought the repeal of a law passed by this House which the petitioners claim is the root of the escalating prices of fuel and petroleum products that has a seismic effect on the cost of living. The enactment, amendment, and repeal of laws is at the core of the mandate of this House to the exclusion of any other organ. As such, the House is able, when properly moved, to address the concern to a high degree of finality.

The Constitution places legislation within the exclusive mandate of Parliament. Conversely, the Petition presented by the Member seeks to stay or stop the implementation of a policy adopted by the Executive on the manner in which it intends to fulfil its constitutional mandate of providing free and compulsory basic education. In this regard, the House may proceed and deliberate such a matter of extreme concern to the people, but its power to resolve the matter with finality is circumscribed by the inescapable fact that the House can only recommend to the Executive what to adopt as a policy decision or urge it to rectify the policy one way or the other. Where a dispute arises between the citizenry and the Executive as to the propriety of a policy decision or its effects, such a dispute may only be resolved with finality by the Judicial arm of

Government, which may either agree with the direction taken by the Executive or quash the policy decision.

In summary, Hon. Members, it is my considered view that:

- (i) Contrary to the provisions of Standing Order 223(g), the Petition presented by the Hon. Sossion on 23rd September, 2021, on behalf of parents and education stakeholders seeking the scrapping of the Implementation of the Competence Based Curriculum failed to disclose that it contains matters that are pending in court.
- (ii) It would be impossible at this time for the House or its Committees to deliberate on any or all of the prayers sought in the Petition presented by the Hon. Sossion without touching on matters canvassed in the Petition before court.
- (iii) The discussion in the House of the Petition presented by the Hon. Sossion is likely to prejudice the fair determination of the proceedings in the High Court Petition No. E371 of 2021 as the National Assembly is also a party in the case.
- (iv) In this regard, the Petition presented by the Hon. Sossion attracts the application of the *sub judice* Rule as outlined in Standing Order 89 and cannot be proceeded with at this stage.
- (v) Whereas the Petition is a matter of public interest, it would be too early for the Speaker to invoke his discretion under Paragraph (5) of Standing Order 89. However, should circumstances change that warrant the Speaker to invoke that discretion, including inordinate delays in its resolution, I will rise to the occasion to do so, if properly moved.

Hon. Members, as I conclude, it is worth noting that the door is not entirely closed to the Hon. Member in seeking to resolve this matter. In the event circumstances arise indicating an inordinate delay in the resolution of the matter by the courts, the Member is at liberty to raise the matter for reconsideration by the Speaker. Additionally, as all Members are aware, any Member is at liberty to propose legislation prescribing the specific system of education he or she would want to apply to the country, or to require the approval by Parliament of any policy decision made by the Executive in that regard. Legislation presents Members with an option exclusively within their authority to resolve this matter of interest and grave concern to the people.

The House is, therefore, accordingly guided.

I thank you, Hon. Members.

(Hon. Abdullswamad Nassir walked into the Chamber)

We are still at the stage of Petitions. Member for Mvita, are you able to see where you are walking? You are on your phone even while in the Chamber.

PROPOSAL TO AMEND THE NATIONAL CONSTRUCTION AUTHORITY ACT

Hon. Members, this is a Petition under Standing Order 225(2)(b). Further, in terms of Article 119 of the Constitution, I wish to report to the House that my office has received a Petition signed by a Mr. Boniface Mwai Gachunga of Identity Card Number 22377410. The Petition says that both the National Construction Authority Act, 2011, and the National Construction Authority Regulations, 2014, do not include the requirement that the cost of all public-funded projects be included in the list of items displayed on the projects' signboards. He claims that the above

formation negates the constitutional principle of good governance, integrity, transparency and accountability as envisaged under Article 10(2)(c) of the Constitution.

The petitioner, therefore, prays that the National Assembly amends the relevant provisions of the National Construction Authority Act, 2011, with a view to entrenching in law a mandatory requirement so that the full cost of all public-funded projects is displayed on projects' signboards.

Having determined that the matters raised by the petitioner are well within the authority of this House, I order that pursuant to the provisions of Standing Order 227(1), the Petition be committed to the Departmental Committee on Transport, Public Works and Housing. The Committee is required to consider it and report its findings to the petitioner in accordance with Standing Order 227(2). I thank you, Hon. Members.

Hon. Members, I may allow some few comments on this Petition. Member for Kimilili.

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker, for giving me this opportunity.

Even as I support this Petition, I want to make it clear that this House has been receiving so many Petitions, Questions and Statements. This is largely because some civil servants seem to be sleeping on the job. This House must find a way on how we are going to awaken these civil servants to take various actions. Even though the matters raised in the various Petitions are weighty, the root cause is basically that somebody somewhere is sleeping on the job. I would want this House to borrow a leaf from the Jubilee Government that has begun to eat her children. This House should also consider eating some children of this Government who are sleeping on the job. Until we do so, we will continue to receive these very many Petitions. I ask the Leader of the Majority Party to lead from the front. Failure to do that we can as a party consider eating him because we have to move forward as a House to put the Government to accountability.

I support this Petition.

Hon. Speaker: Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): I thank you, Hon. Speaker. I am concerned that with time we are allowing the court to expand its jurisdiction to matters that are better left to this Parliament. I am more worried considering the manner in which the public law courts are currently structured. You will remember the times we had Justice Ringera, Justice Nyamu, Justice Lenaola and Justice Ibrahim in the Judicial Review and Constitutional Division, we had a very predictable jurisprudence from the court. Now, for every public matter, including this one Hon. Sossion is raising, you will find some judge whose background as a magistrate was traffic cases being called upon to deal with it. You will find a judge whose background is civil cases being called to deal with such a matter. That way, jurisprudence and principle are no longer predictable in this court.

Because we are ceding too much authority to the courts, the courts are even misinterpreting the Constitution. The courts are now telling us that the Senate has mandate to legislate when under the Constitution they can only participate in the law-making function. I am worried if we continue ceding that much, we will be disturbed. This is the House of Representatives. There are more parents here. We represent the entire Kenya. That is why the face of this Parliament has drawings of the people. Why should we wait for somebody calling herself a single parent to appear before a judge instead of resolving the issue concerning a critical education policy, like the one we are talking about, before this House at once?

I am grateful for the discretion. I would pray that at the end of your ruling, this matter can be considered again by Parliament. I pray you allow that leeway. Otherwise, we will not do much business here.

Hon. Speaker: Unfortunately, the petition on which you are commenting is the one on amending the National Construction Authority Act. There can never be comments about the ruling. So, for those who have placed interventions, comments are on the petition.

Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I was listening to Hon. Kaluma and I was wondering how his comments are relevant to the Petition on the National Construction Authority. This petition that all publicly funded projects need to be labelled with the amount of money that has been used is a good petition. It will go a long way in improving transparency.

Hon. Speaker, you Chair the Procedure and House Rules Committee. We do not know where many petitions that come here end up. We need to structure our Standing Orders in such a way that we are able to dispense with those petitions. When a petition is presented to this House, it becomes the property of the National Assembly. When it goes to a Committee and the matter dies there and we do not even get reports, it is unfair. It would be in order if reports on these petitions are tabled in the House and we have a mechanism of how the House can pronounce itself on the petitions. We have had so many petitions in this House on national and important matters, but how to dispense with them as a House is a challenge. More often, the petitions are read out and directed to relevant Committees, but we are not able to follow up on how they have been dispensed with.

With those few remarks, Hon. Speaker, I thank you.

Hon. Speaker: That is why when I made the Communication on amendment of the Standing Orders, I did indicate that it is up to the House to make changes. Currently, Standing Order 227 requires a Committee to send a report to a petitioner and the matter ends there. I agree with you that there are quite a number of petitions that are of great national concern that the House should have an opportunity to express itself on a Committee's recommendations. Therefore, that could be one of the proposals for inclusion in the new Standing Orders.

Member for Nyando.

Hon. Jared Okelo (Nyando, ODM): I thank you, Hon. Speaker, for the opportunity. I want to make a very short comment on the petition that is before us. When you look at the boards placed next to ongoing projects, there is an indication of the funder, the architect, the scope of the project and the contractor. All that information is displayed. What has been lacking, which I think is the gist of this petition, is to include the total cost of the project, which sometimes vary depending on changes of prices and other things. I do not know what stops the petitioner, having recognised all those who are involved, from invoking Article 35 of the Constitution on access to information, if at all one is interested in further information apart from those that have already been given out. Information on the cost of a project could be channelled as a request to the contractor or the architect. All those people will have that most important information. Whereas the petition is very relevant, I think the information may make the board very untidy if you have to enumerate everything that is under the purview of the project.

Hon. Speaker, allow me to say that I love how you have distinguished two issues: those that have finality in this House and those that may still have a bearing in a court of law. I thank you for that most incisive ruling.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Soy.

Hon. Caleb Kositany (Soy, JP): Thank you, Hon. Speaker. I want to thank the petitioner for raising the issue of having the cost of a project displayed on the board. We have very many

projects ongoing that are of very huge amounts, but the work being done does not reflect the amount that was tendered for. One such project is being undertaken by a body which has been declared illegal, the Nairobi Metropolitan Services (NMS). It has constructed a huge facility opposite the Railway Golf Club. They did a test run and it was a nightmare. I can see now they have started expanding the road. The cost of that project has never been disclosed to Kenyans, but I am sure it runs into billions of shillings. So, it is timely that we display the cost of projects.

One such example is the way we run projects that are funded by NG-CDF and supervised by Members of Parliament. That is where real transparency is. Most government projects should follow the NG-CDF model so that we have transparency. When you see a project, you can appreciate what has gone into it.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Otiende.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. I want to commend this petition and urge that we should all participate in its consideration. It is important, and this has been done in other circumstances, that when public money is used, people must know who is responsible for it and how much it costs. Speaking as a member of the Public Accounts Committee, 80 per cent or more of corruption in this country is by way of projects. The cost of those projects is inflated from inception, time is then varied and prices varied by extension. I not only commend this kind of move but also say that when it is before the Committee I will appear before. I urge that we should go further than disclosure. We should say when there is an extension it should be stated. When there is a variation, it should also be stated.

Unfortunately, I do not agree with my learned brother the Member for Nyando. Article 35 of the Constitution will not help you. It is limited. First, it talks about information held by the State. So, you must start by showing that that information is held by the State. Secondly, you must request for it, giving 21 days' notice. If they fail, you apply to the Ombudsman. The process is too long. Public disclosure requires that if our money is to be used in Arror and Kimwarer, from the word go we know how much it is, who receives it, what it is to do and all the extensions.

Hon. Speaker, with your kind indulgence, I would want to commend you on your determination on the petition by Hon. Sossion. Your determination is not just important to that case. It is important to this House and to the Judiciary.

Hon. Speaker, please allow me one minute. It is an example that should be emulated by the Judiciary. You have not only elucidated the...

(Microphone went off)

Hon. Speaker: One minute.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): You have not only elucidated the law on *sub judice*. Hon. Speaker, you have served an example of reciprocity. You have demonstrated that the Judiciary should restrain itself from taking on matters that are before the House. More importantly, just as Hon. Kaluma was saying, the Judiciary must learn to exercise judicial restraint on matters handled by this House under its legislative mandate as opposed to quasi-judicial mandate. The Judiciary is now starting to encroach into our legislative mandate.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Nambale.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Speaker. I rise to support. I have a few comments on the National Construction Authority Petition. I support it strongly. It is not a big deal to have a figure added on the board.

I have seen it being practised in India down to small projects and also complex projects. Because we are getting a very educated population, they can do the further work that might be needed. They can do the local social auditing that might be needed. Even when we are doing a classroom in a school, it is very important indeed to have those figures out there so that the community knows how much is being spent.

Therefore, I stand up to completely support the Petition.

Hon. Speaker: Member for Dagoretti South.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Speaker. I see the value that this petitioner is seeking to add to the reporting mechanisms on the issue of NG-CDF. As we seek accountability on projects done by the NG-CDF, we might also want to look further. The City of Nairobi has an arrangement called NMS that is taking up projects to the tune of over Kshs30 billion at least for this year. The reporting mechanisms for NMS are very opaque. We are now undertaking 24 clinics around Nairobi and more than 400 kilometers of road. We are also doing many other big projects in Nairobi and the reporting mechanisms are quite opaque because when you think about it the Nairobi County Assembly is unable to oversee the NMS. This Parliament that gave money through Vote 1011 which is the Office of the President is also tied to some extent because these matters will be adjudicated at City Hall. This Parliament will have a very difficult task of checking these books that NMS is holding. Therefore, to my mind, even as we discuss the NG-CDF projects, we should also think about how the reporting mechanisms will be put in place for the transferred functions to the NMS.

Thank you very much Hon. Speaker.

Hon. Speaker: Hon. Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker. I must commend the petitioner for this important Petition. We are talking about public and not private funds, and matters accountability, transparency and all those other terminologies that demand Kenyans to know the cost of projects.

Hon. Speaker, if you travel around this country, you realise that most of the Members of Parliament indicate the names of projects, year of implementation and the cost of the project in their constituencies. I do not see why it is difficult. If we are doing that for projects worth a million shillings, why can it not be done for the billions we are spending on these mega projects? Even as the Committee sits, we need to extend this to all public projects. This is so that every project funded by the Government is clearly displayed and the amount it costs the taxpayers.

On that note, we will also make our people watchdogs. They will be able to monitor the projects and say whether we are getting value for money or not.

Hon. Speaker, we have seen projects where you realise that the cost is Kshs10 million but what is done is not even Kshs1 million. However, because no one says how much the project should have cost then it becomes difficult for people to do that evaluation. Therefore, I support this Petition and I really think we should support it.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Tigania West.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker, for the opportunity to also add my voice to this. The public disclosure of the cost of a project is important not only for people to know how much has gone into the project but also for people to evaluate the extent to

which they are supported. In most parts of this country, we have projects that have stalled and people have actually spent a lot of public money. On the other hand, if you look at some of the NG-CDF projects that have gone on in the past, some are incomplete and people are fully paid. It would be better for people to know the amount of money that has been spent in a project in one area as compared to other areas. Therefore, disclosure is important and public participation should be continuous. People will be able to discuss these things and know people who are doing a good job and those who are not. They will even know the amount of money that the Government is using to respond to their issues.

Hon. Speaker, I support this Petition.

Hon. Speaker: Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. Kenyans have a lot of money especially through construction because this is where corruption thrives. We know for sure that projects could start at nominal costs but they would be followed by variations up to 10 times. This is done such that money is siphoned out of that project for other corrupt practices. This is a timely Petition and I support.

Secondly, I have listened carefully to the subjunctive ruling you have made and that is the correct position. We must always stick to it because of the doctrine of separation of power and it is very important that courts also extend this to the House. This will ensure that when we have matters pending before Parliament, courts restrain themselves from dealing with those matters until Parliament actually finalises and then we can proceed. That is the rule and the effect of the doctrine of separation of power.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Chepalungu.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Speaker, I really want to support the petitioner because I do not see any harm by the Government giving out the cost of the implementation of any project and the time it starts and the time it ends. Failure is on the financial management and it is linked to policy planning and expenditure budgeting. It is taxes from Kenyans and they should know how their monies are being spent prudently by the Government.

Thank you, Hon. Speaker.

Hon. Speaker: Hon Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Speaker. I also want to support this Petition. It is a timely move because we have so many cases of project failures and cost overruns. The elephant in the room is the planning process in Government. There is a lot that needs to be done in terms of planning for projects. This is because you find that most of the public projects overrun costs and time. That is the main challenge. This proposal will also add a lot of value into project management for the public sector.

I support.

Hon. Speaker: Hon. Pkosing, to whom the Petition is committed, wants to say something.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Speaker, for this opportunity. I do not want to comment on the merits or demerits of this Petition because then I will be the adjudicator. I do not want to go to that direction. It is something good because it now gives us the opportunity to look at the Standing Orders for the next Parliament. We can benefit out of these discussions. I have an experience of four years having been the Chair. If you look at it, the issue of putting the price of the project on a board is not a problem because, after all, the cost of that project is already in the budget. Everybody is aware of the budget that is passed here and the cost

of the project. In my view, it is not a serious issue but at times, our petitioners have very good contributions, but it does not come out in what they seek from the petition

Today I was adjudicating a matter of Hon. Washiali on a statement which he sought through my Committee and we thought that, before we lay the Report on the Table of the House, it would be proper to call him to listen to the Ministry reading the Statement.

Hon. Speaker what happened? In fact, he said he was very unsatisfied. So, assume we were to bring that here, what was going to happen was to be futile. So, there might be serious petitions but I am seeking your direction and authority that when a petition of national importance comes before you, before we adjudicate it as a Committee, we must call that petitioner to give more information so that we can know exactly what that person is seeking to be addressed.

Hon. Speaker: Okay. The petition is committed to your Committee. That was the last comment.

Next Order.

PAPERS LAID

Hon speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon speaker. I beg to lay the following Papers on the Table of the House:

Annual Report for the 2020/2021 Financial Year from the Independent Electoral and Boundaries Commission (IEBC);

Reports of the Auditor-General and Financial Statements for the year ended 30th June, 2019 in respect –

(i) Langata Constituency; and,

(ii) FC Talanta for the year ended 30th June 2019 and the certificate therein.

Thank you.

Hon. Speaker: Chairman, Select Committee on Implementation, Hon Kenta.

Hon. Richard ole Kenta (Narok North, ODM): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

Report of the Select Committee on Implementation on Consideration of the Implementation Status Report of the Departmental Committee on Health regarding Kenyatta University Teaching and Referral Hospital;

Report of the Select Committee on Implementation on its Consideration of the Implementation Status Report of the Departmental Committee on Environment and Natural Resources on an Inquiry into Complaints of an Environmental Pollution by London Distillers (Kenya) Limited; and

Report of the Select Committee on Implementation on Consideration of the Implementation Status Report of the Committee on Lands Regarding Land Issues in Taita Taveta County.

Thank you, Hon. Speaker.

Hon. Speaker: A Member of the Department Committee on Agriculture. Who is the Member? Is it Hon. Brighton Yegon? Member for Konoin, is that so?

Hon. Leonard Yegon (Konoin, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Agriculture and Livestock on its Consideration of the Proposed Amendments to the Sugar Bill (National Assembly Bill No. 68 of 2019)

Thank you, Hon. Speaker.

Hon. Speaker: Chairman of Departmental Committee on Transport, Public Works and Housing, Hon Pkosing.

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

Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Bilateral Air Service Agreement between the Government of the Republic of Kenya and the Republic of the Russian Federation.

Thank you, Hon. Speaker.

Hon. Speaker: Next is the Chairman of the Constitutional Implementation Oversight Committee or the Vice-Chair. Is it Hon. Kaluma?

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Constitutional Implementation Oversight Committee on its Consideration of the Kenya National Human Rights (Amendment) Bill (National Assembly Bill No. 1 of 2020)

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

NOTICES OF MOTIONS

Hon. Richard ole Kenta (Narok North, ODM): Hon. Speaker, I beg to give notice of the following Motions:

ADOPTION OF REPORT ON IMPLEMENTATION STATUS OF KENYATTA UNIVERSITY PROJECTS

THAT, this House adopts the Report of the Select Committee on Implementation on its Consideration of the Implementation Status Report of the Departmental Committee on Health regarding Kenyatta University Teaching and Referral Hospital Projects, laid on the Table of the House on Thursday, 30th September 2021.

Thank you, Hon. Speaker.

ADOPTION OF REPORT ON IMPLEMENTATION STATUS OF INQUIRY INTO ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS (KENYA) LIMITED

THAT, this House adopts the Report of the Select Committee on Implementation on its Consideration of the Implementation Status Report of the Departmental Committee on Environment and Natural Resources on its Inquiry into Complaints of Environmental Pollution by London Distillers (Kenya) Limited, laid on the Table of the House on Thursday, 30th September 2021.

ADOPTION OF REPORT ON IMPLEMENTATION STATUS OF LAND ISSUES IN TAITA-TAVETA COUNTY

THAT, this House adopts the Report of the Select Committee on Implementation on its Consideration of the Implementation Status Report of the Departmental Committee on Lands

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regarding Land Issues in Taita-Taveta County, laid on the Table of the House on Thursday, 30th September 2021.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Pkosing.

RATIFICATION OF BILATERAL AIR SERVICE AGREEMENT BETWEEN
REPUBLIC OF KENYA AND REPUBLIC OF THE RUSSIAN FEDERATION

Hon. David Pkosing (Pokot South, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Bilateral Air Service Agreement between the Government of the Republic of Kenya and the Government of the Republic of the Russian Federation, laid on the Table of the House on Thursday, 30th September 2021; and pursuant to the Provisions of Section 8(4) of the Treaty Making and Ratification Act 2012, approves the ratification of the Bilateral Air Service Agreement between the Government of the Republic of Kenya and the Government of the Russian Federation.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Next Order

QUESTIONS AND STATEMENTS

Hon. speaker: We will start with Questions by Private Notice. Hon. (Dr.) Otiende Amollo.

QUESTIONS BY PRIVATE NOTICE

Question No. 004/2021

DISAPPEARANCE OF CHIEF INSPECTOR FRANCIS ISAAC OYARO

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

- (i) Could the Cabinet Secretary explain the status of investigations into the disappearance of Chief Inspector Francis Isaac Oyaro of P/No.7723, a ranger with the Kenya Wildlife Service (KWS) stationed in Marsabit and a resident of Rarieda Constituency, who went missing on 28th August, 2021 immediately on arrival in Nanyuki at around 1.00 p.m. from his work station where he then took a public service vehicle, a 4NTE Sacco *Matatu*, Registration Number KCU 905Q, headed for Nakuru but on reaching Naromoru, the *Matatu* was blocked by individuals alleged to be police officers in a black Subaru vehicle who forcefully bundled him into the car and sped-off?
- (ii) How many suspects have been apprehended or questioned in connection with the disappearance of Mr. Francis Isaac Oyaro?
- (iii) When will Mr. Francis Isaac Oyaro be presented to his family considering that his disappearance has caused immense psychological suffering to his friends, family and the wider Rarieda Constituency?

- (iv) Could the Cabinet Secretary state how many officers serving in other branches of the disciplined forces in the country have disappeared in similar circumstances, and what specific measures has the Government put in place to protect Kenyans from the spate of abductions and subsequent disappearances that have been rampant in the country in the recent past?

Hon. Speaker: The Question will be replied to before the Departmental Committee on Administration and National Security. More importantly, where is the Chairman of that Committee and this is a Question by Private Notice? Hon. Kaunya, you are the agent of necessity.

Hon. Oku Kaunya (Teso North, ANC): Thank you, Hon. Speaker. The Chair had asked me to step in because he is engaged in another meeting but will be coming shortly.

Hon. Speaker: This is a Question by Private Notice and ordinarily it cannot take more than seven days, that is what is important to note.

Hon. Oku Kaunya (Teso North, ANC): Hon. Speaker, it is noted. We will deal with it in seven days.

Hon. Speaker: Yes. The only way to raise a point of order is by pressing the intervention button. There is also another Question by Private Notice by the Member for Kaloleni, Hon. Paul Katana.

Question No. 005/2021

COMPENSATION FOR THE DEATH OF MARGARET CHIVATSI

Hon. Paul Katana (Kaloleni, ODM): Thank you, Hon. Speaker. I rise to ask Question No.005/2021 directed to the Cabinet Secretary for Tourism and Wildlife.

- (i) Could the Cabinet Secretary state when the family of Mr. Chivatsi Meri Mwadzine of ID No. 11376806, a resident of Mweza Village in Kaloleni Constituency, will be compensated for the death of his daughter, Margaret Chivatsi, who was killed by an elephant near Ndatani Primary School in Kaloleni Sub County on Thursday, 23rd September 2021 and the incident reported at Mariakani Police Station under OB 25/24/9/2021?
- (ii) What action is the Ministry taking to address the perennial human-wildlife conflict in Kaloleni Constituency?

Thank you, Hon. Speaker.

Hon. Speaker: Very well. The Question will be replied to before the Departmental Committee on Environment and Natural Resources. Is the Chairperson here or the Vice-Chairperson, Hon. Sophia Abdi? Again, this is a Question by Private Notice and the response will be channeled through the Office of the Leader of the Majority Party.

ORDINARY QUESTIONS

I can see some interventions but before we do that, the next Question is by the Member for Lamu West, who has written to request it to be deferred. The request has been acceded to so the Question is deferred. So is the same with the next Question by the Member for Matuga, Hon. Kassim Tandaza who also wrote to request for deferment. That request is also granted. So, those two Questions will not be asked. I can see an intervention from the Member for Samburu North.

Question No. 343/2021

MEASURES TO MITIGATE THE EFFECTS OF FAMINE IN LAMU WEST CONSTITUENCY

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(Question deferred)

Question No. 364/2021

MEASURES TO ENSURE SMOOTH IMPLEMENTATION
OF COMPETENCY BASED CURRICULUM IN SCHOOLS

(Question deferred)

Hon. Alois Lentoimaga (Samburu North, JP): Hon. Speaker, I wanted to comment on a previous matter which has passed.

Hon. Speaker: Member for Nyando, what is your intervention about? Your name is showing here, unless there is something wrong.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. I am perturbed by the Question raised by Hon. Otiende Amollo with regard to the abduction of Mr. Oyaro. The work of the police is to protect lives and property of people of this great nation. It has taken over one month since the abduction occurred on 28th August, we are going to October and nothing has been done by police officers so far, even though the matter was reported. There has been a spate of abductions in this country lately. Just yesterday...

Hon. Speaker: This is a Question. So, what is out of order? You know you cannot debate a Question.

Hon. Jared Okelo (Nyando, ODM): I am just adding more information. This has become so common and the Committee needs to expedite and talk to the relevant authorities to take their work seriously. The Oyaro family is suffering.

Hon. Speaker: If we begin that trend we will become like some other places. I can see the Chairman has arrived and is being briefed accordingly. We have agreed the matter will be attended to. Member for Mogotio, what is your intervention?

Hon. Daniel Tuitoek (Mogotio, JP): Hon. Speaker, I would like to get guidance from you on how long it takes to answer a Question. I had asked a Question sometime back and was invited by the Committee of Energy, but they cancelled and said they were not ready to deliver the answer. I want to know from you how long it takes a CS to answer a Question. Thank you.

Hon. Speaker: You wanted to know from me.

Hon. Daniel Tuitoek (Mogotio, JP): I am seeking your guidance because I was invited by the Departmental Committee on Energy to hear the response to my Question but they cancelled the last minute and said the Ministry was not ready. It is now more than a month.

Hon. Speaker: The Chairman is not here. Ideally, there should be no delays. Members' Questions should be responded to as quickly as possible. A month is too long for a Question to be responded to. Where is the Chairman of the Departmental Committee on Energy? He has since disappeared from the House and I cannot see him. Does he have a Vice-Chair? Who is the Vice-Chair of that Committee? No, Hon. Mwashetani is the Vice-Chair of the Departmental Committee on Lands and not the Departmental Committee on Energy. Who is the Vice-Chair of that Committee? Hon. Gladwell Cheruiyot. She does not come these days. Anyhow, Hon. Tuitoek your concern will be communicated through the Office of the Leader of the Majority Party. Another intervention is by the Member for Eldama Ravine.

Hon. Moses Lessonet (Eldama Ravine, JP): Thank you, Hon. Speaker. I have also raised Questions to the same Departmental Committee on Energy and up to date, I have no indication when to get a response.

Hon. Speaker: The Departmental Committee on Energy.

Hon. Moses Lessonet (Eldama Ravine, JP): Yes, the Departmental Committee on Energy and as I say this you will notice...

Hon. Speaker: We have since noted that the Chairman and the Vice-Chairlady are absent.

Hon. Moses Lessonet (Eldama Ravine, JP): It is just an observation that since we handed some Committees to the Orange Democratic Movement (ODM) Members, this House has ceased to operate optimally as required. You also said in one of your public appearances that since serious Jubilee Members of this House were told they could no longer serve in some Committees, that are why the House is like this. I am just making an observation and it does not warrant a point of order.

Hon. Speaker: No. We only make observations when we are commenting on Petitions. Now, this is not the time for observations. The Leader of the Majority Party says that is why you were removed. Hon. Kanchory Memusi, do you have an intervention?

Hon. Memusi ole Kanchory (Kajiado Central, ODM): No.

Hon. Speaker: Sorry. We are getting there. We go to the next segment which is request for statements. We start with Hon. (Prof.) Jacqueline Oduol.

REQUESTS FOR STATEMENTS

RECOGNITION AND PROTECTION OF THE FAMILY BY THE STATE

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Hon. Speaker, pursuant to Standing Order No. 44(2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the recognition and protection of family unit by the State.

Hon. Speaker, Article 45 of the Constitution provides that the family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State. The family unit in Kenya is under serious threat. This is due to pressures from modernisation, high cost of living, breakdown of the social fabric and erosion of cultural values and norms that provided a safety net. Further, unresolved issues, poor communication between parents and children and parents themselves have led to a high level of insecurity and severe mental health issues.

Hon. Speaker, some of the most common challenges the family face today include lack of effective discipline where parents and duty bearers appear helpless to provide effective discipline and often move from two extremes of no discipline to direct abuse; ineffective communication skills coupled with inadequate intergenerational and gender responsive communication skills which have transformed the family into a war zone and a threat to all members instead of the safe space it is supposed to be; breakdown of marriages, divorce, blended families and emotional health of children due to inadequate parenting skills and lack of work/school life balance.

Hon. Speaker, as a result the family continues to face several problems due to different personalities clashing and disagreeing over ways of doing things; jealousy or fighting between brothers and sisters; divorce or separation; new step-parents or step-brothers and sisters and where a parent or relative suffers from mental health problems, disabilities or illness. It is against this

background that I seek a statement from the Chairperson, Department Committee Labour and Social Welfare on the following:

- (i) What steps is the Ministry of Labour and Social Protection taking to protect the family from the challenges and problems stated above?
- (ii) What measures has the Ministry of Labour and Social Protection taken to ensure effective co-ordination between key stakeholders in the community namely parents, duty bearers, child bearers, government officials and non-governmental officials to prevent, mitigate, manage and resolve these challenges and problems?
- (iii) What measures are in place to equip parents, children and spouses with effective child friendly, intergenerational and gender responsive communication skills?

I thank you, Hon. Speaker.

Hon. Speaker: Member for Chepalungu, you are the Vice-Chair, are you not?

Hon. Gideon Koske (Chepalungu, CCM): Thank you, Hon. Speaker. That matter is very weighty and it is a conceptional issue but the Committee is up to the task. I commit with my team from the Departmental Committee on Labour and Social Welfare to give a response in 21 working days.

Hon. Speaker: Hon. Jacqueline Oduol, you have heard that. What is your response on those working days?

Hon. (Prof.) Jacqueline Oduol (Nominated, ODM): Thank you, Hon. Speaker. Because the Hon. Member says it is a weighty matter, I hope that within the 21 days we can get a substantive response. Maybe the working might not be very critical but we would really like to get a response. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Elijah Kanchory Memusi.

DECLARATION OF HARDSHIP AREAS BY TSC AND KNUT

Hon. Memusi ole Kanchory (Kajiado Central, ODM): Hon. Speaker, pursuant to Standing Order No. 44(2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding declaration of some areas as Arid and Semi-Arid Lands (ASAL) and hard to staff by the Teachers Service Commission (TSC) and the Kenya National Union of Teachers (KNUT) through an agreement.

Hon. Speaker, the Ministry of Public Service has been tasked with the responsibility of identifying hardship and ASAL areas in the country. Public servants and teachers serving in these areas are paid hardship allowances. Recently, a Collective Bargaining Agreement (CBA) between the TSC and KNUT designated some parts of the country as hardship areas. According to the CBA, teachers assigned duties within the designated hardship areas are entitled to hardship allowances. The TSC has, therefore, been paying hardship allowances only to teachers in schools within the classified hardship areas and leaving out those serving in schools within Kajiado Central despite being an ASAL area, a manner that is not only opaque but also discriminatory.

It is against this backdrop that I seek a Statement from the Chairperson of the Departmental Committee on Education and Research to address the following issues:

- (i) Could the Chairperson explain the rationale behind an agreement between the TSC and the KNUT classifying some areas as hardship areas and removing others particularly Kajiado Central, Laikipia North and parts of Baringo County which are also ASAL areas?

- (ii) Could the Chairperson explain the criteria used by the TSC and the KNUT to determine hardship areas?
- (iii) Could the Chairperson explain whether public participation was undertaken with relevant stakeholders with regard to the designation?

I thank you, Hon. Speaker.

Hon. Speaker: Where is the Chairperson, Hon. Florence Mutua? Where is the Vice-Chair? Hon. Members, this should be taken seriously because whereas on one hand as Chair of the Parliamentary Service Commission I am working to make sure that all those positions get commensurately addressed, if the Chairperson is not there... Surely, like the Member for Chepalungu and the Vice-Chair of Departmental Committee on Labour and Social Welfare was present, the Vice Chair of Departmental Committee on Education and Research should be present.

It is demotivating even to me, that I am pushing on one hand certain things for the Vice Chairs, yet they are not here. Surely! The Vice-Chair is not anywhere. The Vice-Chair is the Member for Nyeri Town. I thought I saw somebody of his size. The Member of Nyeri Town has a habit of never walking through the middle. So, when he walks into the Chamber through the rear seat, you only see a portion of his face.

(Laughter)

Since he is the same size as the Member for Dagoretti South, he should walk through the middle so that he can be seen properly.

The request, Hon. Memusi, will be channeled through the Office of the Leader of the Majority Party.

Even then, such responses should not take inordinately too long. So, maybe in two weeks' time, the response should be available.

Next request is by the Member for Igembe Central, Hon. Iringo.

DELAYED PAYMENT OF TERMINAL BENEFITS DUE TO MR. HAMISI GEOVANNIE NDERI

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker for allowing me to bring this Statement in this House. Pursuant to the provisions of Standing Order 44(2) (c), I rise to request for a statement from the Chairperson of the Departmental Committee on Environment and Natural Resources, regarding release of terminal benefits of one, Mr. Hamisi Geovannie Nderi of ID No. 11892397 a former Kenya Wildlife Service (KWS) Ranger, in November 2009.

Mr. Hamisi Nderi's employment was terminated on 10th November 2009 after his arrest and arraignment in court and was finally convicted to serve a death sentence on 2nd August 2012. His employment terminal benefits as calculated by his employer, the Kenya Wildlife Service accumulated to Kshs179,320.

In the course of serving his sentence, Mr. Nderi executed a Power of Attorney dated 16th June 2015, whereby he appointed his wife Ms. Anuria Abdi Kara of ID Number 23983258, giving her the legal authority to follow up on his benefits. She presented all required documents concerning his benefits to both the Meru National Park office and the KWS Headquarters in Langata, Nairobi.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson, Departmental Committee on Environment and Natural Resources on the following:

- (i) Could the Chairperson explain what measures the Government has put in place to ensure efficient and proper disbursement of employee terminal benefits of officers in Government parastatals and in particular the KWS?
- (ii) Could the Chairperson explain why KWS delayed in releasing Mr. Nderi's benefits, despite receiving all required documents needed to facilitate disbursement to his next of kin?
- (iii) Could the Chairperson explain when the service will disburse the money due to Mr. Nderi to his next of kin plus all interest accrued since 16th June 2015 when his terminal benefits were to be calculated?

I thank you, Hon. Speaker.

Hon. Speaker: The Chairperson is Hon. Kareke Mbiuki Japheth. He is not in. The Vice Chair is Hon. Sophia Abdi, Member for Ijara. I do not seem to see anyone in a *bui bui* who resembles her. The request is then channeled through the Office of the Leader of the Majority Party. It is good that you follow it up with the Leader of the Majority Party so that an appropriate response is given.

Finally, there is another request for Statement by the Member for Lafey, Hon. Ibrahim Abdi Mude.

KIDNAPPINGS AND DISAPPEARANCE OF PERSONS IN THE COUNTRY

Hon. Ibrahim Abdi (Lafey, EFP): Thank you, Hon. Speaker.

Hon. Speaker, pursuant to Standing Order 44(2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding kidnappings and disappearance of persons in the country.

Hon. Speaker, over the recent past, there have been numerous cases of persons who have either been killed or who have mysteriously disappeared in the hands of suspected security agencies. Kenya's and global human rights organisations have documented numerous cases of individuals who have gone missing while in the hands of security agencies, some of whose bodies have later been found having been killed. Of great concern is the fact that the Government is either unwilling or unable to address the problem.

Hon. Speaker, on 26th August 2021, the Chief of Fino Location Mr. Mohamed Nunow Bulle and one Yarrow Musa Osman, a resident of Sheikh Barow Village in Fino Location, Lafey Constituency, mysteriously disappeared in the hands of suspected security agencies. The matter was reported at Lafey Police Station under Occurrence Book Number 06/1/9/21.

Hon. Speaker, Kenya is signatory to the International Convention for the Protection of All Persons from Enforced Disappearance, but is yet to ratify it. Enforced disappearance is a crime under international law and Government should therefore take concrete steps towards ratifying the Convention to ensure that this cruel human rights violation comes to an end.

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

- (i) What is the status of investigations into the disappearances of the Chief of Fino Location, Mr. Mohammed Nunow Bulle and Mr. Yarrow Musa Osman, a resident of Sheikh Barow Village in Fino Location, Lafey Constituency?
- (ii) When will Kenya ratify the International Convention for the Protection of All Persons from Enforced Disappearance? and

(iii) What steps is the Government taking to stop abductions, enforced disappearances and killings in the country?

I thank you, Hon. Speaker.

Hon. Speaker: Hon. Mwathi.

Hon. Peter Mwathi (Limuru, JP): I thank you, Hon. Speaker. That Statement is about disappearance of a chief. Now, I have heard several Members who are talking about disappearance and abductions. I am encouraging that you bring those requests for Statements. As a matter of fact, we will try and bring that within two weeks. Thank you, Hon. Speaker.

Hon. Speaker: Yes, Hon. Mude.

Hon. Ibrahim Abdi (Lafey, EFP): I have no objection to that. I accept that within the two weeks, we should get a reply, Inshallah.

Hon. Speaker: Very well, the Statement by The Leader of the Majority Party.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING TUESDAY, 5TH TO 7TH OCTOBER 2021

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44 (2)(a), I rise to make the following Statement on behalf of the House Business Committee, which met on Tuesday, 28th September 2021 to prioritise business for consideration.

As Members will appreciate, we are in the Third Part of the Fifth Session of the 12th Parliament. There is not so much time left for sittings of the House. In this regard, I wish to urge Chairs of the various Committees to expedite all business before them to enable the House to undertake all the subsequent legislation processes and conclude all other important business before the end of the year and indeed the term of this Parliament. In the event that we need to increase the sitting days or times of the House to expedite pending business, including Private Members' Bills and Committee Reports, the House Business Committee is willing to take appropriate measures to ensure any business sponsored by a Member or Committee does not lapse or fail to see the light of day.

The following business has been tentatively scheduled for Tuesday, 5th October 2021:

At the Committee of the whole House, we will be considering the President's Reservations to the Refugees Bill of 2019 and the Tax Appeals Tribunal (Amendment) Bill of 2021. During the Second Reading, we will continue with the Landlord and Tenant Bill of 2021 and commence the Second Reading of the Health Laws (Amendment) Bill of 2021.

We also hope to consider the Committee Reports on the following matters, if they are not resolved by the end of today: Ratification of Various Protocols under Maritime Labour Convention and International Labour Organisation; Ratification of the Agreement Amending the Air Transport Agreement between Kenya and the United States of America and Ratification of the Protocol to the African Charter on Human and People's Rights on the Rights of Older Persons and the Rights of Persons with Disabilities. Lastly, the House will debate Sessional Paper No.1 of 2021 on the National Water Policy.

Hon. Speaker, in accordance with the provisions of Standing Order No.42A (5) and (6), I wish to convey to the House that Cabinet Secretaries will be appearing before Committees of the House to respond to Questions as follows:

(a) The Cabinet Secretary for Interior and Coordination of National Government is scheduled to appear before the Departmental Committee on Administration and National Security on Tuesday, 5th October 2021 to answer the following Questions –

- (i) Question No.193/2021 by Hon. Alfred Agoi on measures to control heavy vehicular traffic on highways;
- (ii) Question No.204/2021 by Hon. Joshua Kimilu on the landslide occurring in Nduu Sub-County;
- (iii) Question No.224/2021 by Hon. Victor Munyaka on the operationalisation of Kalama Sub-County administrative unit;
- (iv) Question No.249/2021 by Hon. Peris Tobiko on the rampant theft of livestock in Kajiado East;
- (v) Question No.227/2021 by Hon. Halima Mucheke on the disappearance of a resident of Kenya by the name, Dennis Kinoti;
- (vi) Question No.244/2021 by Hon. William Kamket regarding removal of police roadblocks along Marigat-Chemolingot Road;
- (vii) Question No.203/2021 by Hon. Omboko Milemba regarding insecurity in Emuhaya;
- (viii) Question No.252/2021 by Hon. Ahmed Bashane regarding the abduction and subsequent disappearance of Mr. Bashu Yusuf and Sarah Mohamed;
- (ix) Question No.274/2021 by Hon. Janet Ong'era regarding cases of gender-based violence, rape and murder in Kisii since 2018;
- (x) Question No.281/2021 by Hon. Joseph Oyula on the construction of Butula Sub-County Headquarters;
- (xi) Question No.301/2021 by Hon. George Theuri on destruction of property in Molwem Ward in Embakasi West Constituency;
- (xii) Question No.297/2021 by Hon. Samuel Gachobe on closure of four police posts in Subukia Constituency;
- (xiii) Question No.109/2021 by Hon. Jeremiah Lomorukai regarding stocking of food and relief items for emergencies in the country;
- (xiv) Question No.299/2021 by Hon. Caleb Kositany regarding prompt issuance and renewal of passports and national identity cards to Kenyans abroad;
- (xv) Question No.309/2021 by Hon. Walter Owino regarding operationalisation of administrative units in Awendo Constituency;
- (xvi) Question No.318/2021 by Hon. Omboko Milemba on the status of investigation into the recent shooting of three students by police in Emuhaya Constituency;
- (xvii) Question No.332/201 by Hon. Sophia Abdi Noor regarding the stance taken by the Government to address frequent community conflicts in arid and semi-arid regions in the country;
- (xviii) Question No.347/2021 by Hon. John Mbadi regarding circumstances that led to the killing of the late Michael Obara Simon at Gateway Beach, Sindo, in Suba South Constituency; and,
- (xix) Question No.339/2021 by Hon. Alois Lentoimaga regarding the status of investigations into the invasions and raids by heavily armed bandits in Samburu North.

(b) The Cabinet Secretary for Water, Sanitation and Irrigation is scheduled to appear on Thursday, 7th October 2021 before the Departmental Committee on Environment and Natural

Resources to answer Question No.289/2021 by Hon. Simon King'ara regarding the water supply system in the greater Githurai, Ruiru and Juja areas;

(c) The Cabinet Secretary for Energy is scheduled to appear on Tuesday, 5th October 2021 before the Departmental Committee on Energy to respond to Question No.294/2021 by Hon. Moses Lessonet regarding various matters pertaining to electricity in Eldama Ravine; and,

(d) The Cabinet Secretary for Environment and Forestry is scheduled to appear before the Departmental Committee on Environment and Natural Resources on Tuesday, 5th October 2021 to respond to Question No.291/2021 by Hon. Chachu Ganya on the operationalisation of the National Climate Change Council.

The House Business Committee will convene on Tuesday, 5th October 2021 to schedule business for the rest of the week.

Hon. Speaker, I beg to lay the Statement on the Table of the House.

(Hon. Amos Kimunya laid the document on the Table)

Thank you.

Hon. Speaker: Next Order.

BILLS

First Readings

THE COFFEE BILL

THE WILDLIFE CONSERVATION AND MANAGEMENT
(AMENDMENT) BILL

THE PARLIAMENTARY POWERS AND PRIVILEGES
(AMENDMENT) BILL

THE COMMUNITY HEALTH SERVICES BILL

THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL

*(Orders for First Readings read - Read the First Time and
ordered to be referred to the relevant Departmental Committees)*

Second Reading

THE PERPETUITIES AND ACCUMULATIONS (AMENDMENT) BILL

Hon. Speaker: The Vice Chair of the Departmental Committee on Finance and National Planning.

Hon. Isaac Ndirangu (Roysambu, JP): Hon. Speaker, I beg to move the Second Reading of the Perpetuities and Accumulations (Amendment) Bill (National Assembly Bill No. 24 of 2021) which was published on 12th May 2021.

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In moving, I first wish to thank Members who supported the Second Reading of the Trustees (Perpetual Succession) (Amendment) Bill (National Assembly Bill No. 23 of 2021) which is a critical legislation in ensuring the process of establishment of trusts to manage generations' wealth, to make sure it is made less bureaucratic. That Bill, together with this Perpetuities and Accumulations (Amendment) Bill, are very critical in the preservation of general wealth.

Before I proceed and in order to carry my colleagues along, I would like to give a brief definition of what trusts are, particularly for the interest of those Members who were not there earlier. Individuals may control distribution of their property during their lives or even after they are dead through the use of a trust. Trusts come in many types and can either be public or private. They are also created for different purposes, including financial benefits of the person creating it or the benefit of surviving spouses or minors, or even for charitable purposes. So, a trust is a property interest held by one person for the benefit of another. It can also be described as a company or legal entity that acts as an agent or trustee on behalf of a person or business for the purpose of administration or management at the eventual transfer of assets to a beneficiary.

When it comes to trusts, we say that a trust is perpetuity in an investment that has no end. It is an asset or a business or a real estate through which in life you can get a stream of cash payments that continue forever. The concept of perpetuities and accumulations arose in the medieval era when property largely meant the ownership of big parcels of land by a few wealthy estate owners who controlled large tracts or huge territories of land. Of course, then, land was and still is and continues to be a limited resource. It was in the public interest then to limit how long a deceased person could dictate how his property may be utilised by the living. However, in today's society, property has expanded to mean and to include money, intangible assets, boards, chairs, *et cetera*. Therefore, when applied to these new notions of property that are not finite resources and do not preclude any living being from producing them on their own. The primary goal of this Bill is to limit the Perpetuities and Accumulations Act (Cap 161) in its application to immovable property dispositions and to allow for the accumulation of trust income to benefit multiple generations of beneficiaries, particularly in a family trust.

The other objective of the Bill is that it targets to construct a legal structure that allows generational wealth to be preserved or conserved, multiplied or be invested profitably. The Bill therefore seeks to maintain the Perpetuities and Accumulations Act (Cap 161) and particularly its original objectives in limiting perpetual land ownership.

The details of this amendment are that they maintain the Act's original goal of prohibiting perpetual property ownership. The advantage of this amendment will be to allow family trusts to function forever, for multiple generations, and therefore creating and preserving generational wealth. This can be achieved by using properly written trusts which intend to safeguard future generations of a family from spendthrift beneficiaries. I also encourage Members of this House to make good trust deeds when they live, but not to rely on oral wills and oral trusts because, one day, when our Maker calls you, you will not have a chance to say how your property may be managed.

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

*[The Temporary Deputy Speaker
(Hon. Patrick Mariru) took the Chair]*

Hon. Temporary Deputy Speaker, this Bill also encourages Kenyans to seek professional wealth management services. This amendment will also help reduce intergenerational poverty and

reduce the wealth gap between generations. Other benefits arising from this amendment will be that it allows Kenyans to make more professionally managed investments. It will also help them to increase the tax base resulting from profits accruing from profitably managed perpetuities and accumulations.

It is not only the rich families, but also ordinary families, normal families that will be able to give more opportunities for future generations which could otherwise be limited due to financial constraints. This amendment intends to improve on the existing estate management legal framework. Our country is now of age and has developed sufficiently to provide a competitive advantage as an investment destination. This legal framework on perpetuities and accumulations will give us some leverage in attracting investment.

Going specifically to the clauses, the Bill has three clauses and seeks to amend the Perpetuities and Accumulations Act to limit the application of the Act to dispossessions in relation to immovable property and to allow for accumulation of income of a trust so that it can benefit multiple generations of beneficiaries, particularly in a family trust. The Act was enacted in 1984, close to 37 years ago. We need to consolidate and modify the law in Kenya relating to the avoidance of future interest in property on grounds of remoteness and governing accumulations of income from property. The amendment proposes to create an enabling legal framework for preservation of generation's wealth.

In considering the Bill, the Committee observed that the amendments to Sections 2 and 19 of the Act are mainly to ensure preservation of wealth and to provide for application of perpetuity period while exempting family trusts from the same. We also explain what perpetuity period is and what it means. It is that period which applies to future interests in assets that do not take effect immediately and are subject to rules against perpetuities. According to the common law period, perpetuity period is the length of a life or lives in being plus 21 years. A life in being means a life in being at the time of the dispossession. The rule against perpetuities exists to prevent property from being tied up indefinitely. The Bill sets out to limit application of the Act to dispossessions relating to immovable property and to allow accumulation of the income of a trust so that it can benefit multiple generations of beneficiaries, particularly in a family trust.

The Bill also specifies the trusts to which perpetuity period applies and that a family trust may be accumulated beyond multiple generations within the life being of beneficiaries plus 18 years. In addition, accumulation of income will be allowed and distributed within the perpetuity period provided for in the law and trust deed.

We took the Bill through public participation and we are thankful to the groups that appeared before us. Allow me to mention just a few: Prof. Tom Ojienda and Company Advocates, Regent Management Limited, Ashitiva Advocates LLP, Sisule and Associate Advocates, Kipsang and Mutai Advocates, Og'anya Ombo Advocates, Kimakia Magara and Partners, Lobo Office and Kemunto Moturi. Allow me to thank each of these stakeholders for their useful contributions. A majority of them noted that perpetuities and accumulations in Kenya are guided by pre-independence legislation and, therefore, it is necessary to amend the legal framework to align it to the present in order to reengineer the administration and management of wealth held in trust for generational transfer.

As I conclude, allow me to express my special thanks to members of the Departmental Committee on Finance and National Planning and staff of the Committee for their significant role towards scrutiny of the Bill and production of this report. The Committee is grateful to the offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to us during the sittings. Further, I invite our colleagues to participate in this discussion and to join

us at the Committee of the whole House stage to effect the desired changes and amendments indicated by the Committee and proposed by stakeholders.

I beg to move and request my colleague Hon. David Mboni Mwalika, Member for Kitui Rural, to second.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Mboni Mwalika, Member for Kitui Rural.

Hon. David Mboni (Kitui Rural, CCU): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to second the Bill. I want the House to note three things. One, this Act was enacted in 1984 and therefore it is a very old law, which may not be in line with the current thinking on creation and preservation of wealth. Therefore, the proposed amendments seek to create a legal framework for preservation of generational wealth. The amendments will allow family trusts to invest and accumulate wealth to benefit future generations. Lastly, the Bill proposes to exempt family trusts from perpetuity period, which is normally 21 years, thereby allowing for creation of generational wealth and reduced inter-generation poverty. This Bill is very important. We have seen situations where the head of a household accumulates a lot of wealth but when he passes on, the family suffers. So, I beg Members to support the Bill.

With those few remarks, I beg to second. Thank you very much.

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): There are two Members who have registered interest to speak to this Bill: Hon. Pkosing and Hon. Nguna. Hon. Pkosing, he has taken an early leave. Hon. Nguna.

Hon. Charles Nguna (Mwingi West, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for the opportunity given to me. Allow me to be very brief because this is just an amendment. First of all, let me thank the Committee and the Mover and Secunder for the wonderful job they have done. We have been anticipating this kind of amendment for a long time. I can declare it is long overdue. I support the Bill.

I have gone through the Bill very briefly. We have been facing a lot of family conflicts. We have been facing a lot of issues regarding inheritance of property from one generation to another. One of the key things in this Bill is that it will provide a legal and secure way of managing generational wealth. Every time we have faced conflicts on who to inherit what.

The other key function that I see is that it will play a big role in significantly reducing the registration of family trusts. I am one of the people who have been talking about it. It will take five to 10 years to register a family trust. Therefore, the Bill will significantly reduce the passage of generational wealth.

With those few remarks, I support the Bill and urge all my colleagues to do the same.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Ong'era Janet.

Hon. (Ms.) Janet Ong'era (Kisii CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to also contribute to this very important Perpetuities and Accumulations (Amendment) Bill.

At the outset, I support the Amendment Bill. Just as my colleagues have said, I congratulate the Departmental Committee on Finance and National Planning, the Mover, the Secunder and the proposer of the amendment Bill.

It is very important that we get clarity on how to dispose of immovable properties in the country. Just as my colleagues have said, it is important that families have clarity on how they dispose of their wealth and ensure that there is perpetuity and certainty as to how that property will be managed in future.

I am happy to note that this Amendment Bill provides for the accumulation of the income of a trust and will also benefit multiple generations of beneficiaries, particularly in a family trust. That has all along been a gap in the law which the amendment Bill will cure.

I also note that this is not a Money Bill and, therefore, is very straightforward. I note that the Bill has nothing to do with county governments. It is a straightforward Bill that will only be considered in this House and does not have to go to the lower House which will take a long period to be passed.

With that, I support there being a clear and enabling legal environment for the Bill as per the proposal. I strongly support it and urge all Members to pass it.

Thank you, Hon. Temporary Deputy Speaker for allowing me to speak.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Well, there being no other interest, Hon. Shadrack, do you want to speak to this? You now have a chance.

Hon. Shadrack Mose (Kitutu Masaba, JP): Hon. Temporary Deputy Speaker, this is a step in the right direction in terms of dealing with family property.

The Amendment Bill is timely as it seeks to construct a legal framework that allows generational wealth to be reserved. When owners of properties die, there are normally many problems as to what happens to the properties they own and the future interests in those properties. Therefore, this Amendment Bill is extremely critical as it ensures preservation of wealth and provides for the application of the perpetuity period while exempting family trusts from the same.

I say without fear of contradiction that the Amendment Bill will secure the interests of beneficiaries who, on many occasions, are derailed or confused as they move from one court to another. A clear delineation of what is contained in the Amendment Bill will give families a humble opportunity to deal with such properties.

With that, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Okay. Hon. Pkosing, are you registered to speak to this or the next business? The next business!

Let us have the Mover replying.

Hon. Isaac Ndirangu (Roysambu, JP): Thank you, Hon. Temporary Deputy Speaker. I thank the Members who have contributed and given us very important suggestions on the improvement of the Bill. We assure them that we will take their proposed amendments and views into consideration.

I beg to reply.

The Temporary Deputy Speaker (Hon. Patrick Mariru): We shall pend putting the Question under Order No.13 to a subsequent time.

(Putting of the Question deferred)

Next Order.

MOTIONS

REPORT ON RATIFICATION OF VARIOUS PROTOCOLS UNDER THE MARITIME

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LABOUR CONVENTION AND THE INTERNATIONAL LABOUR ORGANISATION

The Temporary Deputy Speaker (Hon. Patrick Mariru): Let us have Hon. Pkosing, Chairperson of the Departmental Committee on Transport, Public Works and Housing.

Hon. David Pkosing (Pokot South, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this great opportunity to move this very important Motion. As I do so, these are conventions within the Maritime Labour Convention. Therefore, so that we can all follow along, this regards the blue economy which we are trying to promote.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Pkosing, be in order yourself. First, move the Motion and then add those details.

Hon. David Pkosing (Pokot South, JP): Hon. Temporary Deputy Speaker, I beg to move the Motion as it is on the Order Paper.

The Temporary Deputy Speaker (Hon. Patrick Mariru): No. For the record, there is no shortcut on that one. It is long, but there is no shortcut. Move it as it is.

Hon. David Pkosing (Pokot South, JP): (*Spoke off-record*).

The Temporary Deputy Speaker (Hon. Patrick Mariru): Yes.

Hon. David Pkosing (Pokot South, JP): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the 2014 and 2018 Amendments to the Maritime Labour Convention, 2006; the International Labour Organisation Convention C185 (Amended Convention on Seafarers Identity Documents, 2003); the International Labour Organisation Convention C188 (Work in Fishing Convention, 2007); the International Convention on the Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel, 1995; and the Cape Town Agreement of 2012 on Safety of Fishing Vessels, laid on the Table of the House on Thursday, 23rd September 2021, and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the ratification of –

- (i) the Amendments to the Maritime Labour Convention, 2006 (2014 and 2018 Amendments);
- (ii) the International Labour Organisation Convention C185 (Amended Convention on Seafarers Identity Documents, 2003);
- (iii) the International Labour Organisation Convention C188 (Work in Fishing Convention, 2007);
- (iv) the International Convention on the Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel, 1995; and,
- (v) the Cape Town Agreement of 2012 on Safety of Fishing Vessels.

Hon. Speaker, this Motion is contributing towards our greater objective of taking advantage of the Blue Economy, on which we have been doing a serious campaign for a while. These conventions are enhancing synergy by trying to implement, in a smoother way, our campaigns and motivating Kenyans to take advantage of the Blue Economy.

Hon Speaker, allow me to, in summary, explain what each of these five conventions means to us as a country.

The 2014 and 2018 Amendments to the Maritime Labour Convention are seeking to enhance the security of seafarers in case of abandonment. The amendments provide for contractual claims for compensation in the event of seafarers' death or long-term disability due to the

operation, injury, illness or any other incident. This Convention is seeking to enhance their welfare. There is provision for employees outside the sea but there is no proper recognition or treatment for employees in the sea. So, like the Convention we have at the moment, it does not provide for such. What happens, for example, if a seafarer is injured while at sea? It is not properly provided for. What happens in case of death or claims? The first Convention, which the Ministry through my Committee is seeking to have ratified, is providing a procedure for compensating seafarers who may suffer injuries while working at sea. For those working on land, we have the Employment and Labour Relations Law. However, this law is not applicable in the sea. This Convention is trying to cure that vacuum.

Hon. Speaker second Convention is on seafarers' identity documents, 2003 as amended in C185. Specifically, this Convention prescribes the contents, forms and systems required of seafarers' identity documents, which we call SID. The document serves as an alternative to the stand-alone document when seafarers are on the move. In simple understanding, this is a special identity document that is likely to replace an identity card, passport or visa. When a ship docks, for example, at a port in another country, employees of the shipping line can use this document to disembark from the ship, go to land and sleep there or stay there for a few days before going back to their ship to proceed with their work or move with the ship to another country.

Without this document, seafarers will have to use their passports and apply for visas to enter into another country, as is the norm. This Convention is seeking a shortcut or direct way, for seafarers, to enter into a foreign country. If you have an SID, you are free to go into another country when the ship docks. The disadvantage that seafarers have been suffering for not having SIDs is that it takes time to get an entry visa. Seafarers who are citizens of countries that issue SIDs can enter into our country without visas. However, Kenyan seafarers cannot disembark from their ships and enter into those countries because they do not have SIDs of those countries.

This Motion is seeking the concurrence of this House to ratify the Convention so that our seafarers can move freely in other countries. During public participation, a very fundamental question arose. Somebody pointed out that the SID will be replacing the visa requirement for foreign seafarers and wondered whether some international criminals would not take advantage of the SID, behave like seafarers and enter into our country and commit crimes. We called the Ministry of Interior and Coordination of National Government, who appeared before the Committee and that matter was clarified. The SID is not replacing the requirement for foreigners to acquire entry visas, but it is a good document that facilitates people to move. The card is like an identity card, but when you are entering into a country, the details are taken. So, I want to assure the country that this is not a shortcut for any criminals to enter into our country. We were given that assurance by the national security forces. It is important that we give Kenyans this identity document. Let us ratify this Convention so that our seafarers can be treated like other Kenyans on international travel.

I am sure that seafarers in Mombasa and elsewhere are watching us this afternoon. They are very happy that we are discussing this Convention. We are seeking the concurrence of this House on this Convention so that Kenyan seafarers can also enjoy their voyages while docking in other countries' ports for a few days. This is the Convention on Seafarers Identity Documents, 2003 as amended in C185. Can you imagine since 2003 and we are yet to approve it? We have a problem, as a people. I hope the House will agree with the Committee and approve this Convention.

Hon. Speaker, allow me to proceed to the third Convention, as it is stated in the Motion – Work in Fishing Convention, 2007, C188. This is about fishing boats, for simple understanding of

the people. It addresses issues of safety, health and medical care for workers on board fishing vessels; minimum age for fishers on board shipping vessels; payment of minimum wages and enforcement of limits on working hours as well as ensuring that fishers have the protection of written work agreements and social security protection as workers on land.

Many people who are listening to me this evening may be wondering whether there has been no minimum wage for people at sea. It is not there. That is why we are saying should we ratify this Convention, the ministry or department in charge, using this Convention, will implement or enforce the law on minimum wage. In the absence of a law on minimum wage, companies in the fishing industry will continue to exploit Kenyan seafarers. Equally, Kenyans are being exploited in terms of time. The number of hours one should work in a fishing vessel, say, per week or month, has not been provided because we have not adopted these international instruments to enable the relevant ministry to invoke them to protect Kenyan fishers.

Worse still is the fact that there is no minimum age requirement for one to be eligible to work in a fishing vessel. Outside the sea, we have a law that says you cannot employ a person who is under age. However, out there at sea, it is a different ball game. The Ministry is seeking to have these instruments ratified so that the Government can implement and enforce the protective laws that have been indicated in this Convention No.3.

Hon. Speaker, the fourth one is the International Convention on Standards of Training, Certification and Watch-Keeping for Fishing Vessel Personnel, 1995 (1995 SGCWF Convention). This Convention seeks to set a regulatory framework for the training and certification of personnel to be employed in fishing vessels with a view to improving safety of life and property at sea. What is it trying to cure? There are no standards in the sea, in terms of the people working in those vessels. So, this will lead to exploitation of employees in the sea in terms of age and working hours. When it comes to training, what are the basic minimums and where is the training in the first place? We do not have it and that is why the Ministry and the State Department of Shipping and Maritime are seeking for these instruments to be ratified. Once ratified, they will give proper procedure on how to rate and give qualifications of people who will be working in the fishing vessels. This is something that is very good, simple and direct. Why it has been outside there, maybe, this will be addressed in another forum or debate.

Convention No. (v), which this afternoon we are seeking for the House to agree with us and approve, is based on the Cape Town Agreement of 2012 on Safety of Fishing Vessels. I want to take you logically since we have dealt with the staff and now we are dealing with safety of fishing vessels. The Convention is trying to lay down standards on the design. We have dealt with the people aboard the ship. So, this Convention is addressing this by giving the standards on the design, construction and equipment of the sea-going fishing vessel. To give you a brief, it is 24 meters or 300 gross tonnage and above. This one can be allowed to go to sea. Remember it can go to the deep end. That is why we are looking at the size to protect the safety of the staff and we have given conditions on how staffing will be done.

Further, in this Convention, the requirements are aimed at ensuring that vessel safety by a country, port or coastal states will contribute to the fight against illegal, unreported and unregistered fishing. This means it will give the specification of a fishing vessel and this will make it easy for the Government to recognise a ship which is not for fishing and might be used by pirates and so they can address this quickly. Without this, we will have different makes of ships and the industry will not be protected. That is why if we approve this Convention, the Ministry will enforce and state the specifications of a ship that is supposed to be doing fishing in our waters. This will be easy because, as a country, we will be sure the people boarding a ship are safe because we have

given our specifications. So, it will be easy to differentiate the ships in the sea, which ones are for fishing and the ones that are not recognised and are for pirates and this will save this country. Having summarised the five Conventions, we are seeking the House to agree with the Report of the Committee. I would further want to give a summary as follows:

That, the Conventions are in line because the House will ask the Committee if they followed the right procedures. The Conventions are supposed to follow certain legal frameworks, the Constitution and the Treaty Making and Ratification Act. I want to confirm to the House that the Conventions are in line with the spirit of the Constitution of the Republic of Kenya because they address protection and the well-being of our Kenyans in recognition of the essential values of human dignity, human rights and equality.

Further, the Conventions also promote access to quality education, the well-being of maritime labour and the employees and our own Kenyans who are working in the sea. I am summarising by saying that the ratification of the five Conventions which I have gone through will assist Kenyans in realising the benefits of the blue economy as I said in my earlier opening remarks, the Big Four Agenda as well as the United Nations Sustainable Development Goals.

Further, the Conventions as presented satisfied the requirements of the Treaty Making and Ratification Act, 2012 as provided for in sections 7 and 8 of the Act. It is for this reason that the Committee recommends to the House to approve the ratification of the five Maritime Conventions which I have stated.

With those few remarks, I want to request my colleague, Counsel Hon. Shadrack Mose, to second this Motion.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Shadrack Mose.

Hon. Shadrack Mose (Kitutu Masaba, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to second these conventions. First and foremost, I want to state that after thoroughly going through the five conventions, the Committee dealt with each and every one of them and was satisfied that they were in line with the Constitution of Kenya, the treaty making process and the Treaty Making and Ratification Act, 2012.

Indeed, I want to state without any fear of contradiction that, as a country, we are lagging behind in effecting these conventions. This is because without them, it means our businesses as a country are limited. We are extremely lagging behind with the very fundamentals required to transact with other countries that have delved into the maritime industry. That is why I state without any fear of contradiction that the Maritime Labour Convention sets out the seafarers' rights. These are some of the issues which, as a country, we have been unable to enjoy. Those are things like decent working and living conditions for the seafarers and when challenges occur in the sea, issues of compensation have been a problem. Once this House approves these Conventions, they will access them.

Another challenge addressed by these conventions is the issue of financial security of seafarers in case they are abandoned. Therefore, their contractual claims for compensation in the event of death and serious disability are not addressed. Once we approve these conventions, they will give our seafarers, people working in the sea and those engaged an opportunity to access these rights. It also guarantees that the seafarers are entitled to a minimum wage during the period they are at sea.

These conventions also give guidance on the issue of elimination of shipboard harassment and bullying. As it stands, since we have not signed these conventions, our seafarers are not properly protected. There is the issue of the seafarer identity and this is critical. Assuming our

people are on board and the ship has a problem in a certain state, without any form of identification, they will not be allowed to get into that state. But with the seafarer identity, they will be able to access that area and be assisted.

Hon. Temporary Deputy Speaker, there are many other benefits that would arise as a result of approving these conventions. I will, therefore, urge this House to move with speed to approve these conventions to be able to expand our blue economy and give teeth to our people who are out there. This country will benefit immensely in terms of the growth of its economy.

Thank you, Hon. Temporary Deputy Speaker.

I beg to second.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Pkosing, I thought that was very helpful just to help Members understand these conventions. Anyhow, Members have an opportunity to engage.

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Odhiambo Akoth.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity. I think you have given me because I come from a fishing area. I thank the Committee for bringing this Report. Let me also just start off by praising myself that this Report is actually here courtesy of me because I brought the Treaty Making and Ratification Act in 2012. Otherwise, the treaties would not be coming before this House. So, I am actually proud.

However, based on that again, I would want to indicate that I wish committees would be bringing one treaty at a time because what the Committee has done is that it has brought five treaties that deal with maritime issues at once. I know, maybe, it is because we do not have time. The only challenge we have is, even as I have been going through them here, each of them deals with very diverse issues and we may not have as much time to contribute or to look into them. It is actually like looking at five pieces of legislation at once because a treaty is actually a law. I want to agree with the Chairman that the blue economy is the way to go and going by the Jubilee agenda, it contributes towards food security.

I am also happy that this is coming very close after we recently had a lake tragedy where we lost 10 people who were just buried a few days ago. Majority turned out to actually come from Hon. Kaluma's constituency, even though they were headed to my constituency. Three of them came from my constituency. I want to indicate that part of the reason I was saying that we had a bit more time is when you actually look at... As we were going through the other pieces of legislation, I have been looking at the conventions and sometimes reading one convention is not enough because you have to make reference like when we talk about seafarers, I am concerned. Of course, I am happy when we deal with people who fish in the seas but I am also much more concerned about people who fish in the lakes because many a times, we forget about them and issues of their security and rights.

I come from a constituency that borders both Tanzania and Uganda. So, my fishermen are always harassed by those nations. One, because we are not very clear about the boundaries. When you are in an island in my constituency called Remba Island, you just go a few nautical miles and you are told that you are in Uganda. The fishermen do not know. They are following the fish. They do not know about lines or issues of boundaries. What happens is that the security agencies in the other countries are more aggressive than on our side. Very recently, we lost about three young

men, one of whose body has not been found to date. They were shot dead by the security agencies that were suspected to be from Uganda. Sometimes, they are also arrested and taken to Uganda where they are forced to raise money usually per boat and they are taken to some small island or stations in Uganda and Tanzania and they are forced to pay upwards of Kshs60,000 per boat. Very recently, I have seen one of my chiefs posting in one of our *WhatsApp* groups warning fishermen to be very careful about crossing boundaries because the fishing season in Tanzania is closed. Sometimes, fisherman do not know that and many of them are not in *WhatsApp* groups or they may not know. They cross the boundaries and those people are very lethal.

We started an informal process as leaders especially between us and Uganda where we had several meetings to foster the kind of things that are being suggested by this convention, so that Kenyans are given some sort of identification like what the seafarers' identification convention is saying. This is so that when they go a little further, they are treated well and not mistreated...

The Temporary Deputy Speaker (Hon. Patrick Mariru): The Clerk, you should be able to signal Members so that then they organise their thoughts. Hon. Odhiambo, you had five minutes but you were not warned. Secondly, you understand this subject more than quite a number of Members, I can tell. Many Members have not registered interest to speak because one would have to know about this area. I will give you five more minutes.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you. I really appreciate, Hon. Temporary Deputy Speaker, because I was not actually aware. I really appreciate. I just want to indicate. Let me then go to the ILO Convention C188 (Work in Fishing Convention) that talk about fishing boats and vessels, safety, health and medical care. It talks about the minimum age, wages and working hours.

In the lake region, this is not regulated and we have owners of boats and people who are employed there. There are absolutely no regulations in that sector and because of that, we always get a clash between the boat owners and those who are working because, sometimes, those who are working in the boats feel that they are being underpaid. So, when they go into the lake and get the fish, they remove a special part of the Nile Perch called *mondo* which on one fish can cost about Kshs12,000. They throw the fish into the lake and you find the fish floating because sometimes they feel they are not remunerated well. So, if this was regulated, then we will not have that kind of situation.

The other challenge that we are facing and that has to do with the International Labour Organisation (ILO) Convention is the age at which those young people are also employed in the fishing industry. We also need to be very clear because if you look at the children circular, we are not even clear about the age at which somebody can get employed. In the fishing industry, most of them get employed at a way much younger age because they see that as a very quick source of earning money. Many of them also face a lot of health issues because the lake is extremely rough and hostile. Most of the fishing is done at night in the dark waters. They dock in the morning. It is extremely cold. Sometimes, I travel in the lake very late when I am in Mfangano Island or other islands. You will realise that there are no lights in the lake and so, they will flash lights at you. If it is raining, they will be rained on because there is no cover. For many of them to survive, they have to take drugs. Those are the issues that in terms of standard setting, we must look into. So, what I am encouraging the Committee to do is, as soon as we are done with this, we not only need to ratify this because this is the first process towards ratification, but we need to domesticate so that we do not have these issues. I would go on and on.

There are issues of gender dynamics that women find it very difficult to get into the fishing industry because of something called *Jaboya* concept; that unless you have a protector - and that a

lot of times it is a protector of a sexual nature - you cannot engage. Because of that, it becomes very difficult for women to engage even as suppliers at the lower end of the chain. I would like to encourage that we find a way of making sure that after ratifications of these treaties, we domesticate and protect them. Of course, we have issues of dwindling stocks of fishing, and the need to encourage *ex-situ* and *in-situ* fishing so that we have cases where, when people do fishing on the land, we do not put as much strain on the lake and it reduces conflict. Right now, we also have conflicts between those who are fishing in the lake; those who are using the natural system and those who are doing fish caging. I know I had a lot to say, but because of time... That is why I was saying that we should be bringing one convention at a time.

I have not spoken to the International Convention on Standards of Training, Certification and Watch Keeping and the Cape Town Agreement. I just want to thank the Committee. Next time, bring one by one so that we raise issues specifically.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Manje, Member for Kajiado North.

Hon. Joseph Manje (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to this Motion and say that I support this ratification of various protocols under the Maritime Labour Convention and International Labour Organisation and the amendments therein. I also want to join my colleagues in saying that these are many conventions put together, but I will try as much as possible to be general in all.

Before I contribute to them, I want to emphasize the importance of the blue economy at the moment. It is a very huge economy that can revolutionalise and create many jobs in the country. If you travel internationally, you will be shocked to see how many economies use water to generate income for their countries. The six coastal counties can really benefit a lot from the Indian Ocean by creating a good maritime economy. For example, they can come up with good boats that will be streaming and holding tourism in the sea. If you go to other jurisdictions and opt to have dinner at the sea, you will “cough” a lot of money. It is something that has not been tapped yet. Therefore, this has come at the right time to ensure that, at least, we have protocols and conventions that the country should sign so that it can be accepted internationally. If you want to do business internationally, there are those conventions that you have to agree on, to have standards that are required internationally.

If we sign these protocols, we are likely to get global funding from institutions like United Nations Development Programme (UNDP). At the moment, there is a secretariat for the blue economy that is soliciting funding in this area. So, some of these conventions will ensure that, at least, the seafarers are well catered for, the labour market in that area will be well regulated through these protocols and the rights of these seafarers will be guaranteed. Sometimes, you will find that due to the working environments, if they are fishing, their boats can stray to other areas and they find themselves in a different jurisdiction where they should be covered internationally.

There is also the issue of security in the sea. You will remember when we had *Al-Shabaab* in the Indian Ocean and they were stopping ships along the way in the sea. This kind of convention will assist us to seek international intervention.

Also, it is giving us some kind of standards in training, accidents and safety in this area. With those few remarks, I support this initiative by the Committee. I support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Janet Ongera.

Hon. (Ms.) Janet Ongera (Kisii CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to also contribute to this Bill. At the outset, let me thank the Committee for bringing these conventions, so that we can ratify them. However, I have some issues

about the manner in which these conventions have been brought into the House. I thought that it would be wise that I raise them. One of the concerns is that they are too many and so, we are just passing them without looking at the substance and detail in each one of them.

The second issue I have about conventions, just like Hon. Millie Odhiambo has said, is the issue of domestication of law. We have 1,001 ratified treaties that are in the Ministry of Foreign Affairs, but have never been domesticated into law. It seems that we do a lot of heavy international work and yet, we are not domesticating those conventions or treaties into law. I am a Member of the Pan-African Parliament and quite a number of treaties have been brought by the African Union and have never been domesticated. It just saddens me and I think it would be very good for us, as legislators, maybe, before we finish our term, to try and see how many of those ratified treaties we can domesticate into law.

Secondly, with regard to this treaty, I notice that it talks a lot about the sea. They forget that they need to also include the lakes. Sometimes, they work against the lakes particularly Lake Victoria where I happen to come from, because I come from Kisii County in Nyanza Region.

There was one that spoke about the size of the boats. In fact, we found that it was affecting the fishermen in the lake because of the size of the boats. Secondly, they say: Let us not have lights in the ocean when the fishermen are fishing in the night. We know that the *omema* industry is one of the biggest industries in the lake region in Kenya. *Omena* is actually fished at night using lights. I want to thank Hon. Millie Odhiambo for having brought an amendment so that fishermen can fish by light in the night. As I congratulate the Committee for bringing these treaties, I feel that they should have come one at a time, so that we can examine them. We should also look at the question of domestication of our treaties.

With those few remarks, I would like to support and thank you for giving me the opportunity.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Baya, Member for Kilifi North.

Hon. Owen Baya (Kilifi North, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I would like to support the ratification of the various protocols under the Maritime Labour Conventions. I also thank the Committee for bringing them to the House. I also share the sentiments of my colleagues; that, probably, we should have brought them one after the other, instead of all of them at the same time.

More importantly, the blue economy in this country is one untapped potential. The Coast Region would not be what it is right now if we had put efforts in the blue economy. This country would be richer. The Government has been trying to push for an economic revolution through the blue economy. The Government is on the right path. The question is: What is the investment in terms of laws, funds, personnel and infrastructure? If today we want to train one child in seafaring, it is one of the most expensive things that one can do. The licence for seafaring is one of the most expensive such that the youth at the Coast cannot afford it. So, we encourage the Government to open Bandari College and make it a seafaring academy. To take one student through the process is very expensive. Why? Because the international licence for seafarers is very expensive. Therefore, we need to bring down the cost. I hope these treaties and conventions we are ratifying will bring down the cost. Again, who are the people who train people to give the licences? There are one or two international organisations. It has been a closed shop. In Mombasa, you will be told that it is only two people who give the licences. Due to the monopoly, it makes it even more difficult for a student to be admitted there. What does that mean? Seafaring jobs are not available to the local people. People from other countries come in to do the jobs. We also know that seafaring is one of the well-paying jobs.

The curriculum for training cooks or people who work in boats or ships is not available in this country. People have to be trained elsewhere. To get a young person to go out there to get trained becomes even more expensive. Who are the owners of the vessels? Kenya does not own the vessels. It is foreigners or companies that own the vessels. To get a student to be admitted into them is another herculean task. I look forward to the domestication of these protocols so that young people from the Coast and across the country can get training opportunities. I hope the cost of training and licensing will go down so that training in this area can be accessible. I hope this country will have its own vessels to ensure that seafaring jobs are available to the people of this country.

The blue economy is a huge thing. It can increase the GDP of this country probably threefold but what is the investment? It has just remained on paper. There have been policy statements but there has not been a deliberate push by the Government to ensure that the blue economy is exploited. Today, fishing trawlers from other countries come and fish in the territorial waters of this country. We are told that they have to leave 70 per cent of the proceeds here but they still go and process the fish in other places. In Lamu, we have an open ocean where big time fishing would be done, but it is the Japanese and other people who come and do the fishing, take the fish elsewhere and they do not give us our share. I challenge the Ministry. This country needs to set up a ministry for the blue economy that will have a budget, personnel and other resources so that the treaties and protocols that have been brought to the House today can make more sense to this country. That way, they would be profitable and will actually ...

The Temporary Deputy Speaker (Hon. Patrick Mariru): I could tell that the Chairperson is very attentive. Hon. Pkosing, you have the Floor.

Hon. David Pkosing (Pokot South): Thank you, Hon. Temporary Deputy Speaker. It is true that I was very attentive. I beg to reply this way.

I thank Hon. Members for their positive contributions and the support for the Report of the Committee. I also thank the Members of the Committee because we burnt the midnight oil. These are five treaties. We did a lot of work. I thank the Committee for that.

I want to give comfort to the House and the Members who have contributed. It is their concern that there are too many treaties or conventions. Let me comfort them that we looked at them as a Committee. If we were to summarise them, it is actually one because they talk about the personnel and the ship. When we were deliberating, it was very difficult to say we deliberate on one convention and leave another one because each one of them was contributing to the other. When we were doing the one on protection of seafarers, we were addressing the issue of how they will disembark from their ships once they dock in a foreign country and enter into those countries. We had to provide for that special identity document. What kind of ship were they going to go to? I assure them that we also saw that. We looked at it so that it is an ecosystem. Conventions one, two, three and four are an ecosystem. They work for each other. They are very logical. If I were to bring one here, Members may not have understood where we were going. Looking at Convention one, what about Convention Five and how will it fit into it? I assure the House that it is a logical way of doing things, but I agree with Members.

Finally, I announce to millions of Kenyans who are looking for those jobs that there we go. Protection has been given by the House. Let them go and apply for the jobs.

Hon. Baya, this is now the beginning of investing in the blue economy. How will we enjoy the blue economy without the vessels, people and training? We have now provided for the training, Hon. Baya. Take advantage of it this weekend now that we are going to elections. Tell your people what we have done. This is a great day for our people.

With those few remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Chairperson, why are you setting the agenda of Hon. Baya for the weekend? He knows what he has to do. The agenda is clear.

(Laughter)

Hon. Members, we shall not put the Question on this Order for now. It will be done in a subsequent Sitting.

(Putting of the Question deferred)

Next Order!

ADOPTION OF REPORT ON PETITION REGARDING RECOGNITION
OF THE PEMBA PEOPLE AS KENYAN CITIZENS

The Temporary Deputy Speaker (Hon. Patrick Mariru): The Chairperson of the Departmental Committee on Administration and National Security. Hon. Mwathi, is it you?

Hon. Peter Mwathi (Limuru, JP): Hon. Temporary Deputy Speaker, I am the Chairperson.

The Temporary Deputy Speaker (Hon. Patrick Mariru): You are the Chairperson, indeed. You have been patient this afternoon.

Hon. Peter Mwathi (Limuru, JP): I had to be. I am always patient.

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

THAT, this House adopts the Report of the Departmental Committee on Administration and National Security on its consideration of a Public Petition regarding recognition of the Pemba people of Kenya as citizens of the Republic of Kenya, laid of the Table of the House on Wednesday, 11th August 2021.

Hon. Temporary Deputy Speaker, Public Petition No. 41 of 2020 regarding recognition of the Pemba people of Kenya as citizens of the Republic of Kenya was submitted to the National Assembly on Thursday, 19th November 2020 by Hon. Owen Baya, on behalf of the Pemba people of Kenya. The Petition was subsequently committed to the Departmental Committee on Administration and National Security for consideration and reporting to the House, pursuant to Standing Order No.227 (1).

The petitioners averred that failure by the Government of the Republic of Kenya to recognise the Pemba people as citizens continues to cause great anguish and inconvenience to the community since they are unable to register their children at birth, they miss out on education, they miss out on health and other social services, they are excluded from employment, they are unable to register businesses or open bank accounts or even register phone sim cards, they have unrecognised marriages, some are unable to register assets for failing to possess identity cards and for allegedly being in Kenya illegally.

The petitioners averred that the continued delay in the recognition of stateless communities in Kenya such as the Pemba community by the authorities was a clear breach and violation of both the Constitution and statutory provisions on citizenship in Kenya. Those who made submissions before the Committee on the Petition were Hon. Owen Baya on behalf of the Pemba people of Kenya, Mr. Omar Mohamed Salim, Mr. Omar Mohamed, Ms. Rehema Abubakar, Mr. Omar Ali

Omar, Mr. Abubakar Hasham, Ms. Habiba Salim, Juma Yusuf and Ms. Samira Omar Hamisi from the community. Their submissions were key in determination of the Committee's recommendations.

Arising from the submissions by the petitioners and stakeholders, the Committee observed:

- (a) The Pemba people are one of the indigenous people found in the Coast. A majority of them were born in Kilifi and Kwale and had integrated with other tribes that are found in the Coast.
- (b) That, although there exists Pemba people who are inhabitants of a village known as Pemba in Tanzania, the Pemba people in the Coast are Kenyan citizens by birth.
- (c) The Pemba people lack registration and identification documents and this has hindered them from accessing essential Government services, including education, health and employment; and, of course, business opportunities.
- (d) That, despite several efforts by the Pemba people to have them recognised as Kenyan citizens with the recent attempt being in 2015, their efforts have been futile as only the Makonde people have since been recognised as Kenyan citizens and have also been issued with identification documents.
- (e) That, Article 12 of the Constitution which espouses the entitlement of citizens provides that every Kenyan citizen is entitled to rights, privileges and benefits of citizens and a Kenyan passport and any document of registration or identification issued by the State to its citizens.
- (f) That, the Pemba people residing in the Coast are Kenyan citizens by virtue of birth and ought to be recognised as Kenyan citizens and be issued with identification documents in accordance with Article 12 of the Constitution.

Arising from the observations above and the key findings, therefore, the Committee recommends as follows:

- (i) That, the Pemba people from the Coast of Kenya be recognised as an ethnic group in Kenya.
- (ii) That, the Cabinet Secretary in the Ministry of Interior and Coordination of National Government should initiate the process of recognizing the Pemba people as citizens of the Republic of Kenya.
- (iii) That, upon recognition of the Pemba people as citizens of the Republic of Kenya, the Cabinet Secretary in the Ministry of Interior and Coordination of National Government does ensure that the Pemba people are issued with the relevant identification documents in accordance with the Constitution and the relevant statutes.

I beg to move and request Hon. Kaluma to second. I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Opondo.

Hon. Peter Kaluma (Homa Bay Town, ODM): I thank you, Hon. Temporary Deputy Speaker.

When the Departmental Committee on Administration and National Security visited the Coast with the facilitation of Parliament over the matter of this Petition, we underwent the most painful and heart-wrenching hearing. The Pemba community in Kenya stretches across the Coast, from Kilifi through to Kwale. With the facilitation of Parliament, we met the Pemba population both in Kilifi and Kwale. The point I want to make is that even amongst the oldest of them, there were Kenyans born in this country whose grandfathers were here. So, we are not talking of people

seeking to be recognised as citizens by registration, but people who are not only born here but, their fathers, grandfathers and great grandfathers were born here.

We want to note that when you look across the country, we recently recognised the Makonde as a community. The Makonde community who were recognised by our Government a short while back came into this country well after the Pemba population. The Shona who the President graciously recognised as citizens of this country a short while ago will be celebrating that recognition within the week. I hear it could be tomorrow. Even those Shona people came to the country well after this group of Kenyans we are talking about.

The fact that those people are being denied recognition as citizenship means that they are not benefiting from those rights accorded to all citizens by Article 12 of the Constitution. Painfully, it includes the right to economic participation and even to employment. Being not recognised as citizens means for them to work, they have to seek work permits. If you are to seek work permits, you need to confirm you are from another country. These are people who have no country to say they are coming from because they were born here, with their great grandparents. It is a very difficult situation.

These are people, Hon. Temporary Deputy Speaker and Hon. Members, who are largely surviving on the grace of accommodation. We were told of tales of where people who are fellow citizens, the Pemba of the Coast, have begotten children with fellow Pemba of fellow Kenyan citizens. When their children want to register as citizens, they pretend their wives are married to other Kenyans who are recognised as citizens. They are very painful things; things which are so indignifying and dehumanizing. You can imagine we are subjecting a Kenyan population to this - people who are not just Kenyans, but Kenyans by birth.

So, I wanted to say that there appears to have been confusion between the Pemba of Kenya and the Pemba of Tanzania who the Chairperson can confirm lives in a village and an island across Tanzania called Pemba. Those are pure Kenyans but they are of that ethnic origin. Investigations by the Committee, as confirmed by our good Chairperson, confirm that those are people who are not to be accorded the recognition as citizens out of grace but, out of right so that they can get their identification documents and participate in constituting our governance. We are approaching elections next year. Those are people who even their grandfathers did not participate in elections and yet, they are people who are very old. We met quite a large population of them. They opened themselves to clear identification. These are people who are willing even to show you the graves of their parents, great grandparents and all that.

I want to second this Motion and ask the Hon. Members to support those Kenyans so that they can get the recognition that other Kenyans have and also to ask the Government to move in line with the new policy of our current President - this inclusive idea of recognising everybody so that these recommendations may not only be adopted, but may be put into force by our President before he leaves leadership.

I thank you, Hon. Temporary Deputy Speaker. I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Patrick Mariru): On top of the list is Hon. Odhiambo Akoth.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving this opportunity to support this Motion. I want to thank the Committee for the recommendations that they have given in regard to the Pemba people. If this Motion goes

through, they will become, I believe, the 46th tribe after the Shona, who are also my people from Zimbabwe. It has, in fact, been an injustice that we have people who, to all extents and purposes, have become Kenyanised and then we make them to beg for citizenship. I hope that any other community remaining that we have not recognised would be assimilated and accepted as Kenyans, so that we live together in unity as a people. We should not have a situation where the Constitution recognises people born here as citizens yet we do not recognise them by their lineage.

There is not much that I would want to say about this save for the fact that it is a very noble move. Beyond this, I know the Shona people are celebrating tomorrow at Uhuru Park following their grant of citizenship. I also pray for the other people that are still not recognised and have been in this country for generations. Some are even much older than us and would appear to have more rights than some of us. I do support and thank the Committee for considering the Pemba people.

Thank you.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Ali Fatuma.

Hon. Fatuma Gedi (Wajir CWR, PDR): Thank you, Hon. Temporary Deputy Speaker, for the opportunity. I want to thank my Chair for moving such a wonderful Motion. Equally, I want to thank Hon. Baya for representing his people well. As the Vice-Chair of the Committee, I am really happy to have participated in that meeting. Indeed, it is really sad for such an important community not to benefit from the basic human rights and needs, including children going to school. Mothers cannot access health facilities because they are not registered. Employment and business are not possible. I am sure they are a hardworking community who want to contribute to the economy of this country. Unfortunately, they cannot do that because of lack of registration. Even registering sim cards so that they can communicate with their people is also a challenge.

Unrecognised marriage is very key, especially for women. Every woman wants to have a stable marriage recognised in the community. These issues are really sad. They disadvantage the Pemba community. I would like the House to support recommendations of this Committee. Recently, our good Government recognised the Shona and Makonde people. I think this will be the 46th tribe of the Republic of Kenya, for which I want to thank His Excellency the President. He is one person who cares for the rights of each and every citizen of this country.

Hon. Owen Baya, who belongs to the ODM party, I think the good people who have elected you have something to celebrate today. Even though you have moved to ‘Uganda Development Agenda’, we want to tell you, please come back to the party that believes in social justice, to the party that cares about the ordinary *wananchi*, to the party that has been fighting injustice. That is why this House has today stood with you, Hon. Owen Baya. I am proud of you. I want to encourage you to know where you belong. I urge Members to support recommendations of the Committee. Let us also identify other communities that have similar problems. They must be registered to benefit from basic human rights.

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

(Applause)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Kaunya.

Hon. Oku Kaunya (Teso North, ANC): Thank you very much, Hon. Temporary Deputy Speaker, for according me this opportunity. I beg to support this Report presented by the Chairman of the Departmental Committee on Administration and National Security. I participated in the fact-finding mission on this public petition by Hon. Owen Baya. We listened to people who have been denied a chance in terms of what the law requires of every Kenyan. Every Kenyan should have a

right to enjoy economic and political freedoms. When we visited Kwale and Kilifi, we found people as old as 80 years who were born there and whose fathers and grandfathers were born but they do not have identity cards.

The citizenship of the Pemba people is long overdue. Most members of the community are not able to register and get IDs and yet they were born there. Testimony from the community indicated that if they want to enjoy rights as Kenyans, they have to pretend to be other communities. For example, in Kwale there were those who would identify themselves as Digo and yet they are not. This is to enable them to acquire IDs. In Kilifi, they would identify themselves as Giriama in order to enjoy the rights every other Kenyan enjoys.

Based on the recommendations of the Committee, we support recognition of the Pemba people. We urge the Cabinet Secretary for Interior and Coordination of National Government to initiate the process immediately so that the Pemba people can participate, especially in the forthcoming election as Pemba people.

(Applause)

We also request that after the recognition process, the Ministry should provide identity cards so that they can vote and participate in the economic life in this country. As mentioned by other Members, there are a number of other communities where that identification is required and it is necessary to ensure that every Kenyan community is recognised and they participate fully in the development of this country.

Hon. Temporary Deputy Speaker, I wish to support and urge other Members of this House to support the rights of these communities that were not recognised.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Baya.

Hon. Owen Baya (Kilifi North, ODM): Hon. Temporary Deputy Speaker, I am a very happy person today courtesy of the Committee. I want to thank the Chair and the Members for a good job well done. I am happy that they lived through the process. They did not just listen but they actually lived the lives of the Pemba people within that short time that they were with them. They heard tragic stories and the torture that these Kenyans have gone through just because there is another community by the name Pemba in Tanzania. Today, the Pemba in Kenya cannot be recognised just because there is a town in Tanzania called Pemba. These countries have communities that live across. The Maasai are in Kenya and in Tanzania but the Maasai in Kenya are recognised. This country has people called the Chagga in Taveta. There are Chagga in Tanzania and there are Chagga in Kenya but the Chagga in Kenya are recognised. However, the Pemba people are not recognised just because there is another community across. This is an injustice that has been meted on these people for many years. However, I want to thank the Committee for the recommendations they have made; that the Pemba are indeed Kenyans like any other Kenyan.

The Pemba are part of the Swahili nation, who are recognised in this country. The Jomvu and the Wachangamwe are also recognised. The Pemba are just part of that bigger Swahili nation but they were singled out because there is another group across in Tanzania called the Pemba. They have lived here, suffered and cannot participate in any economic activity. Today, schools in my constituency that host the Pemba children do not get National Education Management Information System (NEMIS) money because these children cannot be registered. Therefore, if these Pemba children in those schools cannot be registered in the NEMIS because they lack birth certificates and their parents do not have any document, then it means there will be less money in

these schools. Right now, because of the requirement of a birth certificate for the registration of Kenya Certificate of Primary Education (KCPE), these children cannot even do a Standard Eight examination because they do not have a birth certificate.

Today, you cannot officiate a marriage for a Pemba because they do not have any documentation. They cannot enter into a legal marriage because it is required that you produce an identity card or identification. The marriages these Pemas are getting into, you can imagine the agony of a woman getting married to a man but has no right to that marriage because she lacks anything that really identifies her as married to that person. These are real stories and their lives are hard. I want to thank the Committee for the good job. I want to believe that the Cabinet Secretary will act within the shortest time possible. I hope that during this *Mashujaa* Day celebrations, a pronouncement will be made that the Pemba are actually Kenyans. The process of giving them identification documents should start now so that they can live normal lives.

There is a Pemba man who owned a boat and tried to sell it. He did not have identification and therefore he asked someone else to enter into an agreement on his behalf and the person buying and an agreement was drawn. This person could not receive the money because he did not have a bank account and the money was put in the bank account of someone else. When this person got the money, he disappeared and this Pemba could not even go to a police station to report this matter because he would be arrested as an alien.

That is how sad it gets. This person lost the boat and the money because he could not report the matter to the police. The Pemas in this country cannot even seek justice. They cannot even go to a police station because they will be arrested as aliens. They cannot go to court for any injustice. That is the life of the Pemba. I want to thank the Committee for a good job well done and that the Pemba will get justice. They are Kenyans and should get documentation that shows them that this is their birthright.

Hon. Temporary Deputy Speaker, statelessness is the worst form of infringement on human rights. The Pemba are described as stateless. It is the worst infringement....

(Microphone went off)

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Baya, because you are one of the originators of the public Petition on this matter, I will definitely add you three minutes.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon, Temporary Deputy Speaker. I want to dwell on this subject called statelessness because we are looking at people who cannot be recognised. They cannot go to Tanzania because they are not Tanzanians and cannot be recognised in Kenya because they are not Kenyans. That is called statelessness. If you are stateless, you do not have any rights and all your human rights collapse because you have no rights whatsoever. First, you do not have a right to an identity or to any country or nation. It is actually the worst thing that this country must fight. There are many communities in this country that are described as stateless. They are stateless not because of their mistake but because they were born in this country. Their great grandfathers were born here and because someone has refused to give them accord and identify them as Kenyans, they become stateless. The greatest injustice is to be declared stateless. The Pemas are described as stateless. I do not know what we will do but there are many Kenyans here that are described as stateless and this is just one of the many cases that probably need to pass through this Parliament.

As Parliament we need to rise above that and not allow any other person in this country to be called stateless because it is actually collapsing all the human rights of an individual. I want to

thank the Chairman and his Committee. I saw them in Kilifi including Hon. Kaluma. They listened to those sad stories and empathised with the Pemba people. They will now be recognised as Kenyans and we hope that as we move forward, we will come and celebrate the day they will get their papers. For the first time in their lives, they will belong to a state called Kenya, a country they love very much.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Rosa Buyu.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. First, I would like to say that I am a Member of the Committee that dealt with this issue of the Pemba people. I truly and honestly want to congratulate the Committee because of the effort they made to visit and to have a discussion with the people of Pemba so that they could delve and know what these people feel. The Report of the Committee is the beginning of a glimmer of hope for people who have felt undignified, isolated and those who have felt less than anybody else in this country. When you are stateless, like it has been said by the former Speaker, you are denied the opportunity to participate meaningfully in any aspect of the society. When they participate economically, they do so without motivation. This is because you know that when it comes to enjoying the proceeds of your economic sweat, you are less likely to enjoy it like the rest of the Kenyans.

Hon. Temporary Deputy Speaker, we are currently on the campaign mood and will be going into elections next year but they mean nothing to the people of Pemba. This is because they have always been denied the chance to choose or show preference to elect anyone to represent them in any of the segments of our political sphere.

There is nothing worse than feeling that you belong somewhere yet you do not actually belong there. I speak with pride as a Kenyan today when I see how the Shona people were treated. They are people who have been in Kenya for a long time. They had been considered stateless but around November last year, they were granted citizenship and they are now smiling with joy. I know that the people of Pemba will soon join the Shona in that celebration. The Committee is currently dealing with the Nubian situation. These are people who have been in this country for a long time. They have been denied identity and the feeling of being Kenyan. The Nubians are found around Kibos area and Kaloleni Estate in Kisumu. They are also found in Kibra in Nairobi. These are people who have been in Kenya for a long time but have been denied the opportunity to have national identification as Kenyans. I thank the Committee and its Chairman for having given direction; that, the Committee needs to deal with the issue of the Pemba people because Kenya is a county that supports and protects human rights.

I support the Report once again.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Before we go to Hon. Manje, I request the Members who do not have face masks to get some. I can tell that some Members have dropped their masks. Please, there are those two Members who are consulting. They are very close to each other and yet they do not have masks. Hon. Fatuma Gedi, please, put on your masks. You are very close to that Member. You can still continue consulting, but with your masks on.

Let us have Hon. Manje.

Hon. Joseph Manje (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker. Let me also join my colleagues in supporting the Petition to recognise the Pemba people as those of this country. This is not a very big group; they are about 2000, if you go to the upper extreme. They demonstrated by moving from Kilifi to Nairobi to see the President together with the Makonde and others. The Shona and Makonde people have since been recognised as Kenyans. It

is good to also recognise the Pemba people as part of the larger Kenyan community. At the end of the day, they will be more productive if they are recognised. They will contribute to the economy and operate officially like any other Kenyan.

However, we should know that we have a country to protect. We should come up with laws to guard us from anybody coming into the country and claiming to be Kenyan. I am not saying so because of this particular case. We should have put a cut line at Independence and say the people who were in the country after Independence should be given identity cards and recognised as Kenyans. This is because people of the world move from one place to another. You might have a group of Kenyans moving to Uganda or Tanzania and after some 20 to 30 years, they will start looking for recognition. There ought to have been a cut line. If you want to go to another country, there are laid down rules and regulations. For example, you cannot be recognised as a citizen of that particular country and get documentation that will enable you to be economically viable in that particular country.

I know it is very humiliating for a member of the society to live without an identity card because definitely you cannot operate effectively. You cannot even open a bank account. For example, in my constituency of Kajiado North, where we have people from other countries such as Congolese and Rwandese they mingle with others but they cannot have even a mobile phone sim card to operate an M-Pesa account. So, they rely on other members of the society. It is good to recognise the Pemba people of Kenya as Kenyans but we also have to consider other aliens for issuance of alien identity cards so that they can start operating officially in this country.

You can trace them more if they are recognised in the system instead of staying aside the way they normally do. So, this group is not large. I think they are found in only two counties in Coast, namely; Kwale and Kilifi. This is a number which will not change the dynamics of this country. Even if they are put together, they cannot form a constituency. You know some people fear a shift in the dynamics of politics when a certain group of people occupy a certain area. I think, politically, they cannot change anything but in case they change the dynamics, it is acceptable. There is the issue of the economy of these people. Since there is a small Island in Tanzania called Pemba, we try to associate these people with Tanzanians. That is what Hon. Baya was talking about.

So, it is better to recognise them today instead of agitating to recognise them 20 years to come because by then their number will have doubled. Kenya is an economic powerhouse in this region and we expect many people to move to Kenya to get that document. We have really worked hard to make this country a viable country.

I support the Petition.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Ong'era Janet.

Hon. (Ms.) Janet Ong'era (Kisii CWR, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this debate.

At the outset, I congratulate the petitioner, Hon. Baya and the Committee for moving with speed to give us a very deserving Report.

Many of you may not know but the Right Hon. Raila Amollo Odinga is the real champion of the Pemba people. He has been fighting out there to ensure that the rights of the people of Pemba are recognised as people of Kenya. I thank the Committee for bringing a Report which articulates the desires that he has always had.

There is nothing as bad as being stateless and not participating in the political, economic and social processes of a country where you have been born and raised. You cannot articulate that because you do not even have the tools that can enable you to be a citizen. It is really sad that these

people, who were born in Kenya within the Coast Region, have never been recognised as citizens of Kenya. I feel sad for the many communities that are in this country, particularly the Nubians. In my Kisii County, I have a sizeable number of Nubians. They are close to 500, and they live in a stateless world. They cannot participate politically. They cannot even vote for me yet I represent them. These people have been born in this country.

Hon. Temporary Deputy Speaker, I feel very happy for the Pemba people. Through this Report, I hope Parliament will pass a speedy resolution so that we can ensure they are recognised as Kenyan citizens, just like the Shona people were recognised last year. My sister, Hon. Esther Passaris, has invited us to celebrate with the Shona people tomorrow. The Shona were recognised as citizens of Kenya during last year's *Mashujaa Day*.

Lastly, the saddest thing is when people are unable to participate in a political process. I can imagine what the Pemba people of Kenya went through as they grew up. They would want to elect a particular leader but they cannot participate. So, they just hang in there.

Secondly, what saddens me is the question of bursaries. We have the Pemba people whose children cannot get bursaries. Hon. Baya will agree with me that he cannot give them bursaries because their parents are not known by law. If you are stateless, I understand as a lawyer that you do not exist. You are nowhere in the world yet you are already a citizen of that country. I will be very happy to see the Pemba people of Kenya become citizens of Kenya to participate in the political, economic and social processes of this country. So, they can also enjoy the fruits we have enjoyed in this country.

Hon. Temporary Deputy Speaker, with that I beg to support.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Moroto.

Hon. Samuel Moroto (Kapenguria, JP): Thank you, Hon. Temporary Deputy Speaker. I will be brief. I want to start by thanking this Committee and the petitioner on behalf of the Pemba people. This is the first time I am seeing a very effective Committee because I have been here for long. Sometimes when you ask a Question or raise a petition a Committee can be invited to investigate in a certain place. I have done this about four times and when the Committee goes to that place, they get negative information which cannot help the people on the ground.

This has happened for the first time and I want to congratulate the new Chair and his team. Sincerely, we need to fear God because we are representing people here. We were sent to this place by people and every Kenyan should enjoy Kenya. The Pemba people have suffered for a very long time. I am a teacher by profession and unionist. Sometimes when we visited them, they said they had no say, even their children lack right to education and other rights.

As a House let us begin from here and ensure these people get their rights. Also, a Member from Nyanza has said there are other Kenyans suffering here. They were born here their grandparents have died here and they do not know any other place. This is where they belong. We are still putting them aside as people say some groups are marginalised like the pastoralists and others. We need to learn from this Committee and do more through research to help Kenyans.

Hon. Temporary Deputy Speaker, I want to end there and congratulate this Committee.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Passaris.

Hon. (Ms.) Esther Passaris (Nairobi CWR, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to speak to this Report by the Departmental Committee on Administration and National Security. I think Kenya is leading by example in the whole continent and indeed, the whole world. Africa was colonised and with colonisation came mobility and movement of people. So, people moved from different parts of the continent like we had Asians brought to this country to help in building the railway.

As a country, we started with the Nubian Community, went to the Makonde, recently the Shona and now these Report on the Pemba and also the British overseas citizens. Statelessness is against human rights because if you are stateless, it means you do not belong. It is like you have no aboard. You cannot even travel outside the country because you have no ID or passport. The British recognised this when they brought many Asians in this country who were not Kenyans and gave them British overseas citizenship. This means they were not British citizens but they got a passport and would travel. If they wanted to go to the United Kingdom, they had to get a visa which also proved very difficult.

We have to commend our President and the Ministry of Interior and Coordination of National Government for working at such speed. Tomorrow we will be celebrating and issuing citizenship to the majority of the Shona Community that was being processed. I also want to commend the Directorate of Immigration Services because this is a lot of work. At the same time while we do this, we have heard complaints from the Nubian Community that their vetting process has taken a very long time. So, we have to look into this and ensure we do not take a long time to vet them. This is because some of them are actually struggling, they cannot go for further education and their children cannot join the National Hospital Insurance Fund (NHIF). Now, with *Huduma Namba* if you are in a stateless position, you cannot have a *Huduma* card, get a driving licence or go to college. It will be so difficult.

Right now, we trade with M-Pesa. When talking to the Shona, they told us how they had businesses and when they set up an M-Pesa shop, they get their neighbour to set it up and then the neighbour takes all their money. If they wanted to buy property or make an investment, they use their neighbours, friends or pastors. Unfortunately, some of them actually suffered fraud from the people they trusted. So, Kenya as a country is leading by example.

I have to say thanks to Hon. Owen for being ODM *damu* even though right now I think he is going through a state of slight confusion. He has actually emulated what *Baba* has as a principle – that every citizen in every part of this country has to feel that this country is theirs, that they have equal opportunity and that they will not only survive but also thrive. We want to ensure that every Kenyan has that opportunity and that Kenyan dream. As *Baba* is going round, he is talking about the Kenyan dream; the Kenyan dream which was lost along the way thanks to bad governance. This is a dream which *Baba* has had...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Passaris! What is it, Hon. Manje?

Hon. Joseph Manje (Kajiado North, JP): Hon. Temporary Deputy Speaker, is the Member in order to campaign for a presidential candidate in the House? Although we know that *Baba* will be the fifth President, is she in order to campaign for him?

The Temporary Deputy Speaker (Hon. Patrick Mariru): Order, Hon. Manje. I thought what she did is what you have just done. It is actually doing what you were saying Hon. Passaris is out of order for doing. But I did not hear her campaign for anyone.

Proceed, Hon. Passaris.

Hon. (Ms.) Esther Passaris (Nairobi CWR, ODM): Hon. Temporary Deputy Speaker, I am very grateful he mentioned that *Baba* will be the fifth President of Kenya. We pray and sincerely hope that Kenyans will see the light. When we talk about the Kenyan dream, it can only be realised if people feel they belong to the country. The only way you can feel that you belong to a country is if the country recognises you from birth to when you are an adult, to when you want to travel and tour the world, to when you want to invest and to when you want to trade. Being stateless does not allow you all those privileges.

So, the Kenyan dream will be denied to any stateless person who lives in this country. It is not their fault. If you are a country that really tries to push the agenda of human rights, we have to recognise that the colonialists did a lot of wrong by basically moving people from all over the continents and bringing them to Kenya and not actually having a remedy. However, as a country, we have the remedy. We are actually ending statelessness in Kenya. I pray that the Pemba people will be next to be recognised and then we also sort out the British overseas and the Nubians in other countries. So, we actually commend the Committee for the good work that they have done and we pray that this country will one day say we have no stateless citizens.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Sophia.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you so much, Hon. Temporary Deputy Speaker, for giving me this chance. First and foremost, I thank the Committee and the petitioner. With my background and experience in human rights, when an issue of human rights comes on board, I feel I should talk about it passionately. When I hear about stateless persons, it pains me a lot because I have seen many people in North Eastern Province who are stateless and who do not have anywhere... They cannot do any transaction or any business. They have had a lot of human rights violations because they are not able to be identified with anyone. They are not citizens and they do not have anything that can prove that they are part of this country.

After the fall of Somalia, there is a huge number of Kenyans who gave the refugees who came over a very good reception. The refugees received the best treatment that most of the Kenyan Community did not. So what happened? You will find 30-year-olds in those camps who are Kenyans and yet they are stateless. They have nothing completely. I have been following this issue of refugees together with Hon. Mohamed Dahir and others. We know the pain we have gone through, seeing thousands and thousands of Kenyans who are stateless in camps. It is very important that the issue of the Pemba people has been brought to this House through a petition. We support the recommendation of the Committee because I feel that it is important. It is important that under our Constitution, there is guaranteed citizenship to any person in this country who was born and brought up here and has their parents here. We cannot say they are not Kenyans. Where should they go to? They cannot go anywhere. When my brother was contributing, he said we have Maasai in Tanzania and Kenya. We have several communities living along our borders. We do not only have Maasais, we have Luhyas, Somalis, Boranas and many other communities living there. Those people we claim are not citizens and are stateless cannot belong to any other country because this is their country. They belong here.

We know there are many people who are conned because they cannot stand for themselves. They cannot transact any business on their own. When they have little money that they want to invest, even their own brothers and sisters con them. It is high time we defended the human rights of individuals who are stateless, yet they are known Kenyans. It is the right of every Kenyan to be honoured and to be given the dignity and the trust so that they can have a belonging and that confidence and trust in their country. It is not only the political processes. When we hear of any person, we believe they want to join us in the political activities. There are more than political issues that affect the communities and those individuals. They are not settled psychologically. They have lost their self-esteem. They cannot take their children to schools and universities. Their children cannot even be employed because their parents have no citizenship. Where will those children go to? They are the ones who are causing problems in this country and getting into illegal activities because they do not belong...

The Temporary Deputy Speaker (Hon. Patrick Mariru): Okay. Your time is gone. Hon. Duale Dahir.

Hon. Mohamed Duale (Dadaab, KANU): Thank you very much, Hon. Temporary Deputy Speaker for giving me this opportunity. I will start by thanking Hon. Baya for bringing up this Petition. I also want to congratulate the Departmental Committee on Administration and National Security for a job well done. We have passed the issue of the Shona Community in this House. Today we are talking about the Pemba people who are also stateless in this country. In Kenya, we have many people who are stateless. When somebody is stateless, basically they have no legal protection and have no access to basic services like education, health, opportunities for business, voting rights and all those kinds of things. Sometimes those people regret their existence.

I know that there is a Petition on this matter but because we are talking about statelessness, it is also applicable in this case. We have refugees who have for over 30 years been hosted in Garissa County. We have three refugee camps. When the refugees first came, the services available in the refugee camps were much better than the services available for the local communities. So, many members of the local communities sought health services, food, shelter and even opportunities for resettlement. In 2006, the Government harmonised the National Bureau of Registration database with the Refugees database. Because the Government of Kenya had taken the biometric data of the refugees living in those camps, the people who were captured as refugees who were Kenyans and who had gone to look for food, when they reached the age of getting identity cards, they were identified as refugees. As leaders of the area, we estimate that out of the 230,000 people in those refugee camps today, about 100,000 of them could be Kenyans who went there to look for services. Those people are captured in the refugee database and have virtually lost their citizenship. They cannot get Kenyan identity cards, they cannot be employed, they cannot travel and they cannot vote. We have a category of people who became stateless because of the circumstances that led them to go to the refugee camps to look for food, shelter and education.

It is very important that as we resolve the issue of the Pemba Community in Kenya – I thank Hon. Baya for a job-well-done – we have to look at such issues. In this country, if you are an adult, and you cannot be identified because you cannot get an identity card, it means you do not exist. What will such people do? They can join criminal gangs like *Al Shabaab* or do anything. In the Dadaab area, many people who are in such a situation cannot even open an M-Pesa business nor have an M-Pesa number. Consequently, they borrow identity cards of locals. They can even be enslaved because the persons hosting them can even decide to say they do not know them. This is the true situation of statelessness which exists in this country because we hosted refugees.

As we deliberate this issue, I hope the issue of Kenyans in the refugee database should be resolved so that we get Kenyans out of the refugee database and close the gaps. If we remove Kenyans, the refugee population will become very small and maybe the international community will get a solution for it.

With those many remarks, I support the Petition.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Mawathe. He has taken leave. We shall have Hon. Hulufu, then have the Chair.

Hon. Hassan Hulufu (Isiolo North, KPP): Thank you very much. I will make a few comments and allow the Chair to reply.

I thank my good friend, Hon. Baya for bringing the Petition to this House. Frankly speaking, all our ethnic groups, including the one I belong to, were not indigenous to Kenya. We came from elsewhere. So, it is unfortunate that it took this long for the Pemba people of Kenya to be recognised as citizens of this country. Without that recognition, which by extension denies them

opportunity to be given birth certificates, identity cards and passports, these people have really suffered. It is a requirement that for any child to join school in Kenya, they must have a birth certificate. Thousands of Pemba children do not access education. For any adult to access Government services in this country, they must have some form of identification – either a national identity card or passport.

These guys, thousands of them with many of them living very far away from the Tanzania border, are perceived to be Tanzanians. They are not. These are people whose grandfathers and great grandfathers have been living along the Coastal strip even during colonial time. They had no issues when the ten-mile Coastal strip was part of Zanzibar. When the ten-mile strip was transferred to our country, they should have automatically acquired Kenyan citizenship. I would like to thank the Committee for the recommendations they have made after observing and listening to various presentations and recommending that the Pemba people be officially recognised as an ethnic group in this republic and for the Ministry of Interior and Coordination of National Government to fast track issuance of relevant documents which can help them enjoy the services other ethnic groups are enjoying.

Those of us who come from areas where our communities live in more than one country have our own issues. In my own constituency, I have thousands of people who have been denied identity cards on perception that probably they are not Kenyans yet they have not stepped outside the Kenyan territory. We are trying to handle this. These are issues that we also need to tackle. We need to remove the issue of additional requirements for some of the communities to acquire these identification documents.

With those few remarks, thank you very much. I support the adoption of this Report.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Chair, you have the Floor.

Hon. Peter Mwathi (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker.

Let me start by saying I thank all Hon. Members. In fact, all those who are inside here have spoken to this matter. More importantly, they did not just speak, they spoke about it very passionately. You will recall, Hon. Temporary Deputy Speaker, that as you were addressing the issue that was before this, we were not this many in number. I checked and was worried that this agenda might not receive the attention that it deserves. But I am very happy that Members were within and they have come. This only goes to say, Hon. Baya, that the matter that you brought in this House is very important. It is dear to all the Members who were here and who have spoken to the matter. So, I want to thank all of them.

Now that we have heard and it is a fact that access to healthcare, access to education, access to employment and access to travel is a problem and that money for NEMIS from schools cannot be apportioned to those students or children who are in school because they are not recognised, I do not know what other kind of pain one would go through that would be more than that. I want to put myself in the shoes of a Pemba, person from Kenya, I do not understand where they draw their dignity from. I do not understand how they feel when they go through what *Mheshimiwa* Baya refers to as “statelessness”. They feel awkward. At one time, Hon. Kaunya said that they are forced to be an appendage of another ethnic group in Kenya. That, while they even do businesses registered as appendages of another group, the Government receives taxes from them and it is not recognising them.

(Applause)

So, it goes without saying that the unanimous decision that we have made on this Floor from all the Members, goes to speak to the issue of having to expedite this matter. I know

Mheshimiwa Baya that you will follow it up. I too as the Chair will follow it up. I will speak to the ears that will care to listen. Even if it is as early as you said, on 20th October 2021, the President can decide that these are our people and it is a gift that he is giving them when we have that national occasion.

(Applause)

Without further ado, I beg to reply with those few remarks and say that it is not only this one that is going to be processed. I heard *Mheshimiwa* Janet speak about the Nubians. I was part of the team that went to Kibra and I can tell you it is in the process. They are undergoing the same problems and any other.

(Applause)

As long as we are here, let us be the people who bring the change that matters to our people and bring dignity to those people who have been downtrodden since Independence.

I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Patrick Mariru): Chair, you speak as the Chair you are on that matter, with conviction and resolution.

Hon. Members, we shall not put the Question now. We shall pend it until another time. We have around four minutes to 7.00 p.m. For the convenience of the House, we shall not proceed with the rest of business.

(Putting of the Question deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Patrick Mariru): Hon. Members, the time being 6.56 p.m., this House stands adjourned until Tuesday, 5th October 2021, at 2.30 p.m.

The House rose at 6.56 p.m.