

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 24th October, 2013

The House met at 2.30 p.m.

[Hon. Speaker (Mr. Muturi) in the Chair]

PRAYERS

PAPER LAID

The following Papers were laid on the Table: -

Report of the Departmental Committee on Justice and Legal Affairs on the Election Finance Campaign Finance Bill, 2013.

(By hon. Chepkong 'a)

STATEMENT

MEASURES TO ADDRESS EVICTION OF SQUATTERS IN THE COUNTRY

Hon. Mwiru: Hon. Speaker, I wish to reply to a Statement which was requested by hon. Rashid Juma Bedzimba which I was supposed to deliver last week. Unfortunately, the hon. Member was not feeling well but I am ready with it today. I am not sure whether the Member is in so that I can reply. I have seen him.

Hon. Speaker, the hon. Member for Kisauni, hon. Rashid Juma Bedzimba, requested for a Statement from the Chairperson of the Departmental Committee on Lands regarding the rampant

cases of squatter evictions especially in Kisauni Constituency, the coastal area and the county in general. The Committee invited the Cabinet Secretary for Land, Housing and Urban Development who appeared before it and addressed the Members' concerns.

Hon. Speaker, the Ministry of Land, Housing and Urban Development has formulated a draft Evictions and Settlement Bill for introduction to this House and it was expected to have been in this House before the end of this month but at this juncture I would like to say that this Bill cannot appear before this House because quite a number of things have held it from being brought to the House. So, I want to promise the House that we shall fast track it so that it is here in mid-November.

Hon. Speaker, in the meantime, the National Land Commission has given directions on evictions from public land and any enactment of the law. In the statement from the Chairman of the Commission issued on 19th June, 2013, in effect he stipulated that no evictions from public land will be allowed against squatters until the Commission gives guidelines on the same and that legal action will be taken against any violation of the directive.

However, hon. Members were also concerned that evictions of squatters from private farms countrywide were ongoing without consideration of the plight of the squatters.

The Committee noted that the evictions were rampant in the coastal area and asked the Cabinet Secretary to prioritize finalization of the evictions and a resettlement Bill in order to fully address the matter. The matter to do with evictions is supposed to be addressed by a Bill which is to be brought before this House. I said that as a Committee we have to participate so that it is brought before us here and we address that matter.

Hon. Bedzimba: Bwana Spika, nimeshukuru kwa majibu yaliyotoka kwa kamati ya ardhi. Ni majibu yanayotia moyo ingawa yamechelewa sana lakini chelewa ufike. Kitu ambacho nitaomba ni kwamba hiyo taarifa ambayo kamati ya ardhi imeifanyia utafiti ipelekwe kwenye kamati ya utekelezaji ili iweze kumsukuma Waziri wa Ardhi ndiposa alete mswada huo kwa haraka na kwa wakati unaofaa ili tuwaokoe mamia ya wananchi wanaokaa kwa hofu kwenye ardhi ya mababu na baba zao. Naomba taarifa hiyo ipelekwe kwenye kamati ya utekelezaji.

Hon. Speaker: Hon. Mwiru! Perhaps, you could use the Dispatch Box. It looks like the technology we inherited was purchased from Guangzhou.

Hon. Mwiru: Bw. Spika namshukuru mhe. Bedzimba kwa kuwa ametambua ile kazi kamati yangu imefanya. Ameomba kwamba tuipelekee kamati ya utekelezaji taarifa yetu. Nafikiri mwenyekiti wa hiyo kamati amesikia hilo na ameipata hiyo taarifa na ataichukulia maanani.

Hon. Bedzimba: Hon. Speaker, I am happy with that response.

Hon. Speaker: The Chairperson, as you know, I have always indicated that we must attach importance to the work done by Committees. If as a House we have to deliver on our respective mandates, we must pay close attention to what the Committees in which we serve churn out.

Therefore, just to remind hon. Amina Abdalla, the Chairperson of the Departmental Committee on Environment and Natural Resources that as usual we start at 2.30 p.m. but you have my leave to table the document that you wish.

Hon. (Ms.) Abdalla: Hon. Speaker, I do apologize for coming in late.

PAPER LAID

The Report of the Departmental Committee on Environment and Natural Resources on Consideration of the Wildlife Conservation and Management Bill, 2013.

(By hon. (Ms.) Abdalla)

Hon. Speaker: Hon. Members on the Report on the Wildlife Conservation (Amendment) Bill, I would encourage Members to obtain copies so that when the Bill comes up for Second Reading, we make useful and insightful contributions. We would want to do a proper Bill. So, please, I would like to encourage every Member to get a copy of the report from the Committee because it helps to guide debate when the Bill comes up for debate in the Second Reading.

Is there any request for a Statement or a response for that matter? The Chairperson of the Departmental Committee on Environment and Natural Resources, there is a Statement on Flooding of Lakes Baringo, Bogoria and Nakuru requested by hon. Ms. Grace Kipchoim.

(Resumption of Statements)

Hon. (Ms.) Abdalla: Thank you, hon. Speaker. Hon. Ms. Grace Jelagat Kipchoim, Member for Baringo South, pursuant to Standing Order No.44(2)(c) requested for a Statement from my Departmental Committee regarding the constant flooding of lakes, for example, Baringo, Bogoria, Nakuru and Victoria. She stated that some of the dwellings including schools, dispensaries and homes were submerged around Lake Baringo and Lake Bogoria. She wanted the Committee to inquire into and find out the position of the relevant Ministry on flooding and the action that has been taken to help the affected persons. In our interaction with the Ministry, they responded as follows:

That the recent flooding of some of the lakes in the country and in particular the areas surrounding Lake Baringo and Lake Bogoria have been as a result of sustained heavy rain during the months of March to August. It is the view of the Ministry that the catchment area around Lake Baringo has experienced increased rainfall during this period resulting into an increase in the water levels in this area.

The Ministry informed the Committee that the areas most affected have experienced partial submerging and this has resulted in the displacement of individuals. The Ministry also provided us with the numbers of those who have been affected.

They have told us that the affected households total 3,782, resulting in a population of 4,068. The reasons given by the Ministry for the flooding are: -

- (i) flash floods from the catchment area due to land degradation;
- (ii) increased rainfall since 2010;
- (iii) possible decreased evaporation rate due to moderately cool temperatures within the area;
- (iv) decreased depth as a result of siltation; and,
- (vi) increased human activity in the flood-prone areas.

Hon. Speaker, it is the view of the Ministry that land degradation in the area has accelerated siltation, which has been considered as a major cause of the lake's expansion. For instance, available records show that at the foot of Tugen Hills, the soil erosion rate is as high as 209 metric tonnes per hectare per year.

In order to control and prevent floods, the Ministry of Environment, Water and Mineral Resources, in collaboration with other stakeholders, has prioritised the following recommended activities: -

(i) all the swampy areas surrounding the lakes be reclaimed and conserved to serve as siltation traps;

(ii) alternative livelihoods be identified for residences bordering the lake and promotion of conservation within the sub-catchment area of Lake Baringo;

(ii) appropriate farming methods be applied in the catchment area; and,

(iv) people settled in the flood-prone areas need to be relocated to higher ground.

Hon. Speaker, in addition to these preventive measures, the following actions have been taken to curb future flooding: -

(i) continuous monitoring of lake levels and river flows in Perkerra, Molo and Endau Rivers, whose output would be used for early warning systems;

(ii) rehabilitation of the automatic water level recorder at AGS2E203 on River Molo;

(iii) finalisation of the Sub-catchment Management Plan developed by Perkerra Water Resource Users Association to address the problems in management of the catchment area;

(iv) implementation of the Molo Water Resource Users Association management plan for Rongai River, which is a tribute to Molo River; and,

(v) an early warning system for floods be established at Kabarnet Sub-Office.

Hon. Speaker, Lake Nakuru has also not been spared, and the roads to the park were inaccessible due to flooding during the period that the Ministry officials went to assess the situation. Once again, it is the issue of the water resource users' management plans that are not being implemented. The Ministry has taken the following measures to avoid the predicament encountered by the persons living around Lakes Bogoria and Baringo: -

(i) continuous monitoring of lake water levels and flooding in Njoro River;

(ii) rehabilitation of the automatic water level recorder at Njoro River; and,

(iii) full implementation of the Sub-catchment Management Plan for Njoro and Tereti Water Users Association and establishment of an early warning system at Naivasha sub-station.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. Grace.

Hon. (Ms.) Kiptui: Thank you, hon. Speaker. I appreciate the answer given by the Committee although it has taken very long to come. So many people have since been displaced.

Hon. Speaker, although I appreciate the answer, I do not want to believe that the flooding has been caused by much rain in the region. The rains are not as much as the rains during the *El*

Nino times. The problem is more than the rains. So, I appreciate their effort but I urge them to do more research on the ground. The water level in Lake Turkana is diminishing while the water levels in Lakes Baringo, Bogoria, Naivasha and Nakuru have risen above their normal levels. The flooding has displaced so many people. So, we want to know what is happening.

Thank you, hon. Speaker.

Hon. Speaker: Very well. I think nothing beyond that arises but I was concerned that you were urging the Committee to do more research. Hon. Amina Abdalla, you have heard that request. You are, again, on the Floor for the second Statement sought by Rachael Nyamai.

ENCROACHMENT OF KITUI SOUTH GAME RESERVE

Hon. (Ms.) Abdalla: Hon. Speaker, the second Statement is pursuant to a request by hon. Rachael Nyamai, the Member for Kitui South Constituency. In her request, the hon. Member urged the Committee to inquire into and report on the following: -

(i) reasons for encroachment of Kitui South National Park by people from Galole Constituency;

(ii) whether any measures have been taken to recover the land, and what the timelines allocated for the exercise are; and,

(iii) the correct location of Polling Station No.19 as determined by the Independent Electoral and Boundaries Commission (IEBC).

Hon. Speaker, the third part of the request does not fall under the mandate of our Committee because our Committee is not responsible for the location of polling stations. It falls under the jurisdiction of the Justice and Legal Affairs Committee. So, our answer will focus on the purported encroachment of Kitui South Game Reserve by residents of Galole Constituency, and not on the issues relating to the placement of polling stations by the IEBC. We have written to your office to that effect.

The response from the Ministry indicates that Kitui South Game Reserve was gazetted through Legal Notice 106---

(Loud consultations)

Hon. Speaker: Order! Order! Hon. Members to my left, including the gracious lady, hon. Gladys Wanga; please, consult in low tones.

Hon. (Ms.) Abdalla: Hon. Speaker, I am hearing more of the consultations between the Leader of Minority Party and the persons lobbying for seats. The Leader of Minority Party needs to be more attentive because he comes from Kitui County. Having said so, I want to read out the Statement as given to our Committee by the Ministry.

Kitui South Game Reserve was gazetted through Legal Notice No.186 on 7th September, 1979. It covers an area of 1,183 square kilometres. The Ministry of Environment, Water and Mineral Resources, through the Kenya Wildlife Service (KWS), had contracted a consultant to undertake a border survey of the reserve in 2007. The Survey Plan FR345/45 indicated that the reserve is under L.R.27798. The same was expected to be adopted by Kitui County Council to enable the processing of the title. This has, however, not happened.

The Ministry, therefore, wishes to confirm that Kitui South Game Reserve has not yet received a valid title deed. The Ministry informed us that they were not aware of encroachment by anybody in the reserve but they were sending a team to confirm whether there was any encroachment. In moving forward the legitimisation of the reserve, the Ministry will send a team to support the County Council of Kitui to acquire ownership documents to the reserve.

Hon. Speaker, as I said earlier, we are not in a position to respond to the matters relating to the IEBC.

Thank you.

Hon. Speaker: Yes, hon. Rachael Nyamai.

Hon. (Ms.) R.K. Nyamai: Thank you, hon. Speaker, Sir, for giving me this opportunity to also respond to the Chair, Departmental Committee on Environment and Natural Resources. First of all, I appreciate that our able Chair took time to find out a few details on when this was gazetted. However, I am shocked by the fact that she says or the Committee says that the investigations have brought out facts--- I am not convinced at all when they say that the reason why they are not taking action is because they do not have legal documents to show that this is a game reserve. I am worried and I feel, first of all, I should have been invited to give the story behind the Statement that I read in this House. That has been repeated in different versions by Members of Parliament from Kitui County.

I would also like to point out that I thought that this matter was not taken seriously because the Statement was received by the hon. Member for Galole who I have pointed in this House has interest. You ruled that the hon. Member for Galole and I be invited so that we can discuss this matter. I feel that the response which we have received today does not satisfy me as a person. I am sure that it is a shock to the people of Kitui South who are aware that the Ministry of Environment, Water and Mineral Resources and the Kenya Wildlife Service (KWS) have been guarding the South Kitui Game Reserve. This is the case that the response that we can get from the Chair is that this is not gazetted as a game reserve. So, what is it?

I would like to point out to this House again that South Kitui Game Reserve is not a matter of Kitui County but it is a concern to the world now because of the fact we have had media reports of terrorists saying that they passed through or they were rested in South Kitui Game Reserve. I am very uncomfortable with what I have received today. I would like to inform the House and you that I am not satisfied and I feel that it is important that this matter is revisited. We did not expect a four-minute Statement in response to this matter. I am not satisfied with this Statement and I would like to revisit the same and possibly extend this Statement to the Departmental Committee on Administration and National Security. This is because as we discuss the Kitui South Game Reserve now, we are discussing the security of this country and international security. This is the place where nobody knows who lives there and there is a lot to be discussed.

Thank you, hon. Speaker, Sir, for giving this chance. I am not comfortable and I feel that I have not been answered.

I also recognize the fact that the second part did not belong to them. I appreciate that they did not take part “b” of the Statement.

Thank you, hon. Speakers, Sir.

Hon. Speaker: I have not interrupted you because I am trying to study whether we should continue with this process any more or not. If your colleague has made a Statement that was given by a Government functionary - whatever their title – and you are unhappy and dissatisfied, where else do we go? Did you say that we should go back to the same Committee? If you are not satisfied after that, where do we go? I am trying to find out whether there is value in this system and the process that we have adopted? Will it be better if we got that Statement from the Leader of Majority Party who will in turn invite the Cabinet Secretary and the other functionary that may come with

him or her? You will be invited to go and express yourself there and we will get a one-page statement expressing what you have agreed.

Hon. Member: On a point of order, hon. Speaker, Sir.

Hon. Speaker: You are out of order. You shout like that and you will be out!

(Laughter)

I have said time and again that this is the National Assembly of Kenya and this is the Chamber. This is not a market place. Hon. Amina Abdalla, what is your response because hon. Nyamai is dissatisfied? I can also see that the Leader of Minority Party is also not happy. I can see very many Members are not satisfied. Do you have a cure for moods?

Hon. (Ms.) Abdalla: Hon. Speaker, Sir, I am actually happy that you have mentioned the fact that you were wondering whether a Chair or a Member of a Committee of this House should be held responsible for the answers they read. We should start with the person asking that Statement and the phrasing of the question. We are just answering based on the questions as phrased by the Member. The Member has said that there has been encroachment in this game reserve. The first basis of knowing whether there is encroachment or not, you have to know how big this area is and where it is. What is the legal basis of that game reserve in term of LR numbers? I am one of those Chairs who disagree that Members ask questions even when it is a question that requires a “Yes” or “No” answer then we call a Cabinet Secretary to discuss that answer. If the Ministry has given the legal status of that game reserve and I have gone to the next level and said that they are not aware but they are dispatching officers to go and check whether the encroachment really happened, is that not fine?

It is the phrasing of the request rather than the form and length of the answer that we give. If you make it clear that there is a boundary dispute between us and Galole Constituency and you want us to deal with that, then that becomes a lands issue. The problem that Chairs encounter is the phrasing of questions and the appropriate places to take some of these answers.

In fact, my Members were reluctant to deal with Question No.2. They said that, that is a boundary issue and it should be taken to the Departmental Committee on Lands and the other one to the IEBC. This is because of the phrasing of the question. Now that the hon. Member has made it an international terrorism and security issue, we can as well send it to the Departmental

Committee on Administration and National Security. However, if we say that the Leader of Majority Party should answer this question, he will have the same answers because of the phrasing of the question.

Hon. Speaker: Perhaps, we will shorten the period the Committees have to take to go to this. I am honestly concerned that Committees are taking a lot of their time having to respond to questions that their colleagues have asked. I have said it time and again that Committees are never behind with reports on the key functions as stipulated in Standing Order No.216(5).

Hon. Nyamai, you are also a Chair of a Departmental Committee. I am sure that you are faced with similar problems when there are issues to do with encroachment, where people have encroached on land and disappeared to some forest or shrub. What do we do and yet they are your colleagues? It will not be possible for the Parliamentary Service Commission (PSC), and I must make this clear, to keep financing trips of Committee Members to go and find out whether a boundary or beacon has been removed. Surely, that is not the work of Parliamentarians. That should be done by the Executive. Or we go and find out whether a roof of a school has been blown off. Again, that is not the work of Parliament. It is for that reason that hon. Nyamai I allowed you time to ventilate in order to bring out the weaknesses in this process.

Even if I allow the Leader of Majority Party to express his dissatisfaction that terrorists or some such like group or criminals are using Kitui or other location, what can hon. Amina Abdalla say? She will just tell you that, that is the best that they have.

Indeed, now that you have brought the issue of security I agree that, that again is under the domain of the Departmental Committee on Administration and National Security. All of us should start to think how best we will articulate issues concerning our constituencies because you must articulate issues concerning your constituency. That is what you were elected to do. At the same time, given the architecture of our governance today, how do we best perform that function which is part of your representation role? How we do this must be the concern of every one of us especially those of you who were elected from constituencies.

Of course, I am lucky in that my constituency is right here. So, I do not have a lot of difficulties because you can always see me. But I know people who have elected you want you to come and articulate issues of concern to them. But how do we best do this, given the presidential system of Government that we have adopted?

Next Order, Leader of Majority Party.

BUSINESS FOR THE WEEK COMMENCING 29TH TO 31ST OCTOBER, 2013

Hon. A.B. Duale: Thank you, hon. Speaker, Sir. Pursuant to Standing Order 44(1)(2), on behalf of the House Business Committee (HBC), I rise to give a Statement regarding the business appearing before the House the week beginning Tuesday 29th October, 2013.

Hon. Speaker, Sir, the HBC met on Tuesday this week at the rise of the House to give priority to the business that will appear before this House this week and next week. Next week on Tuesday, the House will consider the Second Reading of the National Police Service (Amendment) Bill, 2013. Further, in the event that the Special Report on the Public Investments Committee (PIC) on the contract between the National Cereals and Produce Board and M/s Erad Suppliers and General Contract Limited for the supply of white maize and also the Insurance (Motor Vehicle Third Party Risks (Amendment) Bill, 2013 and the Election Campaign Financing Bill, 2013 are not concluded today, then it follows that these Bills will also be put down for Tuesday next week.

Hon. Speaker, Sir, the House will also consider the Second Reading of the following Bills:

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- (i) The Media Council Bill, 2013; and,
- (ii) The Marriage Bill, 2013

Hon. Speaker, I also wish to urge Committees, through you, to keep to the requirements of Standing Order No.127 (4) and (5) regarding the committal of Bills to the Committees. Allow me to remind Committees that after 20 days---

(Loud consultations)

Hon. Speaker, Sir, the consultations are too loud! Hon. Wambayi and Ochieng look like they are doing serious business. The consultations are too loud at the back there. Hon. Wambayi and his colleagues are doing serious business, which is not of interest to this House, together with the honourable senior, Dr. Oburu Odinga, who is my good friend.

Hon. Speaker, Sir, I want to repeat because this is very important. To keep to the requirements of Standing Order No.127 (4) and (5) regarding committal of Bills to the Committees, allow me, hon. Speaker, to remind Committees that, once 20 days have expired after

the First Reading of a Bill, the Second Reading of that Bill may commence, notwithstanding the tabling of the reports of the Committees. Nevertheless, I urge Chairpersons of Committees with respective Bills to table the reports in the House to apprise Members.

Hon. Speaker, Sir, allow me to remind hon. Members about your guidance to the House on Wednesday, 16th October, 2013; that responses to Statements will now be issued on Wednesday Morning and Thursday Afternoon Sittings. Therefore, Members with Statements should be present in the House to make their requests or seek clarifications on the Statements being responded to. That information is contained in the notice paper which is appended to the Order Paper.

Hon. Speaker, Sir, the Committee on Transport, Public Works and Housing has invited the Cabinet Secretary for Transport and Infrastructure to address a *Kamukunji* of all Members on the roadmap towards achieving road safety in our country. The meeting will take place on Tuesday 29th October, 2013 at 10.00 a.m. in the main hall at the County Hall Building. That is the new building.

Finally, hon. Speaker, Sir, the HBC will meet again on Tuesday 29th October, 2013 at the rise of the House to consider business for the rest of the week. Hon. Speaker, Sir, I wish to lay the Statement on the Table of the House.

Thank you.

(Hon. A.B. Duale laid the document on the Table)

Hon. Speaker: Hon. Members, I think it was important that you paid close attention to the last announcement by the Leader of Majority Party, that on Tuesday 29th between the hours of 10.00 a.m. and 12.00 noon, the Cabinet Secretary for Roads and Infrastructure is to address you, hon. Members, on issues to do with road safety in the country. I think it is important that as many of you as possible turn up. That is not going to be in the Chamber. It will be done in County Hall. It is ready for use and we want hon. Members to be using it. We are also designing some other purpose for it as soon as our colleagues in the Senate exit when the Senate Chamber is complete. It is important. Hon. Duale, you do not have to issue short text messages. That announcement should suffice.

Next Order, is there another Statement? There seems to be none. Hon. Members, the business appearing as Order No.8 relates to the Tax Appeals Tribunal Bill, National Assembly Bill No.7 of 2013. As at the time that the House rose yesterday in the Committee, the Question on the

Bill had been proposed and, therefore, today, the business remaining is to put the Question, which I forthwith do.

THE TAX APPEALS TRIBUNAL BILL

THIRD READING

*(Resumption of consideration interrupted in
Committee on 23.10.2013)*

Hon. Langat: Hon. Speaker, Sir, I beg to move that the Tax Appeals Tribunal Bill (National Assembly Bill No.7 of 2013) be now read a Third Time.

Hon. Ichung'wah seconded.

(Question proposed)

(Question put and agreed to)

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

MOTIONS

STATE/PUBLIC OFFICERS TO USE ECONOMY CLASS ON AIR TRAVEL

THAT, aware that the Government has limited financial resources, given the new governance structures that have occasioned devolution of funds; noting that public and State officers constitute a significant part of the Government; cognizant of the fact that the Government has to cater for their official duties, including transport and other facilitation within and outside the country; conscious of the need to reduce the burden on the taxpayer; this House resolves that all State and public officers, including officers of constitutional commissions, county

governments, State corporations and departments, with the exception of the President, Deputy President, the two Speakers of National Parliament and the Chief Justice, using air transport during official trips within the country should travel in economy class, and travel no higher than business class on international flights, unless they meet their own costs for an upgrade; and that this decision takes effect immediately and all respective Accounting Officers take necessary action to implement, without exception.

(Hon. Kamau on 22.10.2013)

(Resumption of Debate interrupted on 23.10.2013)

Hon. Speaker: Members, notwithstanding the many contributions on this Motion by hon. Jamleck Kamau, the Question on it could not be put. Since I was not in the Chamber, I am unable to advance a reason why that did not happen, but I am sure you could guess. I proceed to put the Question.

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

Resolved accordingly:

THAT, aware that the Government has limited financial resources; given the new governance structures that have occasioned devolution of funds; noting that public and State officers constitute a significant part of the Government; cognizant of the fact that the Government has to cater for their official duties, including transport and other facilitation within and outside the country; conscious of the need to reduce the burden on the taxpayer, this House resolves that all State and public officers, including officers of constitutional commissions, county governments, State corporations and departments with the exception of the President, Deputy President, the two Speakers of the National Parliament, the two Deputy Speakers of the National Parliament, the Chief Justice and the Deputy Chief

Justice using air transport during official trips within the country should travel Economy Class and travel no higher than business class on international flights unless they meet their own cost for an upgrade, and that this decision takes effect immediately and all Accounting Officers take necessary action to implement that exception.

APPOINTMENT OF MEMBERS TO PAN-AFRICAN PARLIAMENT

THAT, pursuant to Article 5 of the Protocol to the Treaty establishing the African Economic Community and relating to the Pan-African Parliament, this House concurs with the resolution of the Senate made on Tuesday, 30th July, 2013 approving the appointment of the following Members of Parliament to the Pan-African Parliament: -

1. The Hon. Zakayo K. Cheruiyot, MP
2. The Hon. Rachael Wambui Shebesh, MP
3. The Hon. Millie Grace Akoth Odhiambo-Mabona, MP
4. The Hon. Sen. Kipchumba Murkomen, MP
5. The Hon. Sen. Janet Ong'era, MP

(Hon. A.B. Duale on 25.9.2013)

(Resumption of Debate interrupted on 25.9.2013)

Hon. Members, business on Order No.10 is Appointment of Members to the Pan-African Parliament (PAP) by the Leader of Majority Party. He had already moved it; it was seconded and debate on it had commenced until it was temporarily withdrawn. There is a balance of two hours and 28 minutes. The PAP began its sittings this week. All other self-governing and self-respecting countries in the continent had their representatives sworn in. The great Republic of Kenya was conspicuously absent for the simple reason that Members of this House were unable to pass this Motion. I am informed that, that Parliament will be sitting for no more than one week after which it will proceed on recess, but committees of that Parliament will be formed. It will not sit again until the month of May, 2014. So, the onus is on the Members of this House to take a conscious

decision whether they want the Republic of Kenya to be represented in the PAP now or some other time after the month of May next year. The Motion is open for debate. Any Member is at liberty to contribute. I hope the Members who have placed requests are contributing to this Motion, so that once I begin applying the rules, you do not start talking about some other different business. Hon. Onyonka.

Hon. Onyonka: Thank you, hon. Speaker, Sir, for giving me the opportunity to contribute on this very important Motion. The feeling I have is that once again, we are always buying time and delaying very critical issues and matters like this where we are supposed to select, nominate and allow our Members to go and participate in the PAP.

The truth is that Kenya as a country has an agenda as we speak. We believe that, that agenda should be articulated at the PAP. For us not to have our Members represent us at the PAP is very wrong. My request to my colleagues in this House is, like you have mentioned frequently, we need to take this House seriously. I know that sometimes we are held up over time and sometimes we are not ready. We need to start taking our affairs in this House very seriously.

Two, the list which has been presented here, I am sure many of my colleagues in this House may not be happy with it. I would like to suggest that we agree amicably as friends. We should look at all the other issues which we need to take into consideration like gender, geographical distribution of the slots and if need be, any marginalisation which would lead us into correcting that situation. Even when I support this Motion and hope that we will immediately send some Members from this House to the PAP, we need to do it diligently, quickly, effectively and fairly, so that we can then continue with the normal business of the House and the normal business of the PAP can continue.

With those many words, I support.

Hon. Kang'ata: Thank you, hon. Speaker, Sir. I rise to raise some issues. I have realised one thing in this National Assembly that it appears that we have forgotten one category of vulnerable groups. When you look at the Constitution, it defines vulnerable groups to comprise of one, gender, two, people living with disability and also the youth. When it comes to appointments, the youths are not being recognised. When you look at this list, there is no youth from the National Assembly. I have realised we are very vulnerable and marginalised.

So, in my own opinion, it is time for us young people to rise and seize this occasion. It is now our moment to rise and say no to being locked out of positions. It is time for the youth of this country to rise and seek their rightful place in history.

(Laughter)

Hon. Speaker: Hon. Irungu Kang'ata, you are addressing your colleagues in the National Assembly Chamber and not in a public rally somewhere in Murang'a.

Hon. Kang'ata: Thank you, hon. Speaker but the point I am trying to make is---

Hon. Speaker: Do not be agitated. Just make the point without those gestures.

(Laughter)

Hon. Kang'ata: Thank you, hon. Speaker. I am just manifesting the bitterness of the youth of this country but point taken.

Well, number one, we as members of the Jubilee Coalition have never been called to a meeting to whip us to support this list, to the best of my knowledge. If we were called, I would have raised the representation of young people.

Number two, the other time there was a list that was presented to this House and it was rejected on the basis that there was no fair representation of the youth. So, it is my opinion that since this list does not have a youth from the National Assembly, it ought to be rejected.

Hon. Speaker, another point why I am of the view that we should consider rejecting this list is because---

Hon. Ichung'wah: On a point of order, hon. Speaker. I really want you to direct the House as to whether hon. Kang'ata is in order to be bringing partisan and party politics on the Floor of this House and the names we are considering are not necessarily on the basis of the politics in and out of the Jubilee Coalition. We should consider these names on merit as to whether the hon. Members of this House warrant holding those positions and we should not be informed of the politics that hon. Kang'ata is alluding to. I do not know who wants to convene the Jubilee Coalition to agree or to whip. He should have done that if he was in a capacity to convene such a meeting.

Hon. Speaker: Well, he is at liberty to express himself on what he thinks about the list but also just to guide the hon. Members, I do not have a vote in this matter. I have no preference at all. Whoever you choose to take to the Pan African Parliament will be a Member of Parliament in the National Assembly and in the Senate of Kenya. So, as far as I am concerned, whoever you take from the two Houses will be representing Kenya. That is the long and short of it but remember you must make a decision today. Either we do not have Members in the PAP or we have Members. Whichever way, you must make up your mind on this.

Proceed, hon. Kang'ata.

Hon. Kang'ata: Thank you, hon. Speaker. Another reason why I am opposed to this list is because we should look at the nature of the functions of this PAP and, therefore, we take into account the interests of this country. One of the key considerations I would take is the issue to do with marginalised counties. We should always take into account that this country has so many marginalised counties. So, therefore, when we are picking names, we look at the marginalised counties. We have, for instance, people from Samburu, North Eastern, Murang'a County – which is a marginalised county.

(Laughter)

So, the point is---

Hon. Speaker: Hon. Kang'ata, your colleague hon. Muthomi Njuki is on a point of order.

Hon. Njuki: On a point of order, hon. Speaker.

Hon. (Ms.) Nyasuna: On a point of order, hon. Speaker.

Hon. Speaker: It is not possible that two Members can speak at the same time. Hon. Gladys Wanga, that is not a very comfortable way of a Member operating in the Chamber. Yes proceed.

Hon. Njuki: Thank you, hon. Speaker. Even as hon. Kang'ata really is agitated about the youth and Murang'a County, I want to seek your guidance on the duration you have given; that we have to have these names nominated today or never. I want to seek your guidance whether it is possible to amend this list. Do we have to either support or reject it as it is? I seek your guidance.

Hon. Speaker: Hon. Muthomi Njuki, if you look at your Standing Orders correctly, any Motion before the House is minimal to treatment in all the ways provided for therein including

proposing amendments and further amendments. So, I do not have to give guidance on that because it is your property. Hon. Members, it is a Motion just like a Bill. So, you can proceed in whichever way you wish to. Hon. Irungu Kang'ata, proceed.

Hon. Kang'ata: Thank you, hon. Speaker, Sir. The concept of regional balance is captured in our Constitution and this country must adhere to it. The concept of youth is a concept that is also captured in this Constitution.

Hon. Speaker: Hon. Irungu, do not repeat yourself. I am told by some quarters that you trained in law. Avoid being repetitive. Unless you trained in something else, then I will now tell you that it is not permissible to be repetitive.

Hon. Kang'ata: Thank you, hon. Speaker. So, another reason why I am opposed to this list is because I feel it is high time, in my own opinion---

Hon. K.K. Kinyanjui: On a point of order, hon. Speaker. I am rising on a point of order because hon. Kang'ata is misleading this House, bearing in mind that we have got Jamleck Kamau and Sabina Chege from Murang'a County. So, he is totally misleading the House and wasting its time. It is high time we moved ahead and made sure that Kenya is placed where it is supposed to be in our region. Thank you.

(Applause)

Hon. Speaker: Proceed.

Hon. Kang'ata: Hon. Speaker, the point is that we feel that we are opposing this list. We feel it is not representative and we feel it is time the youth of this country took their rightful place by being given better slots. I oppose.

Hon. Speaker: Hon. John Mati Munuve.

Hon. Mati: Thank you, hon. Speaker, Sir. I do not want to apologise on behalf of my team but I think we have failed as a country in the fact that Kenya is a great country. We are regarded by all our neighbours and the continent as a leader and for us to be talking about our membership today when the other countries have already forwarded their Members, it is a bit embarrassing. I would beseech my brothers and sisters – the Members of Parliament – to expedite and make this decision.

Hon. Speaker, Sir, it is only about two months ago that there was a speakers' conference in the PAP and I happened to have been in South Africa, thanks to your good grace that I was there. So, on the problems that we are going through as a country, I feel that we need to very quickly expedite and finish with the matter so that Kenya can take its rightful place in the PAP as quickly as possible. We have issues that need to move, from the African Heads of State agenda that was there last month that needs to go to the PAP for legislation and many others. If we do not get our people and the right quality of people there that can actually legislate at that level, we will be making a big mistake. I beg to basically urge my colleagues to expedite and make that decision but take good and capable men and women who can represent and speak for this great nation.

Thank you, hon. Speaker, Sir.

Hon. Gikaria: Thank you, hon. Speaker. Going by your guidance, this is a great nation. Of course, we have always taken the lead in most of the things we do in this region. As the hon. Member has said, it is embarrassing that other countries have given up their membership. If we allow our Members to be excluded, we will be doing a lot of disservice to this country. There are so many questions we might want to ask concerning this list. However, if we continue wanting everybody--- I would not want to say that the youth are not involved. This is because I want to believe that Senator Murkomen is a youth and he can ably represent this country.

The list that we have been given, in my thinking, consists of able Members of Parliament who can represent this country well. It is good sometimes to have experience. Taking young first timers to a place without mixing them with those who have been there would be a great disservice. Nakuru County has a representative. That is why I support this list. In this Parliament, Nakuru County has always been left out. Now we have hon. Zakayo Cheruiyot as a representative. Of course, we feel represented. The list is inclusive---

Hon. Speaker: There is a point of order by hon. Pukose.

Hon. (Dr.) Pukose: Hon. Speaker, if I heard the Member rightly, he said that getting first timers or inexperienced Members is a disservice to this country. I think he should withdraw the remark because hon. Kipchumba Murkomen is also a first time Senator and that is not acceptable.

Hon. Speaker: Hon. Pukose that is just a point of argument. There is nothing to be withdrawn. He is entitled to say what he thinks. You are also entitled to actually say that we should carry only octogenarians or take whatever number. That is just an opinion really.

Hon. Gikaria: Thank you, hon. Speaker. I am actually a first timer. I am not demeaning us. All I am saying is that looking at the list which has the name of Kipchumba Murkomen, I am sure he can represent us effectively.

If we go by what you have advised, really waiting until May, 2014 for us to have another list brought here will not be the right direction to take. Remember that this particular list has been brought before us the second time. I do not think that would be the right direction to take.

I beg to support this list. I urge my colleagues to do the same. It is not about party issues, rather it is about Kenya. All these are Kenyans and they can represent us well. Thank you.

Hon. (Ms.) Nyasuna: Thank you, hon. Speaker for giving me this opportunity to contribute to this Motion. I would like to echo the sentiments of other Members that it is very important that we are represented at this very important Parliament. Since the beginning of the year because we had elections, we have already missed a session. We had elections in March and so we missed a session. This session that is beginning now, if we do not send our Members for swearing in, we are likely to miss another session again.

Members of this Assembly know that there is a very important Motion on Kenya that was agreed in Addis Ababa and is now before the Pan African Parliament. It is important for Kenyans to be there as that Parliament discusses this Motion. This underscores the urgency or the need really to send Members to the Pan African Parliament as soon as we possibly can. This House has a responsibility to this country not to have empty chairs in the Pan African Parliament as it debates issues.

Hon. Speaker, Members of both the Senate and the National Assembly have been proposed in this list to go to the Pan African Parliament. There has been an argument about age. I know that Senator Murkomen is not an octogenarian. I see Millie here and she does not look to me like she is an octogenarian. I see hon. Shebesh is not an octogenarian. The Member who said that there needs to be a good mix in this team that represents us at the Pan African Parliament was right. This is because we have hon. Zakayo Cheruiyot who brings in experience from the previous times.

Hon. Member: Octogenarian!

Hon. (Ms.) Nyasuna: I will not use the other word that I have used.

(Laughter)

He really brings in a good mix there. This House has discussed the issue of proportion with regard to the National Assembly and the Senate. There was consensus building that since this House has 349 Members, if you divide that by 418 you find that we are supposed to have four Members out of the five members. If there is any coalition that is amenable to bringing the necessary amendment so that that proportion is reached, I think we should go ahead and do that and then amend the specific part as of necessity. We need to pass this list so that this great nation of Kenya is represented in the Pan African Parliament.

With those remarks I support the Motion and I will support any amendment to the effect that we get the correct proportion for the National Assembly.

Hon. Murungi: Thank you, hon. Speaker for giving me this chance to air my views concerning the appointment of Members to the Pan African Parliament. It is regrettable that a country like Kenya which is feared in this region this week has not been able to present its Members to the Pan African Parliament. I would not like to blame the leadership of this House including that of our parties that this list has not found its way into the Pan African Parliament to date.

Personally, I have no problem with the five Members who have been selected for this noble job. However, as a Member of the Regional Integration Committee, I know that most deliberations from the East African Legislative Assembly (EALA) and the Pan African Parliament will be forwarded to the Committee on Regional Integration for deliberation and finally for tabling in this House.

I am not interested to be nominated, for record purposes. However, I want to say that it could have added more value to this Committee if one Member from the Regional Integration Committee was nominated to this list of Members for Pan African Parliament. That way, whatever happens in the Pan African Parliament would be easily harmonized with what we do as a regional integration committee. That is the way to move our country and Africa forward. That is my own reservation. If something can be done in future, I request that those who nominate these Members to consider this important Committee. This is the first time the Committee on Regional Integration is serving in this House. In order to grow it nicely so that it has some basis in the future, maybe, the leadership of the House will consider a Member of this Committee to be among those who will be nominated.

I beg to support.

Hon. Speaker: Yes, hon. James Opiyo Wandayi.

Hon. Wandayi: Hon. Speaker, thank you very much for giving me the opportunity to contribute to this Motion. Let me say at the outset that I support the Motion, but with reservations.

As I support the Motion, I must point out that, given the experience that we have gone through in the last couple of weeks, it is not conceivable or possible that any particular combination of five names would be acceptable across the board. Therefore, a time has come when we must make a decision. I also want to point out that there is no urgency. Even though the PAP has met, and it is going on recess, that fact does not justify compromising the process. Just because other countries have done their nominations, we can take our time and do it in the right way because it is important that we do it in the right way.

Hon. Speaker, all the five nominees are Members of Parliament representing either the Senate or the National Assembly. Therefore, individually, they qualify to represent Kenya at the PAP. Each of the five Members listed here qualify to represent Kenya at the PAP but I have to point out that the matter of regional representation and diversity must be taken seriously at all times, as decreed by the Constitution. Firstly, if you look at these names, you will see that there is a problem with representation of the political parties that are represented in the National Assembly and the Senate. These nominees represent only three political parties, out of the many parties that are represented here.

The Orange Democratic Movement (ODM) has two nominees, the United Republican Party (URP) has two nominees and The National Alliance (TNA) party has one nominee, to the exclusion of all other parties, including independent Members. Therefore, something needs to be done in future, so that it does not appear as if the affairs of this House can only be articulated by Members of the so-called big parties. That is a point we need to take very seriously. Again, if you look into the matter of regional representation, you will see that out of the five nominees, two come from the same region, and that they speak the same ethnic language. Hon. Zakayo Cheruiyot and hon. Kipchumba Murkomen have basically been picked from the same ethnic group, at the exclusion of many other ethnic groups of this country, who have Members in this House as well as in the Senate.

Hon. Speaker, these are not issues that can be wished away. Even if it is a question of the URP, the URP has Members in many other bodies.

Hon. Speaker: Hon. Wandayi, rather than lamenting, you are at liberty, as a Member of the House, to propose the exclusion of some names and the inclusion of others. Do not just lament as if you are entirely without recourse.

Hon. Wandayi: Hon. Speaker, I am coming to that part.

Therefore, even though this House today must resolve to send Members to the PAP, let us review the composition of this list. I am privy to information on plans by some of my colleagues to bring forward some amendments, which I will definitely support.

With those very few remarks, I beg to support the Motion, subject to the amendments that will be coming.

Hon. Speaker: Hon. Wandayi, I have not received any proposed amendment.

Hon. Members, notwithstanding what hon. Wandayi has eloquently prosecuted, it is my decision that you, as the Assembly, must take a decision on this Motion today. You can choose to reject it, in which case it cannot be approved again for debate – at least not by me – for the next six months, but you must make a decision as to whether you want the country to be represented at the PAP, and by who, or not. You are the ones with the votes to decide who should represent our country at the PAP. So, if anybody has amendments, they should be brought to me for approval. Otherwise, sooner than later, going by the rules of the House, I will have to put the Question.

Yes, hon. Lelit Lati.

Hon. Lati: Thank you, hon. Speaker. My initial resolve was to oppose the Motion but a colleague has just whispered to me that there are bigger things about our country, which are going to be discussed at the PAP. Those issues override my personal opinion. So, I want to start by saying that I support the Motion, based on the news that I have just received.

Having said so, I want to raise my concerns about this list. Firstly, this is the same list that was brought to this House a few days ago. The mood of the House then was that hon. Members were not comfortable with the list. What happened is that people went back and brought the same list. It looks to me like someone is trying to force down our throats something that we do not like.

Hon. Speaker: Hon. Lati, the Motion was merely withdrawn. If you look at the record, you will appreciate that this is resumption of debate. In fact, for purposes of the record, so that those of you who have placed requests to speak may know; it is clear from our record that the Motion was moved by hon. Aden Duale, the Leader of Majority Party. It was seconded by hon. Gideon Mung'aro, the Minority Whip, after which contributions followed.

There were contributions by hon. Kaluma Peter, hon. Jimmy Angwenyi and hon. John Mbadi before the Motion was withdrawn. Withdrawal of a Motion is not an opportunity for anybody to go and amend it. Once a Motion has been moved and seconded, it becomes the property of the House. It cannot be amended outside this House. So, hon. Lati, I just want to disabuse you of the notion that there was the possibility that the Motion could be brought back to the House with different names. It does not happen that way. I am sure that you are now properly guided.

So, you may proceed.

Hon. Lati: Hon. Speaker, I thank you for your guidance. I said at the outset that I support the Motion. However, I have a few reservations I want to speak about.

Firstly, when the Motion came here for the first time, hon. Members raised issues, which I think are very important to us, as a country. Of course, we know what the Senate is entitled to do, constitutionally. They are supposed to represent the interests of the counties. As a person, I do not see any interest of Samburu County being represented at the PAP. I think it is wrong. We are setting a very bad precedent, as a House. The only Members who are supposed to go to the PAP are Members of the National Assembly.

The next thing I would like to note is that when we came here, we were told that 80 per cent of this House comprised of new Members. So, “new Members” is another category of Members of Parliament – people who have not been in Parliament before. Having 80 per cent of the membership of this House not being represented at the PAP is not right. Even in terms of probability, if you have red and yellow balls stashed together in a sack and you are blindfolded and asked to pick a certain number of balls, it is not probable that you will only pick out red balls. It is impossible. Some things are possible but they are not probable. This is something that is not probable.

Therefore, I want to make note of the fact that, as new Members, we should also be represented at the PAP. I take offence at remarks made by an hon. Member to the effect that new Members are not as good as old Members. That statement speaks volumes about our people. It implies that since I am a new Member, representing Samburu East Constituency, my people are inferior to those people being represented here by hon. Members who have been to this House many times before. That notion is wrong and, therefore, we should not be harbouring such ideas.

I want to go on record as saying that it is wrong to keep on bringing things at the eleventh hour so that we can be told that because there is no time, we have to do this so that we do not lose

this and that. They had so much time since Parliament reconvened. I think we knew that we had PAP and we should have seen this list. So, we should have proposed Members we think can represent us.

Hon. Speaker, Sir, the other thing I have noted is that as bad as it is, we have ethnic groups in this country. We also have regions and we represent every part of this country. I do not see any pastoralist in this list and yet there are 85 pastoralist Members in this House.

(Applause)

Someone should tell me whether pastoralist issues are not discussed in the PAP, and yet most of the African tribes are pastoralists and agriculturalists. It is very wrong for me, as a pastoralist to know that there is no Member from the pastoralist area in the PAP list.

Hon. Speaker, Sir, I support this Motion.

Hon. Keynan: Thank you, hon. Speaker, Sir. From the start, as a country we are a bit confused. Sometimes we say that this is a premier nation and this is a very important continental player. However, the way we do things negates the very essence of what we have been trying to project. It is unimaginable and in my opinion criminal to deny the Republic of Kenya representation at the continental legislature simply because of our own parochial, regional and tribal politics. I may not agree with the list but a time comes when we must think of the nation before our own individual interest.

I may not agree with this list today and I might have issues with proportionality but can we figure out how many Kenyans are not represented in that very important continental House simply because of the politics of the day here? This is the reality and I want to thank you, hon. Speaker simply because you said that we must make a decision here as Members today. I want to agree with you that it is very difficult to have consensus on any political issue however minute it is. I also want to agree with you that this is a process and it is not the end of everything. For the sake of the image of the Republic of Kenya, let us---

I believe that the formation of the PAP is a precursor to the realization of the united states of Africa. How do we promote the image of the united states of Africa if as a Parliament we cannot agree on the membership of that very important continental House which is supposed to lead us to the united states of Africa?

Hon. Speaker, Sir, I know there are issues. I do agree with what the Member of Parliament from Samburu West has said. If I was asked from the initial stage, I would have said that the list should have been done in a better way. However, because we are where we are simply because we did not consult or---

(Loud consultations)

Hon. Speaker, Sir, Members are consulting in high voices. I am trying to say that it is critical as part of our diplomatic endeavours that our representatives are appointed or are elected today so that they go and represent us in that continental body.

For your information, in the next few days, the House will sit. The House will form its own committees just like we do here and then they will go on recess. This means that our Members will be out of the formation of those committees. Once the House in South Africa adjourns, Kenyans will not be represented in those committees. As a leadership, we will also not be represented in those committees. I plead that let us pass this list and if there are issues, let us address them later on.

I appreciate that we should have given the first priority to the new Members. I concur with what hon. Kang'ata has said but I also agree that there are young Members who are on the list. I am told that hon. Kipchumba is on the list. We also have hon. Z.K and in between we have other great Kenyans. It is because of this that we should agree as a Legislature. If there is anybody who has a burning amendment, you can bring it. You should say that you want to replace this name with this name. However, do not say that you oppose the list because we must approve it so that our country is represented. However, if you have an amendment, please move that amendment. You must satisfy yourself that, that amendment is well placed, well centred and well oriented. If you persuade us, I am willing to support the amendment, but I will be very reluctant to participate in a process that will deny us not to pass this list today so that tomorrow--- Can I tell you something? Because of the way we have excelled, the *Nation Television* covers live the proceedings of PAP. This is because of the great media institutions that we have in this country. Therefore, whatever we are saying here today is being watched in South Africa. Is that the way we want to project Kenya?

Hon. Speaker, Sir, I want to conclude by saying that I know there are choruses here but that is not the way hon. Shabir wants to project Kenya. We want to project Kenya in a better way. Two weeks ago, a great decision was made in Addis Ababa that touches on every Kenyan and that decision will be debated in the PAP. What has happened? What has changed? Why are we not having the interest or glamour to have Kenya represented in that continental body?

As I sit, I want to appeal to Members to bring their amendments and persuade us but for the sake of Kenyans, East Africans, South Africa, our image and the PAP, let us pass this list today.

Thank you, hon. Speaker, Sir.

Hon. Speaker: Hon. Fatima Ibrahim Ali, you have a proposed amendment.

Hon. (Ms.) F.I. Ali: Thank you, hon. Speaker, Sir, for giving me this opportunity. I also agree that we need to protect the image of Kenya through leadership. I think we are in this mess because of leadership problems. We have been struggling to bring the list from 25th of last month to date but we have been unable to agree. Sometimes, we need to be bold enough to lay the blame on others.

Hon. Temporary Deputy Speaker, Sir, I beg to move that the Motion be amended as follows: -

By deleting “The Hon. Sen. Janet Ong’era, M.P.” and substituting it therefor with “Hon. Shukra Gure M.P., Garissa County Woman Representative.”

(Applause)

The Member we are replacing is from the Coalition for Reforms and Democracy (CORD) coalition. We are proposing these changes because the 47 Members of Parliament are not represented in this list. We are proposing this amendment so that we consider the representation of the 47 women Members in the PAP so that the voice and visibility is included. The other issue is that we are replacing Senator Janet Ong’era with a Member of Wiper because we felt that Wiper was not represented in this list.

Hon. Speaker, Sir, I beg to move the amendment. Thank you.

Hon. Speaker: Is there anybody who is seconding you?

Hon. (Ms.) F.I. Ali: Hon. Speaker, Sir, I will be seconded by the Secretary-General of ODM, hon. Aghostinho Neto.

(Laughter)

Hon. Speaker: Hon. Members, including hon. Junet, do not get excited about strange titles because the House does not deal with them. The House will only use Aghostinho Neto.

Hon. Oyugi: Thank you very much hon. Speaker. I think what hon. F.I. Ali wanted to say was that I am secretary to the parliamentary group of CORD. That is what I think she meant. The members of CORD ably did that a couple of weeks ago. I really thank her.

I would like to rise to second this amendment. I have listened to my colleagues speak to this particular matter and I appreciate you for standing firm today to say that this is a matter that must be decided and we must conclude today. Kenya is losing on the African Continent. I think that is really firm position. Several members have raised several issues. We are a country with several diversities. The Constitution does behoove us to pay credence to regional representation. Members from the pastoralist community did raise issues. Africa, being diverse as it is, has several pastoralists. Pastoralists will sufficiently be represented in this particular Parliament in the person of hon. Shukra. Our Constitution states very well in Article 55 that issues of marginalized communities need to be taken into consideration. This is one of the things that we must also look into. Hon. Shukra's nomination to this Parliament will be sufficient and useful.

I remember hon. Kang'ata did raise the issue of young people or the youth being represented. Article 55 of the Constitution does raise issues of youth and young people.

(Loud consultations)

Hon. Speaker: Order, hon. Members! Allow the hon. Member to make his point.

Hon. Oyugi: Thank you, hon. Speaker for protecting me. I do agree for a fact that young people's voices need to be represented. The reason I am seconding this particular amendment is because hon. Shukra, apart from being youthful, comes from the marginalized communities. Hon. Wandayi did raise that this House is represented by several Members of Parliament from various political parties. This particular list only includes three political parties. I think it is good to cast the net wide. Apart from hon. Shukra being a member of the CORD coalition, she comes from the Wiper political party. I think it is not just supporting an amendment for the sake of it, there are

several reasons that Members did canvass. I think those issues that I raised will sufficiently take care of marginalized communities' interests, young people and political parties' diverse interests.

With those many remarks, I support the amendment by hon. Fatuma.

Hon. Speaker: Order, we will not debate. You have heard the reason advanced.

*(Question of the first part of the amendment,
that the words to be left out be left out, proposed)*

*(Question of the first part of the amendment,
that the words to be left out be left out, put and agreed to)*

*(Question of the second part of the amendment,
that the words to be inserted in place thereof be inserted, proposed)*

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

(Question of the Motion as amended proposed)

Hon. Members, it cannot be the function of the Chair to stifle Members' intention to propose further amendments. I would wish to advise hon. Chris Wamalwa who has some amendment similar to the one that has been carried, that now your amendment would require to be headed "further amendment" because as the Motion stands now, the name of Senator Janet Ong'era, MP is not there. That, technically, maybe the only reason that I may disallow you to raise it. I will not allow you to move your amendment because now you will be referring to a non-existent name. Should you still wish to pursue your interest, you can propose further amendment.

Hon. Wakhungu: Thank you, hon. Speaker. It is, indeed, a difficult situation. We have really consulted, as you can see. I have just realized that my Whip is here and for the purpose of this, I have been advised that we should withdraw that amendment. We support Shukra. It comes a time when decision-making is very difficult. As you can see, leadership has disappeared. My

card was there, only to realize that you could not catch my eye but now that I have a chance to speak, I am thankful. If you look at the Article of this Protocol --- It is important to note that there comes a time where silence means betrayal. There comes a time when you do not make decisions for your own convenience. I am forced to provide leadership and to urge my colleagues that we support hon. Gure so that we move forward.

Hon. Speaker: That is leadership.

Hon. Njuki: Hon. Speaker, Sir, I rise to support this Motion as amended. It is unfortunate that the bicameral Parliament of Kenya wants to have their cake and eat it. We are going to have the PAP opening and forming committees without the participation of the able Members of the Kenyan Parliament. As it is, and reading from the mood of the House, I wish to support this Motion as amended so that these capable Members, who now have a good balance, because we have the old guards like hon. Shebesh and the new blood, can represent Kenya

It is unfortunate because of what has happened to our brothers across the road, but if you look at the numbers - I am referring to the Senate - it is justifiable that the National Assembly takes four out of five and our brothers can take only 20 per cent of those positions. So, I support the Motion as amended and hope that we are all going to support, so that we can have Kenya represented in the PAP.

Hon. Nuh: Thank you, hon. Speaker, Sir, for giving me this opportunity. I rise to oppose the Motion as amended. This Parliament is very important as you have enlightened us today. We have to have our Members in PAP. This side of CORD lacks leadership. These are disgruntled elements who do not know what they have come to do in this Parliament. These are people who have been talking about this thing for the last one month and they cannot come to any decision. They bring here useless amendments that never take effect.

Hon. Ng'ongo: On a point of order, hon. Speaker, Sir.

Hon. Nuh: Which point of order?

Hon. Ng'ongo: On a point of order, hon. Speaker, Sir. Hon. Junet is a very good friend of mine, but procedures are procedures and rules are rules. Hon. Junet is completely out of order to refer to amendments by other Members of Parliament, especially one that has been carried by this House as useless. He needs to withdraw and apologise to the House.

Hon. Speaker: Hon. Junet, the House which includes you has approved that amendment. Is it the one you are referring to as useless?

Hon. Nuh: No, I am referring to the leadership and not to the Motion.

Hon. Speaker: The leadership of?

Hon. Nuh: Of CORD.

Hon. Speaker: Hon. Members, hon. Junet is saying that he is referring to the leadership of a coalition called CORD.

Hon. Wandayi: On a point of order, hon. Speaker, Sir.

Hon. Speaker: Hon. Wandayi, are you a member of the leadership?

Hon. Nuh: he is not.

Hon. Wandayi: On a point of order, hon. Speaker, Sir. Is it really right? Is the Member for Suna East, hon. Junet, in order to refer to Members of the CORD Coalition in this House as disgruntled elements? Can you find him out of order?

Hon. Speaker: The only thing for which you may challenge him are some caucus.

Hon. Wandayi: Even if he seems to be shifting allegiance, is he in order to refer to Members of CORD as disgruntled elements?

Hon. Speaker: Hon. Junet, you are making your contribution.

Hon. Nuh: Hon. Speaker, Sir, you do not shift allegiance by expressing your views in Parliament. I have all the liberty to express my views as the Member of Parliament for Suna East. He cannot tell me---

Hon. Speaker: Just proceed.

Hon. Nuh: Hon. Speaker, Sir, how do you call yourself a leader, but the time you are required to lead you are not there? You disappear from the House when people expect leadership from you. Our Whip and the Leader of Minority Party are not there and we wanted to make serious amendments.

Hon. Speaker: The Minority Whip is here!

Hon. Nuh: Hon. Speaker, Sir, the Minority Whip is there. I am sorry, I did not see him. I oppose this Motion completely because the amendments were done in a hurry. They were done in a way that we are not supposed to do it. I would like to propose a further amendment if I am allowed. I would like to bring the name of Mr. Andrew Toposo---

Hon. Speaker: Hon. Junet, you have been in the House. Surely, even toddlers learn faster than that. If you want to propose an amendment, you know how it is done. It is not just that you stand in your place and claim that you want to move an amendment

Hon. Nuh: Hon. Speaker, Sir, I seek your indulgence if I could bring a further amendment.

Hon. Speaker: You are now wasting your chance to do that.

Hon. Nuh: Hon. Speaker, Sir, I would like to propose an amendment. Let me forward it to the relevant Committee.

Hon. Speaker: The mistake you have made is that you have risen to contribute without any written amendment. Now you are saying that when you exhaust your time, you be given another chance to claim to propose an amendment.

Hon. Nuh: Hon. Speaker, Sir, I seek your indulgence. I cut my contribution, so that I could bring my further amendment. Please, allow me to do that.

Hon. (Ms) Kajuju: Hon. Speaker, Sir, I rise to support the Motion as amended. I would like this National Assembly to know that the PAP was established to ensure that there is participation of the people of Africa in governance and economic regional integration in the continent.

The PAP gives the people of Africa a common platform to address the issues that affect our people at the grassroots level. There are so many challenges and problems that have beset Africa. The PAP has the legislative function to address the issues that are raised by the people of Africa. The PAP does not have the legislative powers to enact such laws as are supposed to be enacted and that is why this Parliament is sending representatives there to go and deal with that. Therefore, I believe that the Members in this list as amended clearly reflect the spirit of our Constitution because there is balance in terms of age, gender representation and experience.

We have been advised by the speakers here before that these Members ought to have been in the PAP as soon as yesterday, which is not the case. It is important that we ask ourselves as leaders in this country, not what Kenya can do for us but what we, as individual leaders in our own capacities, can do for Kenya. Therefore, I support this Motion. Going forward, it is important because the Tenth Parliament set up the Regional Integration Committee under our Standing Order No.212. If you look at that Standing Order, it provides that one of the mandates of the Committee on Regional Integration is to examine the debates that originate from the PAP. So, as a way forward, maybe in the 12th Parliament, we ought to consider the mandate of the Committee on Regional Integration and have a representative of the Committee in PAP.

With that, I support the Motion as amended.

Hon. Ichung'wah: On a point of order, hon. Speaker. I am standing on Standing Order No.95 asking if it would be in order, reading the mood of the House that the Mover be called upon

to reply. I am also informed by the members of the Departmental Committee on Justice and Legal Affairs that there is a Motion that is also critical and needs to be debated in this House this afternoon. I am also looking forward to the debate on the report by the Public Investments Committee (PIC). Will it be in order now to call upon the Mover of the Motion to reply?

Hon. Speaker: Hon. Members, I am sure there is much more to be debated and we are many. We are 349 Members. Even if we decide that we can all speak for 10 minutes, only 24 will speak on a day like today. So, hon. Members, reading the mood in the House, I accede to the request that the Mover be called upon to reply.

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

Hon. A.B. Duale: Hon. Speaker, I think I have very little to say because this is a matter of national importance. Kenya must have its place in the world of international legislation and I beg to move.

(Some hon. Members withdrew from the Chamber)

Hon. Speaker: Hon. Members, please, for those of you who are walking all over including those that are withdrawing carrying bags, I think there is need for further induction.

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

Resolved accordingly:

THAT, pursuant to Article 5 of the Protocol to the Treaty establishing the African Economic Community and relating to the Pan-African Parliament, this House concurs with the resolution of the Senate made on Tuesday, 30th July, 2013 approving the appointment of the following Members of Parliament to the Pan-African Parliament: -

1. The Hon. Zakayo K. Cheruiyot, MP

2. The Hon. Rachael Wambui Shebesh, MP
3. The Hon. Millie Grace Akoth Odhiambo-Mabona, MP
4. The Hon. Sen. Kipchumba Murkomen, MP
5. The Hon. Shukra Gure, MP

Hon. Speaker: Next Order.

ADOPTION OF PIC SPECIAL REPORT ON SUPPLY OF MAIZE

THAT, this House adopts the Special Report of the Public Investments Committee on the contract between the National Cereals and Produce Board and M/s Erad Supplies and General Contracts Limited for the supply of white maize, laid on the Table of the House on Tuesday, 22nd October, 2013.

Hon. Speaker: Where is the Chairman of the Public Investments Committee (PIC)?

Hon. Ng'ongo: Thank you, hon. Speaker. Order No.11 that has just been called is a report from the PIC.

(Loud consultations)

Hon. Speaker: Order, hon. Members. Even if you must withdraw, please allow the rest of the Members who want to participate in business to do so fully.

Hon. Ng'ongo: Hon. Speaker, I am rising because you have just called Order No.11. My belief is that once it is moved then the debate starts. I have a lot of respect for this Committee and more so for the Chair who is a very close friend of mine. However, I was pleading with the Chair that we defer debate on this Motion so that a number of issues are addressed and especially if I could get a ruling from the Chair.

Hon. Speaker, first of all, this report is so voluminous and important. I have looked at it. It is asking fundamental questions of integrity and chances are that money could be lost. Chances are that there is corruption. For a report like this, we need sufficient time to look at it because I checked this report briefly and I have my fears. I want to ask you to make a ruling.

First of all, hon. Speaker, if you go to page 103 of the report, it makes a recommendation of: "Efforts will be made to amend Article 171 of the Constitution." That actually surprised me a

bit because if this House makes a resolution to amend a particular article of the Constitution, it is almost tantamount to amending the Constitution. Therefore, if we pass this report with such a provision the first question is: Are we going to pass it with a simple majority? The second question is: Are we going to pass it with two-thirds majority as is required by the Constitution? These are fundamental issues that this House needs to be alive to because if we just take a decision, we will take a decision on a matter that may be unconstitutional.

Therefore, hon. Speaker, I just want two issues to be addressed. The first one is: If a ruling could be made, can this House recommend amending a provision of the Constitution through a Motion? I think that is fundamental. Number two, has this House had enough time to really engage with this report so that when we make a decision, it is right? Remember part of the recommendations of this report is even to change the Judicial Service Commission (JSC) Act. I know we have a lot of issues with JSC but these are issues that we need time on and I plead with hon. Keynan, who is my friend, to allow us to read it over the weekend. Let us have this report debated next week within which time we shall have had enough time to read it.

Hon. Speaker, finally, you know both the Public Accounts Committee (PAC) and Public Investments Committee (PIC) are actually oversight committees that basically do postmortems and usually the law requires that the Auditor-General needs to audit some of the allegations and present an independent report. So, I expected to see that independent report attached. It is not there but I think the Committee can address that matter.

Hon. Speaker, so, I am pleading that we defer debate on this Motion. Let us have it debated next week but also clarify whether this House can take a decision especially where we are recommending amendment to a constitutional provision.

I thank the House for being quiet and listening to me.

Hon. Speaker: Well, I can see hon. Kaluma wishing to address me maybe on the same point. Unfortunately, I do not have the benefit of the report with me here as in normal practice. I think this also speaks to the fact that there is something I want to comment on, and I know chairs of committees have addressed this. The Office of the Clerk, you are put on notice because there is no reason why the Chair should not be having a copy of the report with me here. It shows an element of dereliction of duty. Chairs have complained that even though the Speaker is saying committees are not bringing in their reports, it is the staff who are clerking committees who are in bed. They are in deep slumber. You are put on notice that you all must do what you must do. What

does it show? Hon. Mbadi makes reference to a page in a report and I have no opportunity, from where I am to say that indeed I agree with him or not. I do not have difficulties about the issue he raised but surely, I should have the report. The fact that I do not have it seems to corroborate what the chairs of committees have complained about, that there is laxity. So, it cannot just be committees that are being pushed this or the other way and yet those clerking them are taking their sweet time. That laxity must cease.

(Applause)

Hon. Kaluma, do you want to address the same issue that hon. Mbadi has come up with?

Hon. Mbadi requests that debate be postponed to some date next week. Maybe you can address me on that.

Hon. Kaluma: Thank you, hon. Speaker. This is a very substantial report and the House thus needs to look at it; I have had a glimpse of it. There is a contract in which there is an arbitration agreement. I have seen an arbitral award and the decisions of about three judges, that is, of the High Court and the Court of Appeal. They appear to be saying that the arbitral award has to be upheld. So, we have a situation where we are going against--- There is a possibility that the report – I will not talk much about it now that it has not been presented – is in contradiction of the position of the Judiciary as consistently taken that money has to be paid.

The direction I was seeking in addition to having this matter discussed and debated properly next week is whether, indeed, really this was not a matter that required the joint sitting of PIC and the Departmental Committee on Justice and Legal Affairs. The Judiciary falls within the ambit of the Departmental Committee on Justice and Legal Affairs. The interpretation of all these decisions requires the input of this Committee. I am going to request and agree in part with hon. Mbadi that we consider those situations in which there can be joint sittings of the Committees so that decisions are properly made.

Hon. Wandayi: I agree with him.

Hon. Speaker: Hon. Wandayi, you do not have to agree when you are still seated. You wait for your chance to speak!

Hon. A.B. Duale: Hon. Speaker, I want to pick from where hon. Mbadi left. I do not want to go into the issues raised by hon. Kaluma. A report has been compiled and evidence adduced.

The report has been tabled and is ready for debate. So, you do not bring the issue of a joint committee. I think that is out of order. You do not have to rule on that, in my opinion. However, Tuesday is not very far and unless something happens over the weekend as far as this report is concerned---

I want to be in HANSARD that unless somebody somewhere who has been mentioned in this report is buying time and he wants to attend rallies and visit constituencies---

Hon. Ng'ongo: That is not the position.

Hon. A. B. Duale: I am saying incase and I am not imputing anything. I am sure that hon. Mbadi wants to go and read this report. Hon. Speaker, I ask you that we place it on the Order Paper on Tuesday as the first item, with your permission.

I want the nation to know that anybody who wants to be mischievous in the dark hours of this weekend, Parliament is watching.

Hon. Ababu: Hon. Speaker, I do not wish to belabor the point that both Messrs. Mbadi and A.B. Duale have stated. I would wish not to associate myself with the same. In doing so, I have actually been struggling. I got this report about an hour ago and I have been struggling to go through it in preparation for the debate. In having a flip through it, I must congratulate hon. Keynan for the very good work they have done in putting this report together. This report is so critical. Those of us who have been aware of this matter have really been pained by the whole scenario and we would love nothing better than an opportunity to sufficiently and effectively debate this matter from a point of knowledge and praying that, hon. Speaker, you indulge the House to allow us a few more days.

Even as you consider that let me join hon. Duale to also caution that if there are any dark forces out there imagining that they could ride on the extra days to play hanky panky, I want to believe that the Members of this honourable 11th Parliament are beyond cheap influences and that they would want time merely for purposes of acquainting themselves sufficiently with this report so that we can engage in proper debate. I will support that.

Hon. Speaker, I would also wish your guidance on a little matter of procedure. The two sister committees of PIC and PAC are principally postmortem committees – we deal with matters that have passed through the hands of the Auditor-General. Indeed, when you look at the Report on Page 4, it does acknowledge that the Committee requested the Office of the Auditor-General to undertake a special audit on the matter and the Inspectorate of State Corporations was also asked

to investigate and submit a report to the Committee. It is for the House to also have access to these two reports, that is, the Special Audit by the Auditor-General and the investigation by the Inspectorate of State Corporations. This is because ordinarily this report would largely arise out of the finding of the two. If those reports have not been tabled in the House, it will be a good opportunity to have them come to the House so that hon. Members, while debating this report would also have the benefit of the findings of the special audit and the investigation by the Inspectorate of State Corporations. It is just a matter of procedure.

Hon. Speaker: With regard to the last point that hon. Namwamba raised, that is, the Special Audit by the Auditor-General and the investigation by the Inspectorate of State Corporations, perhaps, hon. Keynan could address that if they are not annexed to the report.

Hon. Keynan: Thank you, hon. Speaker. First of all, I appreciate the sentiments of the hon. Members but there are two aspects. Firstly, if there is a genuine request to postpone the debate on this very important Motion to Tuesday, I have no problem. However, on the other issues, this report does not say that anybody is culpable. For those who have read the report and those who have not read it, let me make it very clear that the report recommends further investigation by specialised government agencies. The report does not say that so-and-so is culpable. It only highlights the allegations that have been made and proposes that each entity mentioned in it should discharge that function. It is good to make it clear.

On the bit of constitutional amendment, those of us who have been here for long understand the dynamics of Committee Reports. I really pray that the belated attempt to have this report debated today will not raise issues that will question our own existence as the Legislature. Therefore, to that extent, I have no problem. Indeed, the Report of the Auditor-General is available. The Auditor-General appeared as a witness. The evidence is there. The conclusion is there. I do not think it is the work of the Inspectorate of State Corporations.

I hope that, as a senior Member of Parliament, hon. Ababu Namwamba also understands that our work was not to bring the audited accounts. We will be bringing the audited accounts of the NCPB in the procedural way that PAC and PIC work. These are not audited accounts. This was a contract – an investment that was made. Therefore, the accounts of this particular institution will be presented in the same manner that is consistent with our tradition, as Parliament. Therefore, this is not the Auditor's Report on the accounts of the NCPB as normally presented by the Office of the Auditor-General. It is a special report interrogating an investment in the name of a contract.

It is dealing with a particular issue. I hope that by now, hon. Members are well versed with the particular issue.

The third aspect which I find a bit frivolous is on the amendments that we have suggested. It is a suggestion. It is just like a Motion. We have just passed a Motion by hon. Jamleck Kamau but it does not, immediately, translate into an Act of Parliament. There are those who have a problem with the many suggested amendments that we have made on a number of statutes. We are only saying that in order for us to realise some of the issues that we have raised, can somebody be courteous enough to bring amendments to a number of statutes?

Nowhere in this report have we suggested to amend anything. We just said that attempts should be made to bring it in line with what we want to achieve. What does it say? Efforts should be made to amend the Constitution to rationalise the number of Commissioners of the JSC and make the nominee of the Law Society of Kenya (LSK) a permanent member of the JSC. This is just a suggestion. What we are saying is that the LSK's representative should be a permanent member of the JSC. We found this prudent because of what is going on in the JSC. Therefore, there is nowhere in this report where we have suggested the dissolution of the JSC. Therefore, anybody with that mindset is completely out of order. He has not read the report.

Secondly, we understand and we have the facts. Hon. Members know that by now, we understand institutional roles. There is nowhere in this report where we have contradicted any ruling of a judge but we have interrogated the decision by the arbitrator. When the time comes, we will explain why we interrogated the decision of the arbitrator. The arbitrator is not a court of law. So, anybody saying that we have contradicted a decision of the High Court is wrong. We have not. There is nothing like that in this Report. It only exists in the minds of those who purport so.

Hon. Speaker: Hon. Keynan, do not delve so much into the merits of the recommendations.

Hon. Keynan: Hon. Speaker, I mentioned it so that I could be clear. However, I am persuaded---Let me take this early opportunity to, without delving into the content of the report, thank your office and everybody from the Office of the Clerk of the National Assembly; Members of the Committee, the Leader of Majority Party and the Leader of Minority Party and everybody else who has contributed. As a Committee, we have discharged our function. This report is now the property of the House. It is no longer a PIC property. It is the property of the 11th Parliament. Hon. Members can decide to throw it away or amend it or retain it the way it is. You can decide to

shelve it. It is your property. Whatever you do with it, it is up to you. So, this is your “baby”. Consume it in the best way possible, in the most rational, legitimate and noble manner. Let us remember that this is about the survival of the NCPB, which touches on our national security. I have no problem having this report debated on Tuesday. It makes a lot of sense but as my brother, hon. Duale, has suggested, if there are other issues that we do not know, I pray that we always consider the national interest first and our image, as an institution.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, let us not spend so much time on this matter. There is no debate. As the Chairman of the Committee, hon. Keynan is well aware of the provisions of Standing Order 97(4), he will have a maximum of one hour in moving and another 30 minutes in replying. So, you will have enough time. He is not as lucky as those of us who chaired that Committee in the past, when we would address the House for a week because there was no limitation of time while moving. However, given our current number, it is only fair that there should be some limit.

Hon. Members, let me just make it clear that, as hon. Keynan has rightly pointed out, the report is now the property of the House. The House will debate it. I expect all hon. Members to take their time to read through it and agree or disagree with it; and propose amendments on the Floor of this House. I want to plead with you, hon. Members that since this matter is before us, let us just debate it here. Let us not debate it elsewhere. We are about to break for the weekend. In order to maintain the dignity of the House, let us not debate this matter anywhere else. Let us come back on Tuesday to debate this report. So, I want to encourage every hon. Member to take their time and go through the report.

With regard to proposals and recommendations, as you know, they are recommendations. What happens after recommendations are adopted? This House has a Committee on Implementation. It is the one to follow up to ensure that recommendations adopted by this House are being implemented by the various agencies of the Executive. They deal with what is called “implementation status” of various recommendations of this House. That is a good mechanism by which the Committee on Implementation should be able to engage with the Executive. The Executive is at liberty to look at the recommendations and implement them in full or in half or decline to implement them; in which case they must give a report to the House explaining why

they have not implemented any of the recommendations or why they are implementing them in the manner they are doing, if not in full.

Therefore, we should not worry very much about what recommendations have been made, including the recommendation to amend the Constitution. It is only a suggestion. Members of the Committee on Justice and Legal Affairs, a recommendation like that one cannot be said to be only to the Executive because we are also enjoined to originate Bills, including Bills to amend the Constitution. So, I do not think there is anything that we need to worry so much about. Hon. John Mbadi, let us go and read the report. Your request seems to have been well received by most hon. Members. I agree with you. The report is voluminous. It has many things that people may need to come to terms with but please, let us debate it only in this House.

Therefore, I accede to the request that the business listed as Order No.11 be stood down. We shall, therefore, move to the business under Order No.12.

(Motion deferred)

Next Order!

BILLS

Second Reading

THE INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS) (AMENDMENT) BILL

Hon. Speaker: Yes, the Chairperson or the Member of the Departmental Committee on Finance, Planning and Trade.

Hon. Gaichuhie: Hon. Speaker, Sir, I seek your indulgence that you give us a week to finalise this Bill. The Committee is still looking at the Bill and we have not finalized the Report.

We are requesting that you give us a week or so before this Order appears on the Order Paper so that we can finalise a few issues and have a report tabled in the House.

Hon. Speaker: But remember the communication that we made, it is within our Standing Orders that 20 days from when a Bill is referred to a Committee, debate may commence whether

or not the Committee has presented its report. Of course, it will have a bearing on the Committee or it will show that the Committee has not done what it is supposed to do but your request is that you should be given an additional one week.

Hon. Gaichuhie: Yes, hon. Speaker, Sir. We have been having very many Bills on our table. Yesterday, we concluded one on insurance so we do not want to give this House a raw deal. We want to make sure that everything that we present to the House is very comprehensive. With an additional one week, I am sure we will come with a very comprehensive Bill because we need to amend a few things here and there in the same Bill.

Hon. Speaker: So, you are given one week.

(Bill deferred)

Let us move on to the next Order.

Second Reading

THE ELECTION CAMPAIGN FINANCING BILL

Hon. Speaker: Yes, the Chairperson, Departmental Committee on Justice and Legal Affairs. I can see the Vice-Chair.

Hon. (Ms.) Kanyua: Thank you, hon. Speaker, Sir. On the Election Campaign Financing Bill, we are ready to proceed with the Second Reading. I will try to find the Chair and if he is not here, I will move the Bill.

Hon. Speaker: You can move the Bill?

Hon. (Ms.) Kanyua: Yes, I can move the Bill because I had instructions from the Chairman. We thought that the Bill would proceed yesterday, but we are ready to proceed with it.

Hon. Speaker: Very well. It is only fair that Members pay attention because this is an extremely important piece of legislation. It may not appear very urgent now because the elections are not too near. However, if you ask those that have participated in recent by-elections, this is a very important piece of legislation.

Hon. Nyokabi, you may move the Bill.

Hon. Mwaura: On a point of order, hon. Speaker, Sir. Has the Committee tabled a report that will guide Members?

Hon. Speaker: You are encouraged to attend the sittings of the House many times so that you do not have to ask that kind of question. The report was tabled. Do not ask the Chair whether the report was tabled or not. You should have checked where the reports are normally found. I know the report was tabled in this House.

Hon. Mwaura: It is okay. I stand guided, hon. Speaker, Sir.

Hon. Speaker: But do not ask the Chair because the report is there. I have just said that whether or not a report has been tabled, our own Standing Orders provide that you can commence debate in Second Reading as long as the Bill has matured.

Hon. (Ms.) Kanyua: Hon. Speaker, Sir, let me apologise for being a new Member.

I beg to move that the Election Campaign Financing Bill be now read a Second Time.

This Bill has been in the Committee which deliberated on it. This Bill was also before the Tenth Parliament and was brought back to the Eleventh Parliament because it was not passed. It is a Bill that is supported by Article 88(4) of the Constitution that requires the IEBC to have a legal framework allowing them to regulate the amount of money that should be spent in campaigns. This particular law aims at making our electoral democracy stronger and making competitive elections even better in terms of the amount of money that can be spent in the campaigns.

The Committee has spent time looking at this Bill. The Committee has improved the Bill tremendously through the consultations that have been held, including with the IEBC. What Members will get at the Committee Stage is a much more refined legislation.

As of today, the Bill does provide for accountability of election campaign funds during elections, referendums and by-elections. The Bill deals with preliminary matters including questions of interpretation in Part I. Many definitions have been brought by the report of the Committee which has already been laid before this House.

The Bill sets out the functions and powers of the IEBC in the regulation and administration of campaign financing in Part II. The campaign financing provisions are all functions of the IEBC and there is a lot of detail around what this Commission can do as relates to election campaigns.

In the introduction, the Bill recognizes that there are candidates who are independent and cannot be able to fund themselves because the original Bill as drafted by the IEBC was not allowing candidates to raise money through other people and, therefore, needing to set up

committees. All that has been cleared by the Committee. It is now possible for one to fund himself during the campaigns and you do not need to set up a Committee. All that you will need to do is to account to the IEBC the finances that you are using in your campaign.

In Part III, the Bill deals with regulation of campaign expenditure and the political parties that are funded by taxpayers have to submit campaign expenditure rules within certain timelines. The Committee was persuaded to allow timelines of up to eight or 12 months as has happened in the Elections Act which has allowed a room of eight months. Many timelines here have been revised to cover the eight months period.

In Part IV, the Bill deals with campaign expenses and allowable expenses of a campaign such as matters of transport, printing, media, political party or a referendum committee that a candidate can engage in and the disclosures that are required by the IEBC.

The Bill also deals with sources of contributions received during the campaigns and even limits the amount of money that a particular individual can contribute in a campaign to 10 per cent.

In Part V, the Bill deals with contributions and donations and specifies the sources of funding allowing as much as possible local funds to be applied as opposed to foreign funds.

In Clause 16, the Bill also looks at *Harambees* and raising money for campaigns. Clause 17 prohibits anonymous contributions or illegal sources of contribution in campaigns. The matters of contributions and donations from the State or State institutions or agencies are also prohibited. The campaign also covers matters of surplus funds. If there is any, it could be arrived at in a campaign programme.

In Part VI, the Bill provides for offences and penalties and all the matters that are covered by this law would then be offences. But the Bill also, in the report of the Committee, as hon. Members will see, we have graduated the penalty system

In the first instance, the IEBC is required to give a warning and, in the second instance, to give an assumption. It is only in the third and repetitive instance can they go into a more draconian penalty of removing a candidate from participating in campaigns. But in the first instance, the penalty is really a notice to candidates to comply; and those referendum committees are required to be given notice to comply with the requirements of this law.

[Hon. Speaker (Mr. Muturi) left the Chair]

[The Temporary Deputy Speaker (Hon. Kajwang') took the Chair]

Hon. Temporary Deputy Speaker, Sir, Part VII contains miscellaneous provisions. This Bill does not concern county Governments. It is national Government matters in terms of elections and the IEBC. The enactment of this Bill will not occasion additional expenditure from the Exchequer. The report is available and has already been laid in the Table. Most of the issues the Committee was able to discuss with us are the same ones covering matters of incurring contributions and making sure we continue to have leaders of integrity elected in this country. Leaders who stand on their own and based on their party strength and ideologies, engage in free and fair electoral processes through campaign financing.

Therefore, we urge the House to support this constitutional Bill which we are supposed to have passed within a certain timeframe. We are out of that timeframe, but we urge this House that this particular Bill should be enacted so that the 11th Parliament can put its mark in terms of shaping matters of elections in this country earlier, before we go to the next ballot.

I beg to move and will now call upon a Member of the Committee, hon. Irungu Kang'ata, to second.

Hon. Kang'ata: Thank you hon. Temporary Deputy Speaker, Sir. I beg to second the Bill with several reasons.

First, the Bill is intended to level the political playing ground. Presently, you will see that money has been a very major factor when it comes to politics. That is unfair because Kenya is a country that has so many poor people. It would, therefore, be very unfair to have a situation where only those people who have money are able to become politicians.

Hon. Temporary Deputy Speaker, Sir, I refer this House to various studies that have been done particularly in respect to presidential elections. You will realize that when it comes to presidential elections, candidates who tend to have a lot of money tend to be one step ahead of the others. The same applies to other political positions. That may not be fair to young people, for instance.

Hon. Temporary Deputy Speaker, Sir, we have not entrenched the concept of supporting the marginalized, who may be the youth, people living with disability and gender. The marginalized people tend not to have enough resources. Therefore, the Bill is intended to level the

playing ground so that whether you are poor or rich, to a certain extent, you have almost an equal chance of being elected as a leader.

The other key reason why this Bill is very crucial is: We need to align our law with the best practices internationally. This Bill has been made into law in several jurisdictions; in the USA and in other European democratic institutions. So, it is one of our endeavours in this country to ensure that we are aligned to the best international practices.

Hon. Temporary Deputy Speaker, Sir, another reason why we need to support this Bill is because it is provided for under the Constitution that IEBC ought to regulate campaign finances. It is part of those laws that are supposed to be enacted so that Kenyans can start feeling the real impact of the new Constitution. The new Constitution has so many laws which are supposed to be implemented so that Kenyans can now feel that they are under the new constitutional dispensation. One of them is this one. Therefore, as Kenyans, we have that obligation to ensure that this comes into law so that our constitutionalism is entrenched so that Kenyans can now feel they are part of a new political culture as opposed to the political culture that was there, particularly during the Kenya African National Union (KANU) era; where politicians could loot the economy so that they could be elected.

Hon. Temporary Deputy Speaker, Sir, we had a situation where public offices were only accessed by those people who had money. They tended to join the political class. They loot money and they use that money to campaign. With this Bill, for instance, there are safeguards pertaining to disclosure. That is, you disclose where you get that money from. To a certain extent, it has also addressed the issue in respect to foreign funding.

Hon. Temporary Deputy Speaker, Sir, we have had situations in this country where foreigners have been pumping a lot of money in our elections. We had also a situation of money laundering which is a practice where people commit crimes. Maybe, they are trading in drugs or piracy and then they use that money to come and join politics or to launder that money through the political process. You will then have a situation where the political system is now tilted in favour of the corrupt or those who are doing illegal things. Therefore, once we pass this Bill, such instance, we are sure, within the next few years, that will be remedied.

Hon. Temporary Deputy Speaker, Sir, another reason why we need to provide for this law is because of the provision that is found in the new Elections Act which was enacted last year. It appeared to give power to IEBC to come up with regulations relating to this issue. But then again

that was not fair. We had a seminar where we discussed this issue. We thought that if we were to leave this business strictly to IEBC, it would not be fair. One, we have some Kenyans who have raised credibility issues regarding the IEBC's independence. Secondly, we thought that IEBC being a referee, ought not to come up with regulations probably being captured in an Act of Parliament. Therefore, this is the best chance for us as Parliamentarians to come up with an act of Parliament that is addressing the issue of campaign finances.

Hon. Temporary Deputy Speaker, Sir, we, hon. Members, need to realize that this is a very crucial Bill which affects our lives as politicians. It will influence how we shall face our opponents come 2017. Five years may seem to be a very long time, but it is not. In the blink of an eye, we shall be heading to another election. So, this is not an electioneering mood or period. I foresee this to be the best time for us. Before we enter into an electioneering mood, we discuss this Bill objectively so that we are able to add to it, deduct and vary. Then, we come up with something that would address this very crucial issue.

As I conclude, I would like to draw the attention of hon. Members to the fact that, personally, I have been in politics for some time. I was elected as a councillor when I was 22 years old. Now, I have been elected again as a Member of Parliament at the age of 33 years. I have seen how money discriminates or prejudices young people who are trying to enter into politics. I have seen how the power of money works.

I thank the people of Murang'a and Kiharu for the period I have been with them in politics. I also thank God for giving me that chance to serve the people, notwithstanding that I may not be having a lot of resources. I also know that in other constituencies, money is a very crucial factor. Therefore, without this kind of Bill, I know there are so many young people who have very good credentials than even mine, who are unable to join politics and become politicians and leaders. This is very unfair because we are looking at plutocracy instead of meritocracy; a situation where we are creating a system that favours those who have accumulated wealth through illegal means.

With those remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Members, we have several requests coming. We will go in this order: Hon. Pukose, hon. Kimaru, hon. Mwaura, hon. Chachu Ganya,

hon. Limo, hon. Waiganjo, hon. Peter Mwangi and hon. James Wambura Nyikal, except when I decide to interpose with gender because I can see Members of one gender are all in the request. So, let us have the first one, hon. Pukose, please.

Hon. (Dr.) Pukose: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support the Election Campaign Financing Bill. This Bill is going to bring in discipline in as far as raising funds and the utilisation of the funds in the campaigns is concerned. When you look at the objective of the Bill, it is to bring a level playing field for everybody, so that the best representative for the people can be given the mandate regardless of their social status.

When you look at this country, people have risen from hustlers to the various positions where they are. Most of them have come from humble grounds. In the past in this country, it depended on whether your father was a chief or whether your father's father was in a position of leadership and had saved some money, so that you have money to campaign. But majority of us have come from humble grounds. Personally, I have come from a humble ground where I did not have money. When I went to school, I went bare feet. The first time that I put on shoes was when I joined Form One and to rise to this level and be a Member of Parliament today is because of almost level playing field but we need to do it better. This Bill achieves that.

Many countries in the world like the United States of America, Britain and other countries whose democracies have grown, have election campaign finance. It stipulates how much each candidate is supposed to raise and how much you can utilise during those campaigns. This is where we need to go, so that at the end of the day, people are elected on meritocracy, so that they can adequately represent their people. I thank my constituents of Endebbes because they did not look at how much money I had and how much money other people had. They looked at how best you can represent their views. This is where this country needs to go. Therefore, this Bill is timely. I know it has come early enough. When it has come as early as it has, it gives us room to debate it in a sober manner, look at it item by item and in a more rational way. As the Committee on Justice and Legal Affairs has pointed out, there are procedures to be followed.

More often, you find that opponents always look for a loophole. From other proceedings that we have seen, the International Criminal Court (ICC), for example, you have people who are hired to give false evidence. Opponents hire people to fix you, so that you are not in the campaign. The amendments that the Committee on Justice and Legal Affairs is bringing have warning and

sanctions. This is fair because it allows room for somebody to prove beyond reasonable doubt that the accused person is guilty of an election offence as far as finance is concerned.

Occasionally, you find that there are old people who would want to vote, but they are not able. The old and frail, sick and others within the society will need to be transported to the polling stations. So, these are the areas that we need to improve. It should also meet the standard of any campaign Financing Bill the world over, so that we can do things that other countries are doing.

With those remarks, I beg to support the Bill.

Hon. Kimaru: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support the Bill. Going by our historical background, many people have come to Parliament, whose ability I cannot undermine to represent the people, but whenever they went into the campaign field, those who had more money had an advantage over those who did not have much money. I have had to postpone my political ambitions time and again because each time elections were held, I thought I could put my best foot forward, but most of the time, I did not have enough money to go through the campaigns.

In the last election, when I said I was going to run for an election position, my great aunt, an old lady of over 100 years, Loise Wamuyu Githae, asked me whether I could speak before people. The other very pregnant question was: “Do you have money to go through the campaigns?” I may not have been endowed as many others, but I still made it probably by the grace of God and fate, as we would have it. In the past, people have invested very heavily in elections. After investing heavily, when they got to Parliament, they would have the opportunity to get to the Government and the first thing that they would do is to recoup whatever money they had used in the elections. They would use a lot of money in *Harambees*, give handouts to people and then the moment they got back into the Government, they would look for ways of recouping.

Through *Harambees* and handouts, you will all agree with me that this nation did not move forward. I do not know whether it would be a paradox to write thesis one day on how *Harambees* underdeveloped Kenya. Maybe when I go back to school, I will think of doing such a thesis. We have seen that in times when we have had the CDF, the amount of development that has been there cannot be compared at all with all that the *Harambees* did. Somebody would give Kshs1 million and then go out to make as much as possible so that next time, they would have more. Every weekend, they would have something to give out in the villages. Again, this would not be put to

very good use. The people who received the money did not take it seriously and it did not matter to the people who gave such donations. They could do it again and again.

That also brings to mind the impending Bill on *Harambees*. Members of Parliament should really not be seen as agents of *Harambee* donations when these people ask you for money day in, day out. I mean, by coming to Parliament, you do not suddenly sit on a goldmine that has no owner and all you have to do is put your hands below the mine and bring out all that money that is needed.

So, hon. Temporary Deputy Speaker, I believe this particular Bill is timely to bring about discipline in politics. It will also give other people opportunities and also to disabuse all of us of the notion that you use so much money and then you go back and look for so much money to give back. I am sure even institutions like the CDF, whenever they have been used wrongly, it is because of the desperation of these MPs so to speak who would want to meet the demands on the other side. That is not the way things should be. Instead, the contributions of MPs should be here. The contributions of the MPs on their leadership abilities should be on how well they manage the CDF and all those other funds that will be put in their hands. It is not about them using their own money because no matter how much you wanted, there is very little development you can bring to any constituency by using your own money.

Therefore, hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you, very much. Nominated Member, Isaac Mwaura.

Hon. Mwaura: Thank you, hon. Temporary Deputy Speaker. In fact, I start by that term “Nominated Member of Parliament”. The reason why I chose my path to come to the House through the party list was simply because I did not have money to go and campaign like many of you may have done. I am sure that is something that those who may have been in my position would actually agree with.

Hon. Temporary Deputy Speaker, politics is still largely a domain of the rich. It is for those who have a lot of money. It is for those who feel that they have some few shillings to spend so that they can use them to convince the public about them being good leaders. In fact, we have seen money being used to pontificate individuals who otherwise would never ever have been thought of as having been leaders. By consequence therefore, they acquire opportunity to be in places but then of course boost their image.

Hon. Temporary Deputy Speaker, I think politics then therefore has been used to also define that the characteristic of a Member of Parliament or a politician is that of a rich person and yet we know very well that that is not the case. In fact, many Members of Parliament do not necessarily like the word “*Mheshimiwa*” because when you are pontificated as a *Mheshimiwa* in certain setups, it actually means that you get money out of your pockets and dish it out to whoever is trying to sing praises to you.

Hon. Temporary Deputy Speaker, this is why we had a lot of problems at the beginning of this 11th Parliament. People thought that we were asking for too much, only that we were asking to be remunerated properly. This is because they know that by the time you go to politics then you are actually a very rich person and yet in actual sense the people who end up in politics are just other males and females who may have excelled in their areas of careers, business or civil society and, of course, won the support of the community and, therefore, find space in politics. You know the bourgeoisie or the rich are not aristocrats as it used to be during the time we had feudal lords in Victoria, England.

Hon. Temporary Deputy Speaker, this has also meant that the competition of ideas has only been limited to the elite and that people who may have novel ideas will not see their thoughts come to light because they cannot access the various organs of decision-making. That means therefore then that if you look for example at our history, then we have only been getting supply from one side of the ideological divide – in my opinion the right wing. That then means there is stagnated development because there is no true discourse on various issues that affect people and Kenyans at large. If you then have supply of ideas from all over in terms of implementation at the highest level of the land like the President’s office, for example, then you could see some change and people will start having different opinions based on the kind of and the quality of leadership that they may have been provided at a particular point in time.

Hon. Temporary Deputy Speaker, it is immoral to have a situation where the people who end up occupying certain offices also happen to be the ones who will occupy the list in the *Forbes* magazine; that they are the richest. That they are the most known and that they have a lot of capital. In fact, if that then were to be the case, then we would also want to imagine that if you make as much money as possible then you are more intelligent and brighter than others and that then would put robbers in the highest echelons of that kind of nomenclature.

Hon. Temporary Deputy Speaker, but then the world is awash with good examples and one of them is Barrack Hussein Obama who actually had to be funded by even college students who would give their five or 10 dollars and that is how he was able to actually beat Hilary Clinton who was seen as pro-establishment and the wife of a former President. So, we may want to say that despite everything because sometimes the ramifications of one's leadership may not be just preferred at the moment but we would want to see that kind of exuberance of hope so that people can know that they have an equal opportunity when it comes to political participation.

In fact, I would want to imagine about my university days in England where there was a ceiling of 75 pounds on anyone who wanted to contest for any political position in the student's union and that of course made sure that people would spend money within their limits and everybody was actually encouraged if they so wished to contest for whatever position that had already been declared vacant. This is important. It is very different from what we teach our young students here because I also participated in student politics at the local level where anyone can spend any amount of money and, therefore, it has an effect. This kind of enculturation therefore permeates into the wider society.

Hon. Temporary Deputy Speaker, election campaigning has also influenced the way political parties are owned in this country. You will find that political parties are perceived as clubs and most of the times they are owned by the few rich people. You may have political parties that have good ideas but because of funding levels, they do not even make it to become parliamentary parties. Therefore, this election campaigning will have a ramification because we have also agreed as a country to also fund political parties as part of Government expenditure. Therefore, if we can also influence the declaration of how these political parties are funded by way of elections, because most of our political parties come alive during elections, then it will also have an impact on the quality of leadership. It will have an impact on the decisions made by political parties and by extension Parliament because the only way to gain political power by legal means is through political parties. So, therefore, I think this is a very timely debate. It also encourages accountability in order to fight corruption. We have heard variously how people keep on asking for good leadership but then it is not going to be achieved if the only way to achieve this good leadership is through acquiring political power through corruption. This is because why would a candidate spend more money than another? It is simply because they want to bribe voters by giving them handouts and by trying to seek favours.

Hon Temporary Deputy Speaker, it is also some form of counter bribery if voters expect that by you giving them handouts then they are promising you support. That in itself is actually corrupting the leadership and, therefore, ensuring that people then look at political leadership as an opportunity of enriching themselves and that is also why, in my opinion, this country is extremely corrupt because it starts with the political leadership.

Hon. Temporary Deputy Speaker, the other issue that I would want to raise is about groups that are marginalised. These are groups that have been delineated in Article No.100 of the Constitution and usually because of that marginalisation, there is a question of power politics. It is a question of them not getting opportunities to participate in economic life. It is a question of them not being independent but rather dependent on others or rather being subjugated to support the economic dominance of others. So, therefore, women, persons with disabilities, youth, ethnic and other minorities that may not have been able to have acquired political space or clout to negotiate for political space, then are not able to access political space through political parties and through the elections that are supposed to be equal because of the universal suffrage.

Because of the challenges that they face, they always have to spend more than the rest of the candidates. Therefore, this Bill on election financing is extremely important in empowering these groups of people so that we can see more and more of them in leadership even in this Parliament. They should not be seen as pariahs. They should not be seen as if they only come here through affirmative action. They should not be seen as if they are lesser political leaders than others.

Hon. Temporary Deputy Speaker, it is very important that this Bill has come to the House. This is because it criminalizes what was not criminal before. Indeed, it is an offence for you to spend more than what ought to be. Even if you are not to spend any money, at the end of the day a candidate shall be elected and there will be a winner and a loser. This tells us that the window of spending money in order to influence an election is actually defeating the will of the people. Therefore, criminalizing spending in campaigns is critical. It is going to encourage young professionals who fear coming into the space of politics. It is going to ensure that, indeed, people are also accountable and they reveal their sources of funding and that they are not bribed by business cartels and foreign countries wanting to impose their will on Kenyans.

I think it also encourages independence so that people can know that they won elections based on their ideas and not because of sycophancy or somebody funded them. We know that he

who pays the piper calls the tune. It behooves upon the hon. Members to look at their duties as purely defined within the confines of legislation, oversight and representation.

I support.

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Speaker. First of all, I want to thank the Departmental Committee on Justice and Legal Affairs for this report. From the outset, I support with amendments.

Last week I was in a meeting that was going side by side with the Pan African Parliament. One of the things that was very clear is that as a country we excel in laws. We do a lot of laws and we are way ahead of most of the countries in the region in drafting laws. We are, however, way behind every country in the implementation of the laws. Sometimes when I sit in this House, I ask myself whether I should even bother to contribute. However, sometimes I say that I need to contribute because one day the laws might apply to my children or my great grandchildren, but I can assure you that these laws will not apply to us. For the sake of posterity, let us pass them. I say so having gone through an electoral process. What we do as politicians is that we take our excellent laws and throw them aside and then go for campaigns. Anybody who wants to challenge me can do so with facts, but I can assure almost without exception that everybody disregards the laws in this country. It is from campaign materials, campaign financing and so on.

Therefore, this is an excellent law but, again, like every other law I am sure that we will shove it away somewhere and not deal with it. I, therefore, would like to suggest to the Departmental Committee on Justice and Legal Affairs that we need to substantively amend this law to align it with the realities of this country.

I will start with the political parties. You are giving so much faith and credence to the political parties. I do not have that much faith in political parties. These are vehicles that we use to come to this House. All political parties, without exception, are very “mannerless.” They do not follow any rules of political parties. My political party is no exception. Also, TNA is no exception. I can give you the examples.

The hon. Member from Nyeri was denied her certificate. I had to fight for days to get my certificate. Those are the theatrics we see in our political parties. The political parties must first learn to practise internal democracy. That is why you see Kenyans are beginning to start, even though in small measures, having faith in independent candidates. If it were not for the issue which is another malady that we have in this country of ethnicity, I can assure you that the issues of

political parties would be a thing of the past. Unfortunately, we are also in love with our negative ethnicity and so long as you put--- I remember somebody said that there are areas that even if you put a dog for as long as it belongs to that party, it would be elected. As long as it comes from the right ethnic community, it will be elected.

I am looking forward, although it might not happen in my lifetime, to a country where people would actually elect others based on you as a person, that is, on the principles that you stand for as a person and not because you are Luhya, Kisii or Kikuyu. I look forward for the day when a Luo who lives in Othaya would be elected because of his principles. I know there are a few instances where we have elected a few minorities, for example, members of the Asian community. It is not because of psychic, but we do not see them as threatening. A Luo will always be threatening to a Kikuyu and a Kikuyu will always be threatening to a Luo. Woe unto us Kenya, but I hope one day we will get there.

The Departmental Committee on Justice and Legal Affairs should not put this much faith in political parties by asking hon. Members to set up committees with political parties and asking Members to give reports to political parties. We share this view with most Members here and so I am not just speaking in relation to ODM. For most people here, the only thing you see with your political parties is when you are getting your certificate. There is absolutely no support from the political party and it applies to almost every Member. So, why are we putting so much faith in people who are overwhelmed? They do not have the capacity and yet you are saying that we give them committees. Really, I think we are being over ambitious.

We are putting the same faith in IEBC and most of us have absolutely no faith in the IEBC, from what we have seen. In fact, they have created the greatest divisions amongst Kenyans by what they do and what they do not do. I will only have faith in something that I am involved in doing. Let all these things be done by Parliament. We have the time. The standards that you are talking about, the amount of campaign financing that you are putting to IEBC, let Parliament set it. The IEBC is also generally very unrealistic about the amount of money. You saw in the last Parliament that the amount of money that they set for the women candidate was absolutely impossible for most women candidates to achieve and so it had to be revised in this House. We should not put that much faith in IEBC.

I can see that one of the things we are providing for is regulation on the amount of media time that would be given to candidates and political parties. Again, this is very unrealistic. For

instance, I know of a media house that purported to support my party during the last election but if you read their sub-line messages and looked at the colours that the anchors kept on wearing during that period, you would realise that they had absolutely no indication of supporting our party. So, those are matters we need to leave to media houses to decide, so that viewers can decide who to watch. Those are market issues that should be left to the reality of the market dynamics.

I would also like to suggest to the Committee to re-look at Clause 7(8), in relation to what I have said about giving so much authority to parties. Clause 7(8) says that where a candidate's expenditure committee fails to submit the preliminary nomination expenditure report referred to in sub-section 5(c), the party candidate shall be disqualified from contesting in that election. I am sorry that this provision is not in relation to the parties but rather to the IEBC. As we know, the IEBC is partisan and if we want to leave this responsibility to the IEBC, we will be seeing a lot of disqualifications of parties. So, that is something we must leave to Parliament, and not to the IEBC.

Hon. Speaker, again, we are giving the IEBC very draconian powers in Clause 13(4). I hope that I will be able to give some written submissions to the Committee on Justice and Legal Affairs. I am glad that the able Deputy Chairperson of the Committee is here. Clause 13(4) says that where a candidate disqualified under sub-section (2) is a party candidate, the candidate shall not be replaced by another candidate from that political party. Again, we are being realistic with a country that is ethnicised. If you disqualify a candidate from where I come from and you say that ODM shall not field another candidate, we shall essentially have disenfranchised that community. If you field a TNA candidate, that will not be our candidate. That is the reality on my ground. I am sure that the reverse would be the case in hon. Kabando wa Kabando's ground. So, let us be realistic. Sometimes we come to this House and say very fanciful things. We cheat ourselves. We say nice things that make us sound like nice and democratic leaders yet the reality is totally different.

Again, I would like to encourage the Committee to define who a foreigner is since we are excluding support by foreigners. I do not know whether if my husband decides to support me, I would be committing a crime. I am not married in Kenya. So, if my husband decided to support my campaign, would I be committing a crime? I must have committed a crime in the last elections. It is just fortunate that the law was not in place then. Talking about the reality on the ground, I want to especially talk about groups like women and the youth, who do not have funds. I will give you my example. I am a lawyer. I have been here before but I can tell you that the amounts of

money that you need for campaign are huge. So, even as I was campaigning, people were busy giving me support as I went to the ground. How then do you get your Kshs50,000, you go and bank it and report it?

I know that my time is up. So, I will give a written submission to the Committee.

With those remarks, I beg to support the Motion with amendments.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you for your valuable contributions. Pessimistic as they are, there is wisdom in pessimism. You need to work out your amendments, so that when the matter comes up before the Committee, you can be even more valuable in terms of helping the Committee and the House. So, think through the Bill and propose your amendments in good time.

Yes, hon. Chachu Ganya.

Hon. Ganya: Thank you, hon. Temporary Deputy Speaker. From the outset, I want to say that I support the Bill.

I really want to commend the Committee on Justice and Legal Affairs for bringing this Bill very early in the 11th Parliament. Previously, we conveniently avoided passing it for many good reasons. We knew that we had sufficient time in terms of the constitutional deadlines but that time is no longer there. So, it is good that we pass it in good time, so that we can internalise it and live with it. This law will basically bring about accountability on campaign financing. It will ensure that candidates disclose the amount of money they will be using. They will not only be disclosing the amounts but also the sources of the funds. That is very important. It is the practice globally in all modern democracies like ours.

Hon. Temporary Deputy Speaker, politics is not a game for poor people. In 1992, I was a student in the USA. In that year, a billionaire was running for the presidency as an independent candidate. He was called Al Gore. A congressman quipped: “Here comes a billionaire to save us from millionaires.” The argument then was that congressmen were very rich but a billionaire had joined the league. To be honest, he did so well that in the subsequent election, his campaign was funded by the state and, in effect, denying the Republican Party a chance to win. That is how Clinton ended up in office. So, looking at the amount of money needed for campaign – money for the media and for hiring choppers to move around – you will appreciate that it is a very expensive affair. That is the truth of the matter.

This Bill goes further to say that if you do not disclose the amount of funds you have and the sources of those funds, there are penalties, including being disqualified from running in that particular election. The beauty of this Bill is that it takes certain aspects into considerations. Our electoral areas are not uniform. I represent the largest constituency in Kenya. It is as large as Central, Nyanza, Western and Nairobi provinces put together. It is about 38,000 square kilometres, with a diameter of 800 kilometres. Even a poor man like me, whenever I campaign, have to hire an aeroplane. That is the only way I can do it. Other hon. Members are lucky. My colleague from Kibra, who went to the same university that I went to in the USA, can actually address the entire of his constituency from his house, with the help of a very good public address system. It is that small. For me, even with an aircraft, it takes hours for me to get from one village to the next.

So, this Bill, in some way, takes into consideration such geographical factors. It also takes into consideration the communication infrastructure in such electoral areas. It is very important. In some of our areas, people have no television sets. There is no electricity. So, basically, I have to move around by vehicles or by any other means. Not a single newspaper gets to North Horr. So, we have to look for other ways and means of reaching our electorate. Therefore, it is good that this Bill has taken these issues into consideration as the State sets limits for every electoral area.

Hon. Temporary Deputy Speaker, the Bill seeks to limit the amount of money that one can get from one source. We know how Kenyans work. I will give you my quota. I will call my cousin, give him money and ask him to give it to you. I will call my other best friend, give him money and ask him to give it to you. One man can fund the entire campaign. He will do so very cleverly. As Kenyans, we have been in this business for some time. We know how we do business. So, this law may be good but I am not very sure that the proposed safeguards and controls will save us at this particular moment. What are needed at the end of the day are books of accounts, showing how you have spent your money. I can invest as little as I can for purposes of accounting and use other avenues – which Kenyans are very good at. So, it may look like a very good Bill but---

The Temporary Deputy Speaker (Hon. Kajwang’): Do you have in mind the *Bangla* cash?

Hon. Ganya: Absolutely, hon. Temporary Deputy Speaker and many other scams that I dare not mention here.

So, in that regard, we still need more safeguards and more controls. We should not just leave this matter to this law to really enable us to achieve what we want to achieve, in terms of

accountability on how we finance our campaigns. In addition, our electorate, to be honest, are the problem; electioneering period is their “harvest” season. If you meet youth groups, before you leave, you must part with some money. The same is the case for women groups. Nowadays they are so good that they organise themselves into groups. You can find up to 100 groups in a village. You have to meet all of them and part with money.

Therefore, as much as we want this law, we also need to educate Kenyans so that they can also know the rules of the game. As it is, I am not very pessimistic about this law, knowing our political culture and how we have always done business. I really hope that other safeguards and controls will eventually be used to enable us achieve what we want to achieve as per this Bill. The Bill is basically a constitutional imperative.

Article 88(4) demands that we have that kind of law enacted by the august House and we are basically living up to our constitutional duty.

Having said that, even our political parties have to be more accountable, be genuine and live within the spirit of this law and Constitution if we have to achieve that. For instance, we know that some political parties get foreign funding. We have heard of regime change and all these other funny theories that these donors and civil society activists always come up with during the election period. They say that they are for human democracy, accountability and transparency. Of course, they keep on coming up with new phrases every other year. Most of the time this is not in the interest of this country but sometime it is.

Hon. Speaker, Sir, limiting foreign funds in our campaigns is very important so that we can make our own decisions within our parameters as much as possible. The truth of the matter is, whether it is at the constituency level or the national level, there are some elements of foreign funding in our campaigns and elections. This Bill tries to curtail or control that. I hope that the system will work in order for us to achieve the objective of this Bill.

I think this is a good Bill and it is in the best interest of this nation. It will enable us to build democratic culture based on the principles of good governance and all other democratic tenets. For that purpose, I support the Bill. However, I really hope that the Committee will take our input or discourse into consideration as they work on the amendments so that what we get reflects the true spirit and letter of the Constitution.

Thank you, hon. Temporary Deputy Speaker, Sir.

Hon. Limo: Thank you, hon. Temporary Deputy Speaker, Sir, for giving me this chance to contribute to this important Bill. First, I thank the Departmental Committee on Justice and Legal Affairs for bringing this Bill to this House early enough.

We know in this country we are used to bringing new rules and laws during election time. However, this Bill has come at the right time so that we can have enough time to ventilate. Unfortunately, I have realized that most of the Members are not very interested and this is dangerous for democracy because we witnessed last time, just before elections, laws which were created to promote democracy were changed in the last minute. Of interest are the election law and the Political Parties Act which were changed in the last minute.

I would like to say that this Bill will promote democracy. It will promote democracy because the greatest enemy of democracy in this country is financing and the nomination process. There is a notion in this country that the people who have money are the ones who are taking over leadership. I would like to thank the people of Kenya because if you look at the elections that we conducted in 2013, you will find that this House witnessed the biggest number of young people, including myself join this House and the Senate. This was only possible because the people of Kenya realized that leaders are not elected on the basis of how much they give.

In the past, we found that leaders who had done very well were not elected because they were not giving out money. There are leaders who are either born or made. To actualize this Bill, we need to pay attention to capacity building of our citizens because most of them do not know that they are actually the bosses of this country. They are supposed to be given proper information through capacity building which unfortunately comes just before elections and they have very little time to internalize that there are very clear qualities of choosing a leader and not through financing. Financing of election campaigns is ideally supposed to cater for movement or posters. But in the past, it was used to coerce the electorate in the last minute to change and they are left to suffer for the next five years. It is important for the citizens of this country to realize that a decision which is normally made during elections mostly takes less than a minute but a wrong decision takes five years to reverse.

Hon. Temporary Deputy Speaker, Sir, this Bill also seeks to ensure that even if we are financing our elections and campaigns, we are supposed to finance using legal and acceptable sources. Hon. Millie Odhiambo has mentioned something very crucial here that we need to take

into account, especially people who have spouses who are not Kenyans. We need to move amendments to make this Bill more realistic.

I also support this Bill because it has put control in terms of penalties. When we are making laws in this country, we also need to do what we call risk assessment so that they cannot be abused. We have realized that we can make laws which can be abused by people by setting others. Therefore, the creation of room for giving warning the first and the second time is very realistic so that people cannot misuse that provision.

On political parties funding, the current dispensation is very good because it ensures that the State funds political parties. One of the things we need to consider in this country is to see how the State can fund nomination process. This is because one of the biggest problems which we have encountered in this country is that of nomination process. It is a nightmare because no political party in this country has capacity to carry out a free and fair nomination.

I wish to encourage this House to amend the law on elections so that in future, we have the IEBC carrying out nominations for our political parties. People might say that we do not trust the Commission but, at the end of the day, it is better to have a better Satan than something that brings misery to so many people. In future, we might encourage the Departmental Committee on Justice and Legal Affairs to come up with amendments to the law so that we have our nominations held in a free and fair manner.

Hon. Temporary Deputy Speaker if this amendment Bill goes through, it will actually ensure that many people who have never dreamt of coming to this House will have a chance too in the future. I am sure the people who know my background wonder how I came to this House. I thank the people of Kericho County especially those ones from my constituency because they did not consider that hon. Limo did not have enough funding. They considered leadership qualities inherent in many young people currently.

With those few comments, I support and call upon my colleagues to do the same and give their various views in ensuring that we amend it so that it becomes a better law.

Hon. Waiganjo: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to make my contribution to this very important law. A law that comes to level the political playground between candidates and brings sanity to our elections is crucial. In fact, this comes almost 50 years after our Independence and this has been long overdue. It comes by dint of Article 88(4) of the Constitution. These are some of the benefits which, perhaps, we are reaping

from the Constitution of Kenya, 2010. I also think that this is a Bill that has borrowed a little from other jurisdictions and there is need to try and domesticate it so that it aligns to our political realities.

I am sure that if Members are asked to give their political stories and how they got to this Parliament, you would hear a lot of long stories because most candidates were pitted against very wealthy candidates. This Bill comes to regulate the manner of expenditure during the campaigns. We also need to give civic education to our populace and voters. It is voters who encourage candidates to give bribes. As a matter of fact, voters openly ask for bribes during campaigns. It is a time for voters to reap – they collect themselves in various groups and invite you to speak to them. After you do that, they ask you to release them which obviously means that they need you now to give them some money.

This is, therefore, a Bill that will bring down political corruption because most politicians obviously will use a lot of money not for the purposes intended to win an election; not to print campaign materials; not to be used in transportation but, sometimes, they would use it to hire thugs and goons who would go to disrupt other candidates' rallies. This is a Bill that will bring sanity in the way we manage our campaigns.

For political parties, this is time they became lawful and behaved with fidelity to the law. The Political Parties Act will come in handy to regulate the manner in which our political parties work. Letting candidates lose without disclosure of funds is what has made leadership in the past become a domain of questionable characters who get into power without clear explanation of how they got their wealth. We are aware that there are people who will look for money from anywhere because nobody will question their sources of the funds. That is where laws like that one of money laundering should be looked into closely so that when we get people in leadership, we are sure that those people are in leadership by dint of their integrity and ability to lead. That is why you find that other people fund candidates for their own narrow and selfish interests.

I know there are people who will never run for political office because, perhaps, they cannot run a successful campaign. However, what they do is to get and fund a candidate. When the candidate gets into Parliament or any high office, he becomes a captive of those campaign financiers. That is not leadership. It is, therefore, very important for candidates to make a disclosure of where they get their funds because that way, we can be sure that the money is not from drug pushing or other hideous ways.

Candidates who get into leadership by using a lot of funds, their first thought and action when they get positions of leadership is to pay back what they use. That is how you get corruption in political circles becoming rampant. With the control and regulation of how a candidate will disclose how they will spend their campaign money, it will be good for this country.

In the last campaigns where *Harambees* were not allowed, the campaigns were actually very smooth. In fact, it became so easy for candidates who did not have funds to attend as many functions as they could. For instance, churches would not entertain candidates if they did not have a *Harambee* function. I am sure candidates who do not have resources would find it very convenient when this law is passed.

Our voters need to be educated so that the culture of handouts is discouraged. By passing this law I am confident that our political campaigns will never be the same again.

Hon. (Dr.) Nyikal: Thank you, hon. Temporary Deputy Speaker for this opportunity. The absence of a law like this has thoroughly eroded democratic practice in this country. In my mind, this has subverted the will of the people over many years. We go to the elections every five years or in-between and we come out with the belief that we have elected the best people. However, in many instances, what really happens is that those with finances manipulate the vote and the people especially the youth. What comes out is not in many cases, what is expected.

When we have this law and properly implement it, we may actually start seeing true democracy. I also believe that the use of money in elections is the root cause of corruption in this country. I have been in all areas of human endeavor in this country. I have been in private practice. I have been in the civil society. I have been in labour movements. I have been in public service. I know that electoral processes anywhere where money is used and not controlled actually leads to corruption. In fact, for me, one of the reasons I supported the move that Cabinet Ministers should not be at the same time Members of Parliament is the influence. People literally came into public service to recoup what they had used in the elections. Towards elections, you actually had situations where people literally said, "What do you think we are going to campaign with?"

It percolates that basically if we can effectively control the use of money in elections, we will control corruption to a very large extent. The process of contributions during elections in itself removes the right of people and to an extent it removes even the independence of the people who are elected. It is not only during the process of election, but even when people are in positions they have been elected into.

You will still find that the process that brought them in is affecting their performance. Maybe with the exception of a few cases and some of us are lucky, leadership has been to a large extent limited to people with wealth and it has created the impression amongst the populace that when you seek an election post, you are a wealthy person. To a large extent, the role of a Member of Parliament and other elected persons has been corrupted. People have thought that if you can go there, you have enough money. When we came to this Parliament, the big debate was about the salaries of the Members of Parliament and we missed a point, to look at the role of an elected Member of Parliament. The social responsibilities that they have is that really their role? The electoral process has created the impression that, that is their role.

There is undue influence by the contributors, whether they are local businesspeople or foreigners. This issue of contributions, nobody bothered to find out what it was basically. Therefore, to have a law at this time, if we can implement it, is very important. The role of *Harambees* in our election system has been dubious. Even when we enacted a law during the last elections, as hon. Millie said earlier, we did not follow those laws. As more laws come in, these are issues that will go a long way in strengthening democracy and making it real and not limiting it to the people with money.

The use of money creates domination of certain vulnerable people in the society. If it is left that only the rich and people who can make large contributions and who can use expensive means to campaign go into elective positions, then a lot of people who can make good contributions and spur growth and development in the country are left out. As regards the parties, the Members have said that we lack discipline within parties. If we can bring laws that regulate the spending within the parties, we will go a long way. We are all aware of how painful the nomination processes tend to be. I found this as a major step in the democratization in our country. All the reforms that we have been talking about and that have been brought about by the Constitution; this may anchor that and facilitate a lot more reforms than we can imagine.

May I also say that we need a lot of amendments. I have tried to go through this and there are many areas where amendments will be needed. For example, the definition of “campaign financing” which goes as the money used during campaigns needs amendment. Well, you have other things to do. You need to say that it is the money used during campaigns for the purposes of the election. Those are areas which we will have to look at. There are areas which will also need to be looked at, for example, Clause 10(g). It talks about the referendum expenditure and

nomination expenditure. In a referendum, we all know that there is no nomination process. Those are things that probably we have not looked at carefully.

If you look at Clause 12(5) which says that the disclosures that we are talking about will be confidential, I see no use whatsoever in a disclosure that is confidential. In fact, if it is public, it will almost be self-implementing. We have areas like Clause 13(3) which tends to be a little too lenient. It provides that if there is failure of disclosure and it is discovered after the election, your punishment will be in the next election or the next by-election, if that is there. In my mind, you should just be disqualified even if you are already in. Clause 14(1), for example, indicates the period of three months that the Commission will declaim the expenditure limits. That is too short. By three months, persons who were raising money will have gone through raising the funds. Those are areas that we can look at. But overall, I support this Bill and definitely, we will work to bring in some amendments when we get to the Committee stage.

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Mulu, hon. Gumbo and hon. Kabondo wa Kabando. I only have two minutes for all of you. Do you really want to spend the two minutes or do you think you want to organise your thoughts and then come and contribute on Tuesday? Hon. Gumbo and hon. Mulu, you want me to decide on the basis of seniority? What is fair? I will start by the junior most because the senior most has more patience than the junior. So, yes, hon. Benson Mulu.

Hon. Mulu: Thank you, hon. Temporary Deputy Speaker, Sir. I also rise to support this Motion. Despite the fact that this is a constitutional requirement to have this Bill in place, it is also a very important Bill. The reason is that election financing is the key to good governance. Most of the challenges that we have been facing in this country in terms of our leadership is more associated with the way we finance our elections.

I agree with the Members who have said that almost 90 per cent of why one should be in this House is determined by how much money you have. The reason why the current House has a number of young Members who have been elected is because during the last elections, even though this law was not in place, rumours had spread that if you give people money openly, you will be arrested and you could be disqualified from contesting. So, to some extent, those who had money and were out to give it out to bribe the electorate realised that they had to do it in a very secretive way. To some extent then, our politics moved from more of cash campaigning to issue based

campaigning and the people who put their points forward to the electorates in the best way got the votes.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): All right, hon. Mulu, you have about nine minutes when the debate resumes.

Hon. Members, it is now 6.30 p.m. and I have to interrupt the proceedings of the House. Therefore, this House stands adjourned until Tuesday, 29th October, 2013 at 2.30 p.m.

The House rose at 6.30 p.m.