

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 29th October, 2013

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Hon. Members, I have two Communications to make. The first one is on the timelines for processing legislative proposals and Bills forwarded to Committees.

TIMELINES FOR PROCESSING LEGISLATIVE PROPOSALS AND BILLS FORWARDED TO COMMITTEES

Hon. Members, I have received requests from hon. Members asking that I provide guidance on the matter of inordinate delays in processing draft Bills or legislative proposals forwarded to the Departmental Committees for pre-publication scrutiny and in the processing of Bills committed to the relevant Committees after First Reading.

In line with Standing Order No.114, a legislative proposal for which a Member or a Committee is in charge must be accompanied by a memorandum containing: (a) a statement of the objects and reasons for the Bill; (b) a statement of delegation of legislative powers and limitation of fundamental rights and freedom if any; (c) an indication whether it concerns county governments; and (d) a statement of its financial implication and if the expenditure of public monies will be involved should the Bill be enacted, an estimate where possible, of such expenditure prior to submitting it to the Speaker.

Hon. Members, when all these requirements have been met and the Clerk also satisfies himself that the draft is in good order, two things then follow: (a) If I am of the opinion that a legislative proposal is a draft money Bill I will arrange that the legislative proposal be referred to the Budget and Appropriations Committee. Pursuant to Article 114 of the Constitution, such a proposal is proceeded with only in accordance with the recommendations of that Committee after taking into account the views of the Cabinet Secretary responsible for Finance; (b) in respect of legislative proposal for which no Committee is in charge, refer the legislative proposal to the relevant Departmental Committee for pre-publication scrutiny. The Departmental Committee is expected to submit its comments on the legislative proposal to the Speaker within 14 days of receipt of the legislative proposal – I emphasize 14 days.

This process is referred to as pre-publication scrutiny, a practice borrowed from the United Kingdom's House of Commons. Our requirement for pre-publication scrutiny was introduced to replace the unpopular practice where a Member, who was not a member of the Executive, intending to introduce a Bill was required to first seek leave of the House by way of a Motion. It is also informed by Article 114 of the Constitution.

It is important to know that only those draft Bills emanating from individual legislators, particularly proposals introduced at the behest of a citizen in accordance with Article 119 of the Constitution and those introduced by Members on their own behalf require pre-publication scrutiny. I hasten to state that Bills prepared by Committees and those introduced by the Leader of Majority Party on behalf of the Executive do not have to be subjected to a pre-publication scrutiny. This is because the input of experts, stakeholders and the public generally shall have been sought by the time the sponsors are identified.

In our fledgling practice, the Budget and Appropriations Committee or the relevant Committee may make any recommendations or comments on the draft Bill. Based on those recommendations, I may render either that the draft Bill be not proceeded with or that it be accepted. If I certify that the proposal be accepted, the proposal is then published as a Bill.

I wish to stop there so that hon. Members at the entrance take their seats.

(Hon. Members at the entrance entered the Chamber)

Please, do so quickly. Do not engage in those discussions! Walk in quickly and take your seats. Hon. Members, I stopped to allow you to take your seats, so that we can proceed, and not for you to take water.

Hon. Members, I am aware that quite a few Bills are, for various reasons, still pending in the Budget and Appropriations Committee and others before Departmental Committees long after they were committed to those Committees, disadvantaging the Members who introduced those legislative proposals. This is a matter we must urgently deal with.

Hon. Members, I will now guide on the next process, which is referral of Bills to Committees after First Reading. I know that you are all conversant with Standing Order No.127, which requires a Departmental Committee to which a Bill is committed to facilitate public participation and take into account the views and recommendations of the public when the Committee makes its Report to the House. The Committee or a Member designated by the Committee for that purpose shall be expected to present the Committee's Report to the House within 20 calendar days of such committal.

Upon such presentation, or if the Committee's Report is not presented when it becomes due, the Bill may then be ordered to be read a Second Time. If for any reason, at the commencement of the Second Reading the Report of the Committee will not have been presented, the Committee concerned will be expected to report progress to the House and failure to present the Report shall be noted by the Liaison Committee for necessary action. The House Business Committee has also recently introduced a Bill tracking system to deal with the speed at which the proposals are passing through pre-publication and Departmental Committee stages on committal after First Reading. I invite hon. Members to pay attention to the trackers, which are also available in Room 8 and on the Parliamentary Website. The trackers are updated every Friday.

I also direct Committees to which legislative proposals have been referred for pre-publication scrutiny to expedite the briefs/reports to me on the respective Bills. I have occasionally encouraged Committees to form sub-committees whenever appropriate to ease this process. In this regard, commencing 5th November, 2013, should a Committee exceed or have exceeded the 14-day limit, I may have no other choice but to approve the legislative proposal for publication, so that this House can make a decision on the particular Bills, one way or the other.

To this end, save for matters in respect of which a deadline is set by the Constitution, statutes, the Standing Orders, or a resolution of this House, all Committees are advised to prioritise consideration of Bills before considering any other business.

In addition, should a Committee exceed the period for scrutiny of Bills referred to them after First Readings, the House Business Committee will invoke the provisions of Standing Order 127 without exception – that is to order that the Bill be tabled for Second Reading. Indeed, the House Business Committee has already started applying this rule by listing Bills for Second Reading at the expiry of the 20-day period, irrespective of the reports of the relevant Committees.

Hon. Members, these directions are in keeping with the Parliamentary principle that the law-making role of an individual Member of Parliament, and indeed this House, should only be curtailed or delayed, if at all, by the collective will of the House itself.

Thank you.

The hon. Members walking in, please, take your seats. There is another long ruling.

(The hon. Members took their seats)

CONSIDERED RULING: SCOPE OF OVERSIGHT POWERS
OF SELECT COMMITTEES, REFERENCE TO SUBSTANCE OF
PROCEEDINGS AND COMITY BETWEEN
LEGISLATURE AND JUDICIARY

Hon. Members, I wish to issue guidance on three important matters you have requested that I urgently put to rest. The matters are: -

(i) The scope of oversight powers of select committees and whether committees have relevant expertise needed to carry out specialised investigations;

(ii) The question of reference to the substance of proceedings in select committees before the committee makes its reports to the House; and,

(iii) The fate of a recommendation of a report of a committee on a matter that has been determined through a judicial process and related issues.

Let me commence with the first issue, which is the question of the scope of oversight powers of select committees and whether Parliamentary Committees have relevant expertise needed to carry out specialised investigations.

Hon. Members, you will recall that on Tuesday, 22nd October, 2013, the Member for Ugenya, hon. David Ouma Ochieng, rose on a point of order and sought the guidance of the Chair on the scope of authority and powers of committees of the National Assembly, under Standing Order No.216(5), to investigate, inquire into and report on all matters relating to the mandate, management, activities, administration and operations of the assigned Ministries and departments, and particularly in relation to functions of oversight and specialised investigative agencies. Other hon. Members, including the Leader of the Minority Coalition, and the Member for Suba, also raised similar matters.

Hon. Ochieng sought to know whether committees should engage in what he termed as “primary investigations” and whether in fact the House has the relevant competence to conduct complex forensic investigations. He wondered why days after His Excellency the President undertook to set up an inquiry into the complex matter of the Westgate Mall terror attack, the Departmental Committee on Administration and National Security and the one on Defence and

Foreign Relations, could not wait until the relevant specialised agencies completed investigations, so that they could engage on its oversight. He also sought to know what then the role of oversight agencies, including constitutional commissions, independent offices and specialised investigative agencies would be, if Parliament took over primary inquiries, which are the core functions of those agencies.

On his part, hon. Francis Nyenze, the Leader of Minority Coalition, wondered why the chairpersons of the two key Committees investigating the Westgate Mall terror attack rushed to appear to make conclusions, claiming to defend the offices they were investigating over alleged omissions or commissions before the joint committees concluded their investigations.

In addition, most Members who rose wanted to know what the scope of the investigations by committees would be. They sought to know why the House and its committees cannot provide enough time for various Government agencies to conclude investigations before Parliament is seized of the matter citing the case of the United States of America Congress that had to wait for specialized state agencies to conduct investigations on the Twin Tower terror attack before embarking on a further oversight function.

Hon. Members, this issue, indeed, raises more questions. Is it really in the greater public interest that we, as Parliament, hop at every opportunity to investigate? In what circumstances does Parliament take over investigations from specialized state agencies and at what cost to the investigations? Does Parliament have the competence to take over complex investigations requiring forensic studies? Why would the committees of the House not resort to the same agencies for expertise and technical support while conducting the investigations anyway? These are some of the matters that you have requested me to consider.

Hon. Members, these questions are not new. As a matter of fact, in the past, committees of Parliament have found themselves investigating matters that the Executive has already set up a process of inquiry. One such case is that of the famous or infamous “Artur Brothers Inquiry” where investigations by a committee of Parliament ran almost parallel to a similar process following the appointment of the “Kiruki Commission of Inquiry”.

Indeed, the then Minister for Justice and Constitutional Affairs, hon. Martha Karua sought the intervention of the Speaker, claiming that by carrying out parallel investigations, the Committee chaired by the then Member for Kabete, Hon. Paul Muite was violating the Commission of Inquiry Act. In making a ruling on the matter, the then Speaker, Francis ole Kaparo observed: -

“A commission is a creature of the Executive through an Act of Parliament. If the commission of inquiry was formed before the relevant departmental committee was seized of the matter to be inquired into, then good sense would have dictated that Parliament may have to await the findings of the commission of inquiry. The same good sense that would have also dictated the setting up of the Commission of Inquiry would have awaited the results of the Parliamentary inquiry. But this is just a good sense. I do not think that the setting up of a Parliamentary inquiry would by that very fact stop an already ongoing commission of inquiry and vice versa. Each has a different reporting authority. This situation is clumsy but I see nothing legally wrong with it. Each in theory at least, is trying to establish the truth to the appointing authority. The results may, indeed, be fascinating. Neither the commission of inquiry nor the Parliamentary Committee inquiries can stop the executive from conducting its own parallel investigations to establish whether or not any crimes have been committed by any person or persons and charge those persons in a court of competent jurisdiction.”

While ruling on a similar matter, Speaker Humphrey Slade had observed that parliamentarians are eyes and ears of the citizen. He also noted that, an investigation by Parliament attempts to answer the very immediate and urgent questions and provides a platform for ventilation of preliminary matters. He concluded that this role of Parliament is so central to parliamentary democracy that it is impossible to imagine its removal or abridgement in any way or form. He concluded: -

“The power to scrutinize executive actions or omissions and to bring the executive to account is the inalienable right of this House. It cannot be taken away in any form or guise whether through a commission or otherwise.”

Hon. Members, I have no reason to deviate from these historic precedents. I, however, hasten to add that it is almost obvious that parliamentary committees lack expertise to carry out specialized investigations. However, committees are at liberty to hire such expertise. In addition, from my own experience in cases of this nature, parliamentary findings are rarely conclusive. In the end, Parliament may recommend amongst other things, that the various specialized organs of the State carry out further investigations in any matter that a Committee of this House may have been investigating including carrying out forensic analysis of the evidence adduced in the committee.

Indeed, on the example cited by the Leader of Minority Party regarding the “9/11 Attacks”, the Congress of the United States of America formed a joint committee whose membership was drawn from the Senate and the House of Representatives. Thereafter, the National Commission on Terrorist Attacks from the United States of America, popularly known as the “9/11 Commission” was formed. In their report, the 9/11 Commission indicated: -

“We have built upon the work of previous several commissions and we thank the Congressional Joint Inquiry whose fine work helped us to get started.”

This clarification now settles the first matter raised by hon. Ochieng including the question of whether Parliament should proceed to carry out primary investigations. I want to encourage the Members of the joint committees investigating the Westgate attack to benefit from the two reports that I have referred to. In particular, I want to encourage them to compare the gravity of importance and seriousness that go into such investigations, including the manner of treating information and evidence obtained from the committee proceedings.

Hon. Members, I now turn to the second question relating to the reference of the substance of proceedings slated before the committees before they table their reports.

(Several hon. Members stood at the Bar)

Once again, I will pause to allow hon. Members to take their seats. Hon. Members, I just gave you a chance to walk in and take your seats before I proceed. Hon. Members at the Bar, you can do what you are doing later on. I will continue on the second question.

Several Members sought an interpretation of Standing Order No.86 that provides: -

“No Member shall refer to the substance of the proceedings of a Select Committee before the Committee has made its report to the House.”

Hon. Members wanted to know whether it is every Member of the House and not necessarily a Member of the very select committee whose report is anticipated that should not make any reference to the substance of the proceedings. What is the substance of proceedings of a Select Committee? To rest this matter, I wish to refer to Erskine May, Parliamentary Practice (23 ed.), page 142. It says: -

“The publication or disclosure of debates or proceedings of committees conducted with closed doors or in private or when the publication is expressly forbidden by the House, or of draft reports of committees before they have been reported to the House will constitute a breach of privilege or contempt.”

In the case of the Petition before the Departmental Committee on Justice and Legal Affairs touching on some members of the Judicial Service Commission, I want to remind the House that this process should be accorded the highest levels of gravity. It is, indeed, very repressing and an abuse of the privilege for any hon. Member of this House to make public pronouncements, of whatever nature of this matter.

As a law-making organ, is not incumbent upon all of us to lead by example? It is, therefore, wrong to publish in any way or to disclose debates or proceedings of committees conducted in closed doors or indeed, in private. It is also wrong for any hon. Member to disclose debates or contents of proceedings of a committee if such disclosure is expressly forbidden by the House. You are also not allowed to disclose contents in whole or in part, of draft reports of committees before they have been reported to the House. It does not matter whether you are a Member, a friend of the committee or that you may have accessed the information in any other way as a Member. Any such act will constitute a breach of privilege or contempt and the necessary sanctions shall follow.

In the event that a committee may want to express an opinion on a matter, it is always fair that the committee first agrees on the content of that opinion or statement or even better, makes a preliminary report containing the collective views of the committee.

Hon. Members, I know most of you are serving for the first time and, therefore, may have been ignorant of this requirement. Now that I have made this communication, I will not take kindly any attempt by an hon. Member to violate the provision of Standing Order 86, whether within the precincts of the National Assembly or not. This also goes to Chairs of Committees who may purport to make conclusive statements on proceedings before their Committee.

(Applause)

Hon. Members, lastly, I was asked to give guidance on the fate of recommendation of a report of a committee on a matter that has been determined through a judicial process. This issue touches on the concept of the comity between the Legislature and the Judiciary. Having perused several authorities in the Commonwealth, and also in the USA it is my considered finding that –

(i) A recommendation of a Committee is not final until the report is considered by the House and a decision made in one way or the other. However, should the House adopt a report of a Committee purporting to invalidate or nullify a matter determined by a court exercising its judicial powers, then it becomes very difficult for anyone to implement such a resolution. This is because our Parliament does not have appellate jurisdictions or judicial processes. As a matter of fact, the practice of parliamentary appellate jurisdictions was primarily practised in the United Kingdom in the UK Parliament, where the House of Lords also acted as a court of appeal. However, this practice ended on 1st October, 2009, when the appellate jurisdiction was transferred to the Supreme Court.

In this regard, it will probably be more useful for Parliament to require that the aggrieved party makes an appeal before a higher court. It has been urged that if Parliament makes a resolution that is not implementable, or one that purports to unduly reverse a court process, then such resolution would be in vain. I am on record asking committees to refrain from making

Parliament act in vain because that is not what the membership of this House was elected to do; certainly not to act in vain.

(ii) Similarly, many courts have held that a matter touching on a legislative role of a House, or Houses of Parliament, or indeed, a matter of procedure in a House or between Houses of Parliament cannot be a question to be determined through a judicial process by a court of law. In a landmark case in the UK where a petitioner unchallenged the validity of the Finance Act of 1964 because it provided for expenditure on nuclear weapons contrary to international law, the court held that a statute cannot be challenged on the grounds that it was illegally made or made for unlawful purpose, or made unlawfully. The Court also held that if this were possible, it would then amount to denial of supremacy of Parliament. On the same subject, Section 15 of Mason's Legislative Manual provides as follows; and I quote:

“A legislative body having the right to do an act in law must be allowed to select the means of accomplishing such act within reasonable bounds. Under a constitutional provision declaring that each House shall determine the rules of its proceedings, the fact that a House acted in violation of its rules, or violation of parliamentary law is a matter clearly within its power and does not make its action subject to review by the courts.”

In this regard, it is urged that should a court clothe itself the powers of the legislature and purport to make determination on matters relating to procedures of a House or the House of Parliament, and therefore question the supremacy of Parliament, then such determination by such court would only be in vain. I doubt any court worth its salt would want to travel that route.

Hon. Members, this concept of comity between the Judiciary and the Legislature is the very core that separates the two institutions and which we must all jealously protect and respect.

Thank you.

(Applause)

PAPERS LAID

The following Papers were laid on the Table: -

The Kenya Water Towers Status Inspection Report, Vol. I.

(By hon. A.B. Duale)

The Report of the Parliamentary Committee on Energy, Communication and Information on the Media Council Bill, 2013

(By hon. Kamau)

REQUESTS FOR STATEMENTS

Hon. Speaker: They should be done in the order that they are. Is hon. Mwangangi not here?

The hon. Member being absent, his request is dropped.

(Request dropped)

Next is hon. (Eng.) Nicholas Gumbo.

STATE OF ROAD NETWORK AND POWER SUPPLY

Hon. (Eng.) Gumbo: Thank you, hon. Speaker. Pursuant to Standing Order 44(2) (c), I wish to request for a Statement from the Leader of Majority Party regarding the state of infrastructure development in the country, with particular reference to road networks and power supply.

In his statement, the Leader of Majority Party should inquire into and report on the following: -

- (i) the total length of tarmacked road surface per constituency, broken down into classes "A", "B", "C", "D" and "E";
- (ii) the total length of power transmission distribution lines per constituency tabulated in terms of voltages, that is, 400 Kilovolts, 220 Kilovolts, 132 Kilovolts, 66 Kilovolts, 33 Kilovolts and 11 Kilovolts lines;
- (iii) the total domestic and industrial electricity connections per constituency; and
- (iv) the measures the Government is taking to bring equity to all parts of this country with regard to these key infrastructure projects.

Thank you.

Hon. A.B. Duale: Hon. Speaker, I will respond next week on Wednesday, in the morning.

Hon. Speaker: Next Statement request is by hon. David Gikaria. The Member being absent, the request is dropped.

(Request dropped)

The next request is by hon. Waweru Nderitu. Hon. Waweru Nderitu!

DELAYED PAYMENT OF SEVERANCE PACKAGE TO EMPLOYEES OF DEFUNCT KCC

Hon. Nderitu: Hon. Speaker, Sir, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives regarding non-payment of severance package to the former employees of the defunct Kenya Co-operative Creameries following the winding up of the KCC and the subsequent ruling by the court on 30th January, 2002 that all former employees be paid the severance package. To date, more than 6,000 former employees have not yet received their severance package amounting to Kshs220 million.

In the Statement, the Chairperson should inquire into and report why the former employees have not been paid their dues, the number of former employees who have been paid their dues and the amount paid. The Committee should also report when the former employees will fully be paid and the outcome of a petition by the former Member of Parliament for Ndaragwa and forwarded to the then Minister for Co-operative Development on 4th December 2012.

Hon. Speaker: The Chairperson, Departmental Committee on Agriculture, Livestock and Cooperatives. Yes, the Vice-Chair.

Hon. Mbiuki: Hon. Speaker, Sir, we shall issue the Statement within the next two weeks.

Hon. Nderitu: I am okay with two weeks.

Hon. Speaker: Hon. Oner Ogalo.

CLARIFICATION ON CONDUCT OF HELB AND KNEC

Hon. Ogalo: Hon. Speaker, Sir, pursuant to Standing Order No.44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the conduct of the Higher Education Loans Board (HELB) and the Kenya National Examinations Council.

Very many pupils below the age of 14 years who registered for the 2013 Kenya Certificate of Primary Education (KCPE) have been barred by the KNEC from sitting the national examinations. On the other hand, the HELB has been frustrating students applying for loans. Applicants are required to apply online through a server address which is constantly congested and unable to enlist the applications. In the Statement, the Chairperson should inquire into and report on the following: -

(i) whether all the pupils who registered for the KCPE regardless of their age will sit for their examination and if not, what measures the Government is taking to ensure that such students are not barred from sitting for the said examinations;

(ii) what procedure is in place for the HELB loan applications;

(iii) the number of students who qualified and were awarded HELB loan in the period between June, 2012 to October, 2013; and

(iv) what measures are being taken to ensure that all students who apply and qualify for the HELB loans are awarded the said loan.

Hon. (Ms.) S.W. Chege: Hon. Speaker, Sir, now that the Member's question involves two different departments in the Ministry of Education, Science and Technology, I request that he gives us three weeks.

Hon. Speaker: One of them is a matter touching on pupils that are going to sit for examinations.

Hon. (Ms.) S. W. Chege: Hon. Speaker, Sir this involves the KNEC and the other one involves HELB.

Hon. Speaker: There is something of an urgent nature. So, what are the timelines?

Hon. (Ms.) S. W. Chege: Hon. Speaker, Sir, three weeks.

Hon. Speaker: Oner.

Hon. Ogalo: Hon. Speaker, three weeks is okay as long as KCPE will not take place before the Committee is done with this process.

Hon. Speaker: Very well. Hon. Joyce.

STATE OF MINING SITES AND WELFARE OF MINE WORKERS

Hon. (Ms.) Lay: Hon. Speaker, Sir, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairpersons of the Committees on Environment and Natural Resources and Labour and Social Welfare on the state and condition of the mining sites and the rights and welfare of the mine workers in the country.

In some mining sites in Kenya, workers are facing serious violation of human rights from the employers whereby they are physically abused, subjected to poor working conditions and even in some cases, there is late or no payment for services offered by mine workers. The Chairs

of the two Departmental Committees, namely, the Committee on Environment and Natural Resources and Labour and Social Welfare should urgently inquire and report on the state and condition of mining sites in the country; two, violation of welfare and rights of workers in mining sites in the country, in particular Kasigau Mining Sites in Voi Constituency, Taita Taveta County and thirdly, the steps taken by the Government through the Ministry of Mining to operationalise the Mining Act, 2012.

Hon. Speaker: Let us hear from hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Hon. Speaker, Sir, we take the request from hon. (Ms.) Lay very seriously and we, as a Committee will bring a report in one week's time, subject to the positive response from the Cabinet Secretary who happens to have problems appearing before Parliament. He has not appeared after the four summonses that we have given to that particular Ministry. If he appears, we intend to give the answer in one week.

Hon. Speaker: But which Cabinet Secretary does not appear? Hon. Amina Abdalla, you may wish to disclose that. The country will need to know which Cabinet Secretary does not appear before Committees of the House.

Hon. (Ms.) Abdalla: Hon. Speaker, Sir, I thought that one of your rulings was based on a complaint I had given to you that the Cabinet Secretary, Ministry of Mining, had given excuses to three out of the four summons that we have given him and he has never appeared before the Committee.

Hon. Speaker: Hon. Leader of Majority Party, what do you have to say?

Hon. A.B. Duale: Hon. Speaker, Sir, it is very strange that a Cabinet Secretary has turned down summonses. I will write to the President, through the Chief of Staff, that this said Cabinet Secretary is turning down summonses of Parliament. I will communicate that information and make sure that all Cabinet Secretaries, heads of department and executives attend all summonses. On the same matter, the Mining Bill is coming to Parliament, I am sure shortly. As the Committee investigates the matter in Kasigau, in Taita Taveta, I wish to assure hon. Abdalla, one of the active chairs, this time round the Minister concerned will come following a directive by His Excellency the President. He has no choice.

Hon. Speaker: In fact, we need to file a report about anybody flaunting summonses issued from here, so that appropriate sanctions can be processed. Hon. Lay, take the Floor.

Hon. (Ms.) Lay: Thank you, hon. Speaker, Sir. I partly agree with the Chair that the issue on violation of human rights is a very grave one. I have enough information that I will give to the Committee because it touches on women. The way women are being mistreated in Kasigau area in a particular mining site needs very urgent attention because what is happening there is a very sad situation. I will, therefore, appear before the Committee and give more information on that.

Thank you, hon. Speaker Sir.

Hon. Speaker: Can we get concurrence from the Chair of the Departmental Committee on Labour and Social Welfare? Who is the Chair? Hon. Oburu, you are the Chair?

Hon. Aburi: Hon. Members are turning this House into their dining tables. For example, if you can look at hon. Sumra he is chewing something. Can he stand, open his mouth and tell us what he is eating? If to chew in this House is not a taboo, I am from Meru and I should be allowed to chew *miraa*.

(Applause)

Hon. Speaker: I am sure the framework of our Standing Orders has not anticipated that chewing of those substances would be a matter that would come up for the Chair's ruling, but you are encouraged to finish chewing before you come to the Chamber. Can I get a response from the Chairperson of the Committee on Labour and Social Welfare?

Hon. Wakhungu: Thank you, hon. Speaker Sir. We will endeavor to give a response, at least, after two weeks because it involves us going to Voi and actually trying to get to know what is happening there.

Hon. (Ms) Lay: Accepted, thank you.

Hon. Speaker: Hon. Ng'ongo, you have a point of order

Hon. Ng'ongo: Hon. Speaker Sir, I am looking at Article 108 of the Constitution, about party leadership and leadership in the House. In line with what the Leader of Majority Party has just said, that he is going to write to the President who is the head of the Executive through the Chief of Staff, I would like to ask if that would really be in order because this House has a channel of communication. I believe that if there is a complaint or concern by hon. Members or Committees in Parliament about the performance of the Executive or particular members of the Executive, it is the Speaker who should actually write to the President. If you look at the order of leadership, the President is up there, followed by the Speaker, then the Leader of Majority Party and lastly the Leader of Minority Party.

I am asking this because we need to set a precedent; the Leader of Majority Party is not in the right position to communicate to the head of the Executive. The head of the Executive should be communicated to by the head of the Legislature and that is the Speaker. I would, therefore, urge that you rule the Leader of Majority Party to be out of order. It is only the Speaker who can complain on behalf of the House to the Executive.

Thank you.

Hon. Speaker: You know this matter is not contentious. Hon. Ng'ongo just wants to get into some debate with the Leader of Majority Party. The hon. Amina Abdalla's Committee is at liberty to draw the attention of the Chair to the failure by the said Cabinet Secretary and then appropriate proceedings will begin, but of course the Leader of Majority Party is at liberty to communicate to even the President or even hon. Ng'ongo about issues that he may think are of mutual benefit. But on matters about what hon. Amina Abdalla raised, I think we need to get an official communication from that Committee, then appropriate proceedings will be commenced.

Hon. (Ms) Ghati: On a point of order, hon. Speaker Sir. My microphone is on and I had raised a point of order. I think I am allowed to speak at this point.

Hon. Speaker: Hon (Ms.) Ghati, I think you want to take advantage but proceed

Hon. (Ms) Ghati: Hon. Speaker, I am getting concerned on the issue of Cabinet Secretary and the fact that he does not turn up when instructed or requested by a Committee Chair. This is a very serious matter, and it is coming at a time when I was also thinking of bringing a very serious Statement that touches on what hon. (Ms) Lay has said, especially concerning mining. I would also wish that mining issues are looked at very seriously. I come from a county that is 90 per cent mining; Nyatike Constituency.

I wish to support what hon. (Ms) Lay is talking about in terms of violation of the rights of women who go to the mines. We have heard of people who have been trapped in mines and they have lost their families. They have not been compensated and the Government has not said anything. I really expect a very quick answer on that.

Hon. Speaker: Well, of course, you took advantage of the fact that your microphone was on to ventilate on that issue. I appreciate, just like the late President of the United States of

America, Wilson, who said, "Congress in plenary is Congress in exhibition." It is fair that you raise the concerns of the people that you represent. More importantly, please accompany hon. (Ms) Lay before the Committee to go and prosecute the matters that you raised.

Hon. Koinange? Absent not desiring to be present, your request is dropped.

(Request dropped)

The hon. (Ms.) Mbarire?

Hon. (Ms.) Mbarire: Hon. Speaker, I wish to request for a Statement. My request had been approved by you and I had been told that I would be given a chance to raise it this afternoon.

Hon. Speaker: You may do it but in future we want all requests to be on the Order Paper so that we are able to estimate the time spent on this.

WITHHOLDING OF FORM FOUR CERTIFICATES BY HEAD TEACHERS

Hon. (Ms.) Mbarire: Thank, Hon. Speaker Sir. Pursuant to Standing Order No 44(2)(c) I wish to request for a statement from the Chairperson of the Committee on Education, Research and Technology, regarding the numerous Form Four leavers in the country who have been denied their Kenya Certificate of Secondary Education due to outstanding school fees. As a result, these students are unable to get admissions into institutions of higher learning, tertiary institutions or being recruited into the disciplined forces and many other job opportunities. The Government has on several occasions ordered the heads of schools to release these certificates stating that failure to clear school fees is not sufficient reason to withhold their certificates. In her statement, the Chairperson should inquire and report on one, the number of students countrywide affected by this practice of withholding of their certificates; two, the immediate measures to be put in place to compel the head teachers to release these certificates to the respective students as a matter of urgency; three, a long term policy which should be put in place by the KNEC and the Ministry of Education, Science and Technology to effectively protect students from this practice by the headteachers in future.

Hon. Speaker: Chairperson of the Departmental Committee on Education, Research and Technology, hon. Sabina Chege. Hon. Sabina Chege, even as you respond, I think the House has in the past expressed itself on this matter and more particularly the fact that there is no contract between the schools and the candidates. The contract is between the Kenya National Examinations Council and the candidates. I think this is a very serious matter that needs to be really delved into so that you can get a lasting solution. Hon. Chege.

Hon. (Ms.) S.W. Chege: Thank you, hon. Speaker. Actually, as a Committee, we raised that issue last week with the Chief Executive Officer (CEO) of the KNEC and he agreed that he is going to issue a circular to all primary and secondary school principals that they should not withhold certificates of the students due to non-payment of school fees. We agreed on that as a Committee and the Cabinet Secretary was also present.

Hon. Speaker, I would wish to respond to this in a week but now the hon. Member of Parliament, Cecily, has also requested for a policy between the Ministry of Education and KNEC. I am not so sure whether there is a policy. So, that might take a little bit of some time and I request then for around two weeks so that if there is something to do with policy, then they will have had ample time to prepare.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Mbarire.

Hon. (Ms.) Mbarire: Thank you. Hon. Speaker, I have heard the Chair of the Departmental Committee on Education, Research and Technology but I want to say that circulars have been issued very many times before. I remember at one point it was actually the former President, hon. Kibaki, who actually issued that circular. It was not honoured and I believe they are going to take us through the same circle of excuses. I would like this matter handled more seriously by the Committee to the point of ensuring that if there is no policy, they ensure that a policy is put in place. That is my concern. We need a long-lasting solution but I am willing to wait for two weeks. That is okay.

Hon. Speaker: Very well. I think you also need to look at the existing legal framework so that if there are areas which are not properly covered that may require your intervention, I think it is important that the House expresses itself on them. This is a matter that is of great national importance because it runs across the country. Next Order.

MOTION

ADOPTION OF PIC SPECIAL REPORT ON SUPPLY OF MAIZE

Hon. Keynan: Hon. Speaker, I beg to move the following Motion: -

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, before I---

Hon. Speaker: Do I notice that there is a point of order from hon. Ali Wario?

Hon. Wario: Asante, Mheshimiwa Spika. Nimesimama kwa jambo la nidhamu kulingana na Kanuni za Bunge 89(3). Kanuni hii ya Bunge inatambua kama jambo liko mbele ya mahakama, Bunge hairuhusiwi kulizungumzia. Utakapoangalia ripoti hii, ukurusa wa 19 inazungumza kwamba maswala haya yako mbele ya Mahakama ya Rufaa. Ikiwa sisi ni watunzi wa sheria na Bunge hili halifanyi kazi bila kufuata sheria, ni sheria gani tunatumia leo? Maswala yamo katika Mahakama ya Rufaa na huku tunayajadili!

Mheshimiwa Spika, naomba uangalie Kanuni ya Bunge 89(3)(d) utoe mwelekeo kwamba maswala haya yasiletwe kwa Bunge leo.

Asante, Mheshimiwa Spika.

(Applause)

Hon. A.B. Duale: On a point of order, hon. Speaker. Last Thursday when this debate was being shelved, I raised a concern, and I am on HANSARD, that I hope the deferment of this Motion to today will not be as a result of some very dark forces that want to make sure this report does not see the light of day. However, having said that, with a lot of respect to my good friend and neighbour, the Member for Bura, before you make a ruling, I want the Member to avail the court proceedings, the court case, and the affidavits generally as a matter for this House to discuss.

Hon. Speaker, you cannot stand up and say that matter is in court. The precedent and the Standing Orders will support me. Before you make a ruling, the Member must table on the Floor of the House the case number, the proceedings and tell us if there is a partial judgment. Then from there you can move to the ruling.

Hon. Speaker, what is before us now is a report. This Committee met for six months. The Motion before the Public Investments Committee (PIC) is a matter that was discussed for six months where key witnesses were interviewed. The Member should have even walked to that Committee, raised the matter and stopped its proceedings. Parliament has invested money in that Committee and today I am sure the House is extraordinarily full because Members want to debate this report. It is either for or against it. Would it be in order for hon. Wario to table the court cases and proceedings before hon. Speaker rules?

Hon. Speaker: Hon. Wario.

Hon. Wario: Mheshimiwa Spika, hata kama niko na heshima kubwa kwa Kiongozi wa Wengi Bungeni, nimeuliza Bunge swala hili na nimeuliza Mheshimiwa Spika. Lakini tutakaposimama na ukweli, ukurasa wa 19 wa ripoti hii unathibitisha hii kesi iko katika Mahakama ya Rufaa. Ningemuomba Kiongozi wa Wengi Bungeni asome ukurasa wa 19 kwa habari zaidi. Hii ni kesi Namba Tisa katika Mahakama ya Rufaa, 2012. Iwapo unataka makaratasi, nitayaleta mbele yako, Mheshimiwa Spika. Asante.

Hon. Speaker: Hon. Members, it is a very simple matter for me to rule on. It is very, very simple but I do not want us to get excited about what is there because what the Member is required to do is to provide evidence. That is what the Standing Order says. The mere fact that there is reference to a court case is not in itself a bar to debating a report, if it is not going into the substance of the matter in court. If it is just mere reference to the existence of a court case or a dispute between this and the other, that fact in itself cannot bar Parliament from debating a report. Of course, there will be issues to do with the substance and when we get there, I want to be available to make a ruling. Hon. John Mbadi, you still want to contribute?

Hon. Ng'ongo: Yes, hon. Speaker.

Hon. Speaker: Proceed.

Hon. Ng'ongo: Hon. Speaker, thank you for your quick ruling on that matter but more fundamentally, I think as a House we need to respect the committees of the House and the House at large. This matter has been canvassed and transacted by this Committee for months, if I am not wrong and if the hon. Member felt that this matter would be *sub judice*, it would have been proper to approach the Committee or the House at that time because a committee is a creation of the House. I am concerned because last week when I asked for postponement of debate on this report, there were concerns that probably over the weekend issues would come out which would compromise the debate on this matter. I feel pained that probably I have provided an avenue for some of us to do just that.

I have actually read the report. Hon. Speaker, I would like to ask hon. Wario to hold his horses if he cannot prove that this matter is active. But even if the matter is still active in court, it is also out of order for the hon. Member to wait until it is late in the day to raise the matter.

Hon. Wario: Bw. Spika, sijui nimepotea ndiposa mhe. Mbadi akatoa hukumu kwamba mimi nimefanya kosa. Mimi sijamwuliza mhe. Mbadi swali lolote. Mimi nimemwuliza swali Bw. Spika.

(Laughter)

Ukurasa wa sita wa ripoti hii unaiambia Serikali isilipe. Ukurasa wa 18, mahakama inasema, “Lipa”. Kwa hivyo Bunge haliwezi kuchukuwa jukumu la kuamua eti nani kafanya makosa na nani kafanya vizuri. Ninaomba uangalie suala hili, Bw. Spika. Mimi niko tayari kufuata maamuzi yako. Hata hivyo naomba uangalie ukurasa 19 wa hii ripoti ambapo inasemwa kwamba hii kesi iko mbele ya Mahakama ya Rufaa. Leo tutapangusa uso wetu kisha tuseme, “Leta ushahidi.” Ushahidi umeletwa na PIC na uko mbele yako na hili Bunge. Hukumu ni yako. Ahsante.

Hon. Speaker: I will rule that for the convenience of the House, the Mover be allowed to move the report then Members and the House in general will be in a position to express themselves on the various recommendations and the processes undertaken by the Committee in arriving at these recommendations. It will also not be right that the Speaker prohibits Committees from presenting their reports when they have already proceeded to take evidence.

For the time being, I rule that hon. Keynan proceeds to move the report and hope that it is going to be seconded and debate thereon can follow.

Hon. Keynan: Thank you so much, hon. Speaker. What we are experiencing was not unexpected because for those of us who have been around for quite some time, I know the kind of lobbying that has been going on. However, I want to confirm that having served in this House for so many years, in this report there is no iota of *sub judice*. Therefore, what the Member has attempted to do is actually the opposite of the ruling that you have just made. I hope next time Members will be available in the House whenever the Speaker is expected to give guidance.

I want to take this opportunity on behalf of the Members to thank your office and that of the Clerk, the entire staff of the National Assembly and more so the Office of the Auditor-General and in particular the Auditor-General himself, the Inspector-General of State Corporations and all other witnesses who appeared before the Committee.

Hon. Speaker, there are critical issues on this report, which somebody mentioned last week. One of the requirements of this Committee even before we considered the report was to ask for a specialised audit by the Auditor-General. Gladly, the recommendations of the Auditor-General form part of our recommendations. For purposes of those hon. Members who asked, I believe that what the Auditor-General has recommended and what our report says are largely similar. Although copies of the Report of the Auditor-General are in Room 8, for the benefit of those hon. Members who may not have had a chance to read it, I wish to table a copy of the Report of the Auditor-General, dated 5th August, 2013. I would like to urge those hon. Members who had issues with this matter to critically examine the Report of the Auditor-General and see how comprehensive it is, so that they can be well informed as they debate the matter.

(Hon. Keynan laid the document on the Table)

Hon. Speaker, again, for purposes of information, I would like to address the Members’ concerns. This report touches on a key State corporation. The National Cereals and Produce Board (NCPB) was formed in 1939. It used to be called the Maize and Produce Board. In 1985, the National Cereals and Produce Board Act was enacted. Since then the functions of the NCPB have been as they are known to us today.

The NCPB is mandated to engage in commercial commodity trading and provide grain-related services. Within the Republic of Kenya, the Board operates 110 depots, storage facilities, silos and conventional stores. Today, it is only the district that I come from that does not have

any silo. All the other parts of Kenya have had functional silos before the sad issue of the conflict between the NCPB and M/s Erad came into being.

It is good to appreciate how this issue came about. In 2004, a number of bureaucrats in the Government decided that there was a drought. In order to ensure that their cartels benefitted, they went ahead and persuaded the Government to declare that there was drought and famine. That was done in August. One-and-a-half months down the line, the same individuals, through correspondences that we are going to avail to this House, declared that there was a bumper harvest and, therefore, there was no need for importation of maize. When the “drought” was declared, the Government mandated the three trustee-Ministries overseeing the Strategic Grain Reserves (SGR), namely, the then Ministry of Agriculture, Ministry of Finance, and Ministry of Special Programmes, to import white maize through the NCPB. Roughly, a total of 180,000 metric tonnes of maize were to be imported.

Hon. Speaker, on the face of it, the exercise looked legitimate. Companies were invited to tender. The invitations saw the formation of an inter-agency tender committee stationed at the headquarters of the NCPB. Out of the 180,000 metric tonnes of maize that were to be imported, only 70 metric tonnes were eventually imported. M/s Erad happened to be one of the companies that applied to import maize. Following the advertisement of the tender, over 80 companies applied. Eventually, about 31 companies submitted their documents. Out of the 31 companies, only six companies met the pre-qualification requirements. M/s Erad was one of the six companies. Again, for purposes of information, M/s Erad company was registered in 1997 but got its VAT Registration Certificate on 16th July, 2003. I wish to table the document.

(Hon. Keynan laid the document on the Table)

Hon. Speaker, they got their Income Tax registration number or PIN on 19th June, 2003. It is indicated that by the time this company applied to import maize, it had assets worth about Kshs7 million, with a bank overdraft of Kshs3 million. However, the audited accounts of that company at that particular time show that it was technically insolvent. It did not meet the requirement of three years’ experience. Therefore, the issue is how a company which did not meet any of the pre-qualification requirements applied for importation of thousands of tonnes of maize? The company did not have any capital or any institutional experience. They did not meet any of the tendering requirements.

Therefore, in our opinion, this was a well orchestrated programme that was meant to benefit certain cartels who wanted to rip off and kill this very important institution called the NCPB. We are going to demonstrate that when the operations of the NCPB were grounded, the same individuals and their associates applied to the Ministry of Agriculture to have the same organisation privatised and commercialised, so that they could buy it at a throw-away price. The Committee has since asked the Ministry of Agriculture not to go ahead and commercialise the NCPB until these issues are sorted out. That is why the entire tendering process was tailor-made to accommodate the particular company.

First of all, the company did not have the financial capacity. They did not have the technical know-how. They did not have the experience. More so, we will demonstrate later on that even the Directors of M/s Erad started quarrelling amongst themselves. We will also show the position that was subsequently taken by the then Permanent Secretary (PS), Treasury. We will show what forced the then PS, Mr. Kinyua, to go to his office on a weekend and write a very

serious letter to the then PS, Special Programmes and PS, Agriculture, just to make sure that the Government did not lose millions of shillings in the particular transaction.

Hon. Speaker, for purposes of information, I would like to read out the letter which is going to form part of the record of this House, and explain why this report is very critical to this country's food security. The letter is dated 28th August, 2004. I want to, sincerely, on behalf of the people of Kenya, and on behalf of my Committee, thank Mr. Joseph Kinyua. He was one of the trustees but in-between the transaction, he realised that there was a problem somewhere. Even the way the media covered this story is that they have been reporting on evidence given by different witnesses who appeared before the Committee. I want to urge them to read the observations of the Committee's Report and the way forward. On the particular date, Mr. Kinyua wrote to the PS, Special Programmes, in which he said the following: -

“Thank you for your letter dated 27th August, 2004. We have carefully reviewed your letter and have the following comments to make: First, we find its content very wanting. On several occasions, we have tried to explain to you the procedure that is followed in releasing money from the Consolidated Fund in line with the Statutory Financial Regulations. It has been made clear to you that you need to provide Treasury with a firm procurement programme to assist the Exchequer Committee to plan the release of funds, based on spending pattern but bearing in mind the statutory authorisations.

Secondly, you have indicated in your letter that the tenderers are awaiting Letters of Credit (LCs) by the National Cereals and Produce Board in order to commence the importation.”

Hon. Speaker, the gist of this crisis is the opening of the LCs. An LC is an internationally recognised financial instrument that guarantees a transaction. In our opinion, the indication that the tenderers were waiting for the opening of LCs was, in itself, an illegality. Anybody who is familiar with the statutory financial regulations will agree with us because an LC is normally provided by whoever is going to supply goods and services.

In other words, you have a business cartel that has applied to supply maize, and the same cartel is asking the Government to open an LC; the other bureaucrats had agreed but Permanent Secretary, Mr. Kinyua, came out and said that, that was an illegality. That was the departing point among the three trustees at that particular time. This leads to the question: Who was doing the actual importation of maize? Was it the NCPB or the tenderers? This was the question that was posed by Permanent Secretary, Mr. Kinyua. If it was the tenderers on behalf of the NCPB, would the issuing of the LC not be tantamount to making payment before delivery? This question has never been answered by all the individuals who were engaged in this transaction. Did the NCPB assess the financial and technical ability of the tenderers to procure the required maize? That question has never been answered.

He says: -

“You ought to know that in the past the Government has lost a lot of money in similar circumstances. The case of Mr. Somaia and the National Bank of Kenya (NBK) purchase of the London-look taxis demonstrates this point. The Treasury, as custodian of public funds, should not knowingly allow this to happen.”

This is one of the trustees. He says: -

“The NCPB should certify that the maize is of good quality and quantity is right before paying. If the tenderers cannot afford to finance the purchase of maize, or such basic costs as LCs, you should be concerned of their ability to deliver.”

This is eventually what happened.

The letter reads: -

“In the meantime, the Treasury wishes to assure you of its commitment to avail resources required to finance the approval of purchase of relief maize. In this regard, the Treasury will arrange a release of Kshs1.5 billion in the course of the weeks as we await to receive your firm procurement schedule; this is part of the funds required for this part.

You are, however, strongly advised that payments to tenderers should be made only on delivery and confirmation that the imported maize meets the requirements as specified in the tender.”

Hon. Speaker, Sir, I am a bit surprised that the media did not highlight the contents of this letter; it forms the basis of the disagreements between different players in this saga. I want to take this opportunity to say that if many civil servants, or technocrats, would have been as diligent as Mr. Kinyua – and this was almost 10 years ago – I think this scandal, and many other scandals, would have been avoided. For purposes of the media, and Members who are here, I wish to table this, although it is part of the report, since it was not highlighted.

(Hon. Keynan laid the document on the Table)

When the tendering process commenced, this company, along with other companies, was given an opportunity to supply what it had actually requested to supply. The procurement process was shortened from 42 to seven days in order to give an opportunity--- Drought had already been declared as a national disaster. We eventually proved that, indeed, that was not the case. How do you declare drought in the month of August and at the end of September, you say that there is a bumper harvest? Was it genetically modified maize? How fast did that maize grow? What happened? It grew within 30 days? How did it happen? Did somebody not foresee this? Eventually, they said that instead of utilizing the money to import maize, they would divert it to buy maize from the local farmers. That was why the process was suspect from the beginning to the end. That is what we will demonstrate to the Members and to the Kenyan public.

Even against the advice of the Permanent Secretary, Treasury, the procurement process continued and this company was given an opportunity to supply maize. This company offered to supply 20,000 metric tonnes of maize. There was a technical evaluation committee before the main tender committee and an inter-agency committee at the NCPB. The technical evaluation committee recommended, notwithstanding the other earlier deficiency, that this company be allowed to import 20,000 metric tonnes of maize.

When the same recommendation went to the inter-agency evaluation committee of the NCPB, the figure was changed from 20,000 metric tonnes to 40,000 metric tonnes without reference to the tendering process or to the committee. This is why you will realize that somewhere in-between, the management of the NCPB made a very serious omission that has paralyzed and killed that very important organization that provides food security. The company did not have the financial capacity to import that maize. The company was again allocated an amount that was higher than what it had tendered for, and what it was even qualified to supply. Eventually it had to import maize.

What is shocking is that this company was asked to avail the sources of the maize that it was to import. It provided a company called Ropack International, purportedly located in South Africa. From our preliminary investigations, that is a tyre manufacturing company. It is called Ropack International South Africa. They said that, that company dealt with maize importation or storage. I do not want to divulge more, but the information from one of the key investigating agencies is that, that was a tyre manufacturing company. Your guess is as good as mine now.

What was the relationship between a maize and a tyre manufacturing company? That was their first source. Therefore, from our investigations, there was no business relationship between M/s. Erad and Ropack International, which is a tyre manufacturing company.

Secondly, they also said that they would get their maize from Ethiopia; they gave the name of a company called Ethiopian Grain Trade Enterprise. We all live on planet earth. Ethiopia has never exported maize because it has never had enough. From the preliminary information that we have, that aspect was completely not true.

They gave another company called Chelsea as the company that provided freight services. From our own investigations, that company is non-existent. They provided another company in Brazil which does not exist. You can see the chronology of events. This company applied yet it did not have the capacity; it interfered with the procurement procedures; the sources of their maize only existed somewhere else and not on planet earth, and we have confirmed that beyond reasonable doubt. The Ethiopian Grain Trade Enterprise is a State-owned corporation. That in itself is a serious criminal offence - they have used the name of a good company in a neighbouring country to justify their commission of crime.

When we did not find the sources of their maize, we went and looked at the proceeds of the tender. This company, with no facility and financial capability, was allowed to import maize worth US\$9,160,000. This company did not only lack the capacity to import maize worth that amount of money, which is equivalent to about Kshs800 million, but also did not have the capacity to supply 10 bags of maize because it was non-existent. Until then the company did not have offices. There was even a dispute on who was the Managing Director, or who owned the company.

We had two individuals who appeared before the Committee and each was claiming to be the Managing Director. All this is in the HANSARD. We went ahead and interrogated the contract process. Permanent Secretary, Mr. Kinyua, advised against using the LCs which were anchored on something called standby letter of credit, and which is a facility provided by an international financially stable bank. Because they did not have any facility, these individuals purportedly decided to use a joint venture in the name of a company called Kapu International; it drafted a joint venture in order to prove that the company had the financial capacity to supply the maize.

Hon. Speaker, Sir, from our revelations, Kapu International was as insolvent as the M/s Erad Supplies and General Contracts Limited. The MD was not there and the company did not have these documents, and they approached I&M Bank. Before these tender documents were verified--- I do not know whether these people stole them or they were acting in connivance with some officials. They bought a draft contract agreement which was presented to one of the banks. But this bank was expected to issue a bid. The I&M Bank issued a conditional bid because M/s Erad Supplies and General Contracts Limited was expected to provide the details of any internationally recognized financial institution that would guarantee or give them, a standby letter of credit. So, I&M issued that bid bond to the NCPB - I do not know whether it was through connivance - in order to allow M/s Erad Supplies and General Contracts Limited to sign the contract. One day after that purported bid was issued, I&M Bank went ahead and cancelled the bid without notifying NCPB and the public. There was a fake bid bond that was used to transact business worth hundreds of millions of shillings. We called the management of the company and asked how it issued that document, the bank officials had no answer. So, from our deductions, as you will see later, we concluded that the bank was part of the cartels because

every attempt was made to conceal the existence of that bid bond. I do not know whether it was by connivance, omission or commission.

Hon. Speaker, Sir, those of us who are lawyers will appreciate that once you have an official document that is supposed to justify a transaction, prudence demands that, that particular entity inquires about the authenticity of that particular document. The NCPB did not attempt to find out about the existence of that document; the bank did not find out and M/s Erad Supplies and General Contracts Limited did not also make full disclosure that the fake bid bond was used to consummate that particular contract. When that was done, the second thing was how they signed the contract. They had that fake bid bond, and the second thing was how to get the performance bond.

Hon. Speaker, Sir, these same individuals, instead of going back to I&M Bank, went to another bank called Dubai Bank and they presented the contract, dully executed, together with the forged bid bond and the Dubai Bank issued another performance bond on the basis of that forgery. Therefore, the three documents; the contract document, the bid bond and a performance bond that was anchored on the bid bond, were presented back and this was what was executed to purportedly import maize.

It was because of this that the Permanent Secretary, Mr. Kinyua, and others felt something was awfully wrong; they notified the different players and as a result of this - I say this without fear - there was no intention from the beginning to import maize. Eventually, when these companies started wobbling in their effort to import maize, the management of NCPB did not invoke the provisions of the contract document to enforce a breach of contract by M/s Erad Supplies and General Contracts Limited. They waited until M/s Erad Supplies and General Contracts Limited said that there was a breach of contract. Once this happened, this issue was given to an arbitrator.

Hon. Speaker, Sir, those who are lawyers will acknowledge how difficult it is to deal with arbitrators. An arbitrator was given the issue to handle. There was a document that was presented to one arbitrator by the name Evans Githuro who, shockingly, gave an award that had not even been asked for. M/s Erad Supplies and General Contracts Limited asked for compensation of US\$8 per metric tonne. Shockingly, the arbitrator gave them US\$49 per metric tonne and that was not something that was asked for.

Secondly, the arbitrator gave M/s Erad Supplies and General Contracts Limited storage charges. How do you give storage charges where there was no storage since there was no maize in the first place? The NCPB was asked to pay for storage and the question is: Where was the maize that was stored? The NCPB was again asked to pay interest at the rate of 12 per cent per annum.

Hon. Speaker, Sir, when this happened, there were a lot of accusations and counter accusations and the NCPB eventually demonstrated how individuals within the NCPB were part of the cartel that hired a lawyer. From that time to date, the NCPB has spent over Kshs30million on litigation. They have hired several lawyers and the case has not been concluded, as we speak. The Attorney-General was not involved; the Ministry of Finance was involved at the peripheral level and the procurement process was completely suspended.

Eventually, this company was given an arbitral award. Initially, the company was given an arbitral award of almost Kshs900 million, but in-between they felt that figure was too alarming and it was reduced to about Kshs613 million or its equivalent. If they were genuinely doing business and they know that, that arbitral award is theirs and they were awarded Kshs900 million, why would they shy off? They should be laughing all the way to the bank. They were

given Kshs900 million and they were asking whether it can be reduced. The figure was reduced to about Kshs600 million. That is what was used to auction all the properties. We visited the headquarters of the NCPB and their depot.

Hon. Speaker, Sir, for those of you who are familiar with the critical role this organization plays, all its bank accounts had been garnished as a result of a court order. M/s Erad Supplies and General Contracts Limited went to all the bank accounts of NCPB and garnished them. In the last two months, it has collected Kshs313 million. They also attached all their properties. In the last four years, the NCPB has been reduced to a shell. One-and-a-half years ago, their annual business volume was almost Kshs5.2 billion. In the last one year, that has been reduced to about Kshs500 million. Who takes responsibility for that loss of earnings from Kshs5.2 billion to Kshs500 million? It is a whopping Kshs4.7 billion loss, and it is a cost to the taxpayer as a result of this scandal.

Those of you who are consumers of maize meal, like myself, must have noted a steady increase in the price of maize flour. Little did we know that these are the individuals who played a major role because there are no storage facilities. In fact, there is also a health element. The storage facilities have been attached. I have just said that the only district without a silo in the Republic of Kenya is Tharaka Nithi, which my able sister represents. The others have stores. Maybe that has not been documented. Even Balambala has one.

When we visited the management, the Managing Director did not have a table or chair. The secretary was just looking at us while standing in the office. When we went there, the entire staff decided that they wanted to have an audience with us as if we were going to solve all their problems. We had a *baraza* with them and we promised, in the name of God, that the 11th Parliament and the Republic of Kenya that we were going to stand firm and protect the interests of Kenya, the board and the welfare and interests of the staff. We said that we would do whatever it takes to make sure that the NCPB is not rendered completely irrelevant simply because of the imagination of a couple of individuals.

It was because of this that we invited the Attorney-General and asked him: As the legal advisor to the people of Kenya and the Government of Kenya, how come you are involved in this mega transaction? He said that the Office of the Attorney-General had never been notified of these transactions. It was only when all the attempts to get injunction failed that they went to the Office of the Auditor-General to seek assistance. I want to again say that it is because of the non-involvement of the Office of the Attorney-General that there has not been an injunction in the Court of Appeal for the last five years. You can figure out how this process that touches on a very important institution has waded through all this process without an injunction.

It is because of this that as a Committee, once we were seized of the matter, we started evaluating all the information that was presented before us. One of the critical issues that we realised in this is that there was a management at the NCPB, tender committee, technical committee, presence of the strategic grain reserve, banks and Erad. The common denominator in this was that everybody was out to make a kill out of this very important institution, except one or two people like the office of Mr. Kinyua that I have mentioned.

The Committee considered evidence from all the individuals, but I want to mention that this report took us a bit of time because sometimes getting information is very difficult. We met the management of the NCPB. We also met the officials of Erad Supplies and General Contracts Limited, who had a dispute as to who was the Managing Director. We had two individuals, each one of them claiming to be the Managing Director. We met the management of the I & M Bank, the Kenya Commercial Bank, the Office of the Attorney-General and the officers of the Ethics

and Anti-Corruption Commission. One of the things that we learnt in the process of going through this was that there was an attempt to conceal this from the public, and even from the Government. All the individuals realised that there was, indeed, no maize. They did not meet the target and the Kenyan public was about to discover that the purported drought disaster was meant to benefit certain individuals. You need to ask yourself, if truly there was need and a facility to import two million bags was given, but only about 180,000 metric tonnes were imported, what happened? Did somebody not mislead the entire nation?

It was because of this that we had asked the Inspectorate of State Corporations, once we were seized of the report of the Auditor-General, to provide us with information. Having evaluated all this, the Committee looked at the components and every aspect of the presentation that was made and made a number of observations, which you will realize point to a scheme that was meant to deny the taxpayers their resources. In the observations, we realized that this company did not have the capacity. The procurement process was flawed. The company did not have the financial muscle, the experience; it was fairly new and was purportedly again registered for this particular transaction. We asked, why should this happen in the Republic of Kenya?

In all these, we realized that there were individuals who were out to kill the NCPB and then run to the Government and say that this organization had failed to discharge its functions, and it should be privatized. By the time we were writing this report, there was already an advertisement in the newspapers asking for consultancy service in order to privatize and commercialise the NCPB. They failed even after garnishing NCPB's accounts. After attaching everything, they were of the view that the NCPB was now down. The same individuals or other cartels have done the same to the Kenya Railways. I am sure you are all aware of the fate of the Kenya Oil Refinery and the NCPB. This was a scheme. It was not only in the food sector; it has happened in the oil sector. It has happened to a number of pumps. It is because of this that we looked at who the individuals responsible are.

In relation to Erad, I want to put it on record that a Member of the Committee was adversely mentioned. Again, taking into account our own stringent legislative procedures, we have asked the Member to invoke the provisions of Standing Order No.90. I want to take this opportunity to thank hon. Waluke for invoking the provisions of the Standing Order No.90, on declaration of interest, which reads that: -

“(1) A Member who wishes to speak on any matter in which the Member has a personal interest shall first declare that interest.

(2) Personal interests include pecuniary interest, proprietary interest, personal relationship and business relationships”.

The Member invoked this. Again, we felt as a Committee that we were duty-bound to apply the law equally, notwithstanding the membership of hon. Waluke; he is a Member of Parliament and also of the Committee. Again, we invoked the provisions of Standing Order No.184, which again says: -

“A Member who is adversely mentioned in a matter under deliberation by a Committee shall not be present at any meeting at which the Committee is deliberating on the matter, but the Member may appear to adduce evidence as a witness before the Committee”.

We issued an invitation, because that is what the procedure requires. Again, this was in line with Article 125 of the Constitution which gives the Committee the same jurisdiction as the High Court. The Member appeared before the Committee and, as some of you might have read, said: “Look, yes, you have invited me as a witness”, but he was not willing to give any evidence before the Committee. He quoted the Powers and Privileges Act. Our hands were tied and we

were forced to contend with that. We just said that the Powers and Privilege Act is there. Initially, we were of the view that it would have been in the interest of justice, the Member and the public for the Member to shed light on what he knew about that transaction. Again, because the Member invoked the provisions of the Powers and Privileges Act, we did not pursue him. We allowed the Member all the necessary institutional opportunity to give his side of that particular transaction. I felt that I should put this on record because there is a question. Over the last three days, we have been bombarded, as Members of the Committee, with so many questions such as: How can you bring a report that adversely mentions one of you? In this era, we have to be fair, consistent and thorough with whatever we do.

Hon. Speaker, doing a skewed report simply because one of our Members was adversely mentioned, in our opinion, we felt we would be failing in our cardinal responsibility as the electorates' representatives, and as people who have sworn to defend and uphold the Constitution. Therefore, I want to proudly commend the members of the Committee for standing firm. I also want to thank hon. Waluke for accepting the reality that this was a report none of us knew would find hon. Waluke under the circumstances. This was something that happened a long time ago, and then even hon. Waluke was not a Member of Parliament. We said this is the price we have to pay because of our oversight role. I want to again commend hon. Waluke for accepting that reality and the members of the Committee for accepting that, indeed, the law must apply equally to everybody regardless of his or her stature.

Hon. Speaker, having looked at this, what we did again in order to realise our goals, because this issue was a big one, we asked ourselves: How do we approach it now that evidence has been adduced that indeed due process was not followed? The company did not have the institutional mechanism. The bank somehow orchestrated the drive to milk the taxpayer. What we said is: How do we deal with this? We separated the different players under the tendering committee. We looked at the management. Who were the individuals who were accountable and who were at the helm of NCPB? We attempted to interrogate the activities of the management of NCPB at that particular time. We realised that the management of NCPB at that particular time did not follow all the laid down institutional procedures. If they had done that, then this saga would have been avoided. We also looked at the role of the tendering committee. We also looked at the role of the Strategic Grain Reserve. Other than Mr. Kinyua, the others did not take their work seriously and, therefore, they did not use their good offices in order to protect the taxpayers from this imminent fleecing.

Hon. Speaker, we also looked at the banks and concluded that banks were part and parcel of this particular drive to deny the taxpayers their resources. I am glad that you have made a very important ruling today. The role of a legislator does not end at the committee level. The moment you produce a report and that report becomes the property of the House; you remain an integral part of that report. So, what we said is that it is not just enough to pinpoint individuals, the management of NCPB, the then management of the SGRs and the banks. So, why do we not put measures in order to cure this? What we are saying is: Can we overhaul the NCPB Act so as to make sure that this does not happen? We also need the Arbitration Act. This is one area that has been used again to fleece the public.

Hon. Speaker, again, there was the issue of challenges between the lawyers and officials of the Judicial Service Commission (JSC). Again, we said, in addition to asking the Law Society of Kenya to discipline certain individuals--- When this saga started, the lawyer on record of Erad later on became a very senior official and that is, the hon. Nancy Baraza. She later on ended up being the Deputy Chief Justice and for the period this issue was hanging or floating within the

Judiciary, that lady was the Deputy Chief Justice. Again, I do not want to question or impute improper motives but we realised that there were issues but we said the LSK should investigate this.

Hon. Speaker, again, the Arbitration Act has been used to fleece the public and these days it is the norm. You just purportedly write an agreement, default and then go to court and say that you are in breach. Again, we said there was need to amend this particular Act.

Hon. Speaker, in conclusion, food security is something so critical. I have been asked, and I want again to demystify this, at the time this crime was committed, we were not here. We were there in Kenya. We were adults but we did not know some of the players and interestingly some of the individuals who participated in this come from different provinces. There are some who come from North Eastern; western, Nyanza and even Rift Valley. The question was: If everybody was to say this is my person and he or she should not be touched, then what happens to our electorate? This is how I want to appeal to your conscience. This report will ensure that such incidents do not happen on our soil and more so something that deals with our security. When this report is adopted, it will send a very strong message that regardless of the span of time, once you commit an illegality, that act will catch up with you.

Hon. Speaker, in conclusion, I want to urge you to adopt this report as it is. There is no *sub judice*, as it has been alleged. If there were interests, I do not want to allude to them. This report is the only sure way that will safeguard the interests of taxpayers in NCPB and ensure that facilities like declaration of famine are not abused. At this juncture, I want to call on hon. Kimani Ichung'wah who is the vice- chair to second. Thank you, hon. Speaker.

Hon. Speaker: Did you move?

Hon. Keynan: Thank you, hon. Speaker. I beg to move and ask Kimani Ichung'wah to second.

Hon. Speaker: Very well. Hon. Kimani Ichung'wah.

Hon. Ichung'wah: Thank you, hon. Speaker. I rise to second this Motion. I would like to highlight some issues, without repeating myself that brought about this issue that affected the importation of maize way back in 2004. This matter has haunted NCPB for a number of years. Indeed, I must submit that were it not for this House delving into this issue, maybe today we would not be speaking about NCPB as an institution standing on its feet. This institution is very important not just for the food security of this country but also because matters of food security are matters of national security. Therefore, for an institution like this to be brought down by a small cartel of people who have no regard for the rule of law, people who will do anything to squander public resources at the expense of the Kenyan masses, it is very sad.

Hon. Speaker, the Chairman has clearly explained how this transaction came into being way back in 2004. When Members go through the report, they read what we are talking about. I have received a lot of commendations from Members of this House who have gone through the report and have been able to grasp what the real issues are. The company that we were investigating, at the time it was being awarded the contract, it was technically insolvent. The company was given a contract to supply maize worth Kshs.800 million yet its net worth was negative. It is a company that did not have financial or even technical capacity to deliver even a single bag of maize. It was given a contract to deliver 40,000 metric tonnes of maize.

Hon. Speaker, it is clear that there was a conspiracy. When the technical evaluation tender committee of the NCPB, which was an inter-ministerial tender committee recommended that this company, which had actually bid the highest price of US\$233, be awarded 20,000 metric tonnes the main tender committee doubled this quantity to 40,000 tonnes and also varied

the price. There was no evidence tabled before our Committee that, indeed, the company agreed to a variation in the price. So, it was quite clear from the outset that there was a lot of collaboration between this company that was being contracted; Erad Company and General Contracts Limited and certain individuals, both within the NCPB and at the inter-ministerial tender committee.

Hon. Speaker, Sir, we also note that the conspiracy, as the Chairman has said, went beyond the institution itself. It touched on commercial banks and in this case two particular commercial banks. A bank issues a bid bond to a company to bid for Government business worth close to US\$ 1 million. It gives a bid bond on condition that this company will provide an irrevocable Letter of Credit for that bid bond to stand.

That irrevocable Letter of Credit was never and has never been supplied to the bank. However, the bank did not have the morality and the ethical standing to inform the procuring entity that the bid bond they had given was conditional and the condition had not been fulfilled. Therefore, the bid bond they were giving was, in fact, void.

The second bank that gave the performance bond guaranteeing the NCPB that, indeed, Erad and General Contracts were able to perform on the contract also gave the same condition that for that performance bond to hold, Erad and General Contracts had to supply the bank with an irrevocable Letter of Credit. The same was never availed. Therefore, the second bank, that is, I&M Bank and Dubai Bank--- Whereas the first bank refused, the I&M Bank which gave the bid bond refused to give a performance bond on the basis that Erad had not supplied the irrevocable Letter of Credit. Dubai Bank went ahead to give that performance bond. At the time, the contract between Erad and NCPB was being signed. You will note from our report that not only had the bid bond and performance bond not been given to the two banks, but also Erad Suppliers knew that they did not have a binding executed contract. Even at the time they were getting the performance bond from the bank, you will note from the report that it was based on a draft agreement that was signed. The bank, even though, went ahead to give this performance bond.

The other interesting thing is on what hon. Keynan mentioned, that is, the role of other players within the Ministry of Special Programmes and that of Agriculture and more so particular trustees of SGR. I heard the Chairman mention with exception Mr. Joseph Kinyua who was the Permanent Secretary in charge of Treasury. I must take this opportunity to commend Mr. Joseph Kinyua. When this contract was being signed between Erad and NCPB on 26th August, 2004, out of all the trustees in the SGR, it is only Mr. Joseph Kinyua who had the audacity, two days after the contract was signed---

Hon. Speaker, it is worth noting that the genesis of this problem between Erad and NCPB was the question of the Letter of Credit. Mr. Joseph Kinyua pointed out this to the other trustees of the SGR in a letter addressed to Eng. Mahboub Mohamed who was then the Permanent Secretary in charge of Special Programmes. He alerted him that NCPB had no business opening Letters of Credit for them. The Letter of Credit was basically just a means of Government guaranteeing suppliers that, indeed, Government had adequate funds to pay them.

However, you will note that all this advice by Mr. Joseph Kinyua was clearly ignored, both by the NCPB and the Permanent Secretary Mr. Kinyua was writing to at that time. That clearly tells you that it was a scheme designed by people within and without NCPB to defraud not only NCPB, but Kenyans. Indeed, as the Chairman has alluded, there was not a single bag or grain of maize that was supplied. There was never any intention to supply any maize to NCPB by Erad Contracts and General Suppliers.

Indeed, as the Chairman has said, you will note that many of the companies that purported to be importing maize from South Africa--- I think it has been mentioned that one of those companies supplies bicycle tyres and tubes. The other source of maize was said to be Ethiopia. We were informed that this country does not allow maize to be exported from it. This company never intended to supply any maize to NCPB. All this was clearly designed to defraud the Kenyan public. I implore Members of this House to stand with Members of this Committee on the findings of this report. They should stand with the people of this great Republic. They should stand with the millions of Kenyans who every so often go without food and depend on relief food. This relief food is usually coordinated from the silos of the NCPB. Had this House not spoken with one voice--- I believe that this House will speak with one voice to support this report and support the millions of Kenyan farmers who every year have got to depend on NCPB not only in the supply of seeds and fertilizers, but also to buy their maize and ensure that the SGR is safe and protected.

I call upon all Members to support this report and the SGR which is a matter of not just food security, but also a matter of national security and importance. I beg to second.

(Question proposed)

Hon. A.B. Duale: Hon. Speaker, I stand to support this report. I want to thank the Committee and hon. Keynan. This is because hon. Keynan has a history especially in the last Parliament of doing very thorough investigations and making sure that those who commit crime against the people of Kenya are brought to book. He did it in the last Parliament when some people in the Ministry of Foreign Affairs decided to “eat” even the plots that were to be owned by the Kenyan embassies. I will be very brief.

Hon. Speaker, I want to set the record straight. This grand corruption took place a few years after former President Moi left office. Hon. Members can remember that throughout Moi’s tenure, Kenyans alleged that his Government was corrupt. However, we can see that three years after he retired, the axis of corruption regrouped under the NARC Administration. Instead of reforming this country, the new administration then went ahead and came up with fictitious companies. The names changed from O. Pattni to Jacob Juma. There is no difference today. Therefore, I want to use the privilege of this House and say that I am happy that this Committee has brought a recommendation to the effect that Jacob Juma and company, as well as their companies, should never do business with the Government. That is the route to go.

In the past, people would oversupply hot air to the Government of Kenya. It is very sad. The genesis of this scam were people of Northern Kenya, whom I happen to represent in one of the constituencies. Fictitious drought was created. It was said that people of Northern Kenya were suffering from drought, and that they needed relief supplies of maize. On that premise, a needs assessment was done for some people to cash on. So, people who were dying because of drought were used as guinea-pigs, so that Jacob Juma, Dubai Bank and the rest could squander billions of shillings of taxpayers’ money. The then Ministry of Finance published Gazette Supplement N0.50 of 5th August, 2004 and zero-rated tax on imported maize. This is a big shame for the NARC Administration. I am sure that those who are still alive will be looking at me in the eye, wherever they are.

Even after Moi exited office, what changed was only the monkeys in the forest but the forest remained the same. Taxpayers’ money was lost. Those people got an exemption from the Treasury. When the LC was opened and the suspension done, it was established that it was a

particular company called Erad, owned by a man called Jacob Juma, who is now heavily involved in the mining sector. He has since taken Cabinet Secretary Najib Balala to court. Shame on him! He now wants to take the same monkey business to the mining sector. The Committee has given us the financial, technical and human resource capacities of the entity called Erad. The highest price by then was US\$223 per tonne of maize. It subsequently emerged that there was no maize that was supplied. There were only 20,000 bags. So, they realised that the air they wanted to supply to the Government was too little. So, they inflated the figure to 40,000 metric tonnes and increased the price to US\$229 per tonne.

Hon. Speaker, I want the media to be very fair to Kenyans. I do not want to talk for long but I want to thank the Committee for a job well done. This is the first Report of the Eleventh Parliament, which is a benchmark. A standard has been set by the PIC. The Eleventh Parliament must live to these kinds of Reports. The Reports that will be coming here in the next four years must be even better or of this standard. Those who live on impunity and corruption must be dealt with by the Eleventh Parliament. There is a man I respect, whom the President, in his own wisdom, appointed the Chief of Staff, namely, Joseph Kinyua. On 28th August, 2004, Joseph Kinyua must have prayed to the Almighty God. He went to his office and wrote a letter, which I want to read out to show that he was the only guy who wanted to stop the theft that Jacob Juma and company wanted to perpetrate. In one of the paragraphs, Joseph Kinyua said: -

“You ought to know that, in the past, the Government lost a lot of money in similar circumstances. The case of Mr. Somaia and the National Bank of Kenya, the purchase of the London-look taxis---”

Hon. Speaker, Jacob Juma and company are similar to Somaia and the National Bank. Mr. Kinyua went ahead to say the following: -

“You are, however, strongly advised that payment to these tenderers should be made only on delivery and confirmation that the imported maize meets the quality requirements as specified in the tender.”

Hon. Speaker, I want to tell the President that he has picked a man who in 2004 told the NCPB, the then Ministry of Special Programmes and Ministry of Agriculture that they were taking us back to the Somaia and Pattni way of stealing from public coffers. I got worried on Tuesday when this debate was postponed. I want to confess that in the last Parliament, debates on very good reports were killed because certain people played the ethnic card. Debates on very good reports were killed in the Tenth Parliament because of corruption and political affiliation. I want to urge my colleague that this is the first report that has come to the Eleventh Parliament. Let us set a benchmark.

Once we get to this House, let us remove our tribal shirts and political affiliation courts, however expensive they may be and, diligently, as we swore by the Constitution, comply with Article 96 to the letter. Let us play our oversight role and ensure that characters like Jacob Juma and M/s Erad Suppliers never again supply hot air to Government. Such characters should never do business with the Jubilee Government and any other government that will come to power. Of course, I hope that the Jubilee Coalition will be in power for many years to come.

With those remarks, I beg to support the Motion.

Hon. Speaker: Yes, hon. David Ochieng.

Hon. Ochieng: Thank you very much, hon. Speaker, Sir. I also wish to support this report. I would like to tell my colleague that this report sets the standards and the pace for this House. It is on record how businessmen who do not want to do business in the right way deal with this House. There is always this feeling out there that Parliament is a conveyer belt and

nothing serious happens here. The way this report goes will determine how this House operates for the next four years in this kind of situation.

I see very serious economic crimes against Kenyans in this report. On this I do not want to think about Jacob Juma or M/S Erad. What was the Permanent Secretary in charge of Special Programmes at that time doing? What was the Managing Director of NCPB doing? We must not start by blaming outsiders. We must start with the person who advertised this tender? Who ensured that the way the tender was advertised was followed? Let us not think about those who sit out there or the brokers looking for business. Let us look at the Government officials responsible for this scandal.

Hon. Speaker, Sir, this country has created many millionaires and billionaires who do not work or who do not know what hard work means. They sit down somewhere, come up with ideas, they say they know this Permanent Secretary and this Minister, they can introduce you to this director and they can take you to the President and you will get what you want. That is why our youth do not work hard. They know that in Kenya you just need to know someone. You do not have to work hard or start a company and make it grow. You will get a small contract today, leave it and go to another one tomorrow. We need to set a good example to our people.

As we speak now, we are pushing for the youths to get Government contracts. If we allow this kind of contracts to go on, we will get people like Jacob Juma using the youth and going to the Ministries to supply hot air and spoil the name of the youth who want to do business.

(Applause)

We cannot allow this. We cannot allow Government officials to collude with thieves to run down this country.

Hon. Speaker, Sir, as I speak here, I do so with a very heavy heart. This morning I had visited the Principal Secretary for Agriculture, Livestock and Fisheries because I want my constituency to have a cereals store because we do not have any. However, I was being told that the Erad thing has run down the NCPB. I was told that we cannot have this because somebody somewhere sat down and said that they must bring down that board.

Last month, the Government advertised in the newspapers for a factory to manufacture fertilizer. As I speak now, we are paying Ken Ren and yet we do not have a fertilizer factory in this country. We cannot allow this to happen. We are still paying Anglo Leasing Company for supplying nothing. We cannot allow this to happen if we have to be a House of Members of Parliament who will be called honourable Members. We must act and put our feet down. It is a shame.

We now want to blame the courts and yet we have new information in this report. Hon. Speaker, Sir, you are a former judicial officer and you know this. If you have new information, you can go to court to review a judgment. So, let somebody not tell us that there is a court case and, therefore, that is *sub judice*. We have new information in this report which can be used in court. We can go to court and ask them to review the judgment. This is because we cannot rely on fake court orders to defraud this country money.

Those who pay tax in this country are those who earn Kshs38,000 a month or Kshs15,000 a month. These are the people we still want to steal from. We are stealing from the poor, disabled and the youth to enrich a few persons. That is why I personally think that we should not be talking about Jacob Juma. We should look for the Tirop Kosgeys, the Maalims and all those

Government officials. This is because you cannot plan this kind of fraud when you are out of the Government. They look aside when you do not have this document. From the word go, they said they should be given the certificate of inspection but the company did not have it. That was the document that would have told them that the maize Erad wanted to import into the country was good. However, that company did not have that certificate. So, from the word go, you see the Government officials looking at the other side. That is why I wish that there is a recommendation that, first of all, we look for the Government officials and take them to court for economic crimes because this is what they have committed.

There is something I really think we must do as a House because it is very important. Every time a report comes to the House, somebody thinks that someone will be bribed to vote against it. That is a bad thing. They ask what the other side is saying. We must act with our conscience and we must act the right way. We must make Kenyans believe in us.

We cannot allow Kenyans to continue spreading rumours that we can do anything in *Bunge*. We must redeem our image. As I support this report, I would like to tell the PIC that the report it has done is very good. Hon. Speaker made a ruling this afternoon that you can engage forensic experts if there is anything you think needs to be investigated. Let us follow the lawyers we think are corrupt. This is because from the investigations we know who is trying to steal from this country.

Hon. Speaker, Sir, I beg to support this Motion.

Hon. (Dr.) Laboso: Thank you, hon. Speaker, Sir, for giving me this opportunity. I must say that I am very proud of our Committee, the PIC, for this very comprehensive report. As everyone else has said, this is setting the pace. This is a report that has been done in a very comprehensive manner. If these sorts of reports will come from this House, the public will have a different image of this House.

Many times, we hear negative statements made about hon. Members of Parliament. This is one report that will help redeem our image and we hope that other Members or Committees will emulate what has come out of this Committee.

The Committee Members have taken the bull by its horns and they have called a spade a spade. They are standing on behalf of Kenyans as our role is representing Kenyans.

Hon. Speaker, Sir, we hear that if you go to the NCPB now, you will find that they do not have chairs and tables because when some companies see them get some little money, they go for their share. It is really sad to note that people can be so callous or unfeeling not to realize that it is immoral or it is not right to treat Kenyans that way. It is us as taxpayers who continue to be ripped off by this terrible saga. When you see the kind of groups that have been involved in this saga, I agree with Members that more serious work needs to be done. I want to encourage the PIC as you have rightfully done and that is why I am recommending--- We are not saying that you are going to carry out full forensic investigations yourselves. You are making a referral to the bodies that have been given that task. We are saying that let the Ethics and Anti-Corruption Commission (EACC) do the work that they are paid to do and the Committee has given them timelines on when it expects them to give a report. That is why I support this report.

Hon. Speaker, Sir, injustices have been done in this country. We have said how the former regime had been brought down because of corruption. This was soon after a new regime had come in. This is a scandal. Is this really about regimes? Is it changing or is it still business as usual? You will change the presidents and the deputy presidents but have you changed the system? Have you changed the people who are below? Obviously, nothing really changes.

I urge the Government that I belong to, not to be involved in such scandals. We must really come out clean and work like our President has been saying. If anybody wants to do business and you are a Cabinet Secretary, you better resign from that ministerial position, go out there and do business. You should do real business and not monkey business like the one that M/s Erad was involved in.

They even talk about a country which has never exported any maize. To go and say that they are importing from that country when they do not even have enough to feed their own people is the height of impunity.

Hon. Speaker, Sir, all these banks come out and look like they are rosy and working in the best interest of Kenyans but they are part of the cahoots or groups that are trying to fleece our country. Therefore, I want to congratulate the Committee for setting the pace and for showing us what it means to seriously carry out an investigation. It is not witch-hunt and you can see that if we do it right, we will get the respect that we deserve as a House and Kenyans will begin to have faith in what we do.

With those remarks, I support.

Hon. Mirenga: On a point of order, hon. Speaker, Sir. While I obviously support this report, I want to ask for the indulgence and guidance from the Chair on one of the recommendations of this Committee; on the Judicial Service Commission, Recommendation No.16, page 98 of this Report.

Considering the independence of the Judiciary, Chapter 10, Article 160 of the Constitution says:

“In the exercise of judicial authority, the Judiciary as constituted by Article 161, shall be subject only to this Constitution and the law and shall not be subject to the control or direction of any person or authority.”

While we are annoyed and, in fact, we want to direct that this recommendation be implemented, how do we deal with this recommendation No. 16 where Parliament will be seen to be giving direction to the Judicial Service Commission (JSC) to investigate its former and serving members of staff to take action for the alleged corruption and abuse of office?

Thank you.

Hon. Speaker: I think the matter is not very contentious on that recommendation No. 16 because it is important to distinguish between the JSC as a constitutional commission and the Judiciary. I think this misconception has been fueled by lack of understanding and knowledge in these matters by our media and even some strange lawyers who have been commenting on these matters.

That recommendation is to the JSC. The JSC is responsible for the employment of staff working in the Judiciary. It recruits even the judges in the Judiciary. The Judiciary is the third arm of Government and it is independent. It is independent, particularly when they are making their decisions, so that recommendation to the JSC to investigate former and present members of staff does not in any way infringe on the independence of the Judiciary. Therefore, I rule.

I can see a point of order from hon. Wamalwa. I hope it is on the same. I think it is fair that this matter be put to rest that, even the Parliamentary Service Commission (PSC), which I chair, is a constitutional commission to which hon. Keynan is a constitutional commissioner. But when it is acting as the Commission, it is answerable to the oversight function of the National Assembly of the Republic of Kenya. Therefore, there is no other commission, if the one responsible for the hon. Members of Parliament submits itself to the oversight role of the National Assembly.

I find it obnoxious that somebody out there in the streets can begin to say that a recommendation to the JSC is interfering with the independence of the Judiciary. In my view, this recommendation does not in any way interfere with that independence. I think, even those other commissions excluding the JSC, I would want to encourage them to know that when they sit as JSC, they are not the Judiciary. They are not, they will not be and they will never be.

This distinction must remain and be understood simply that way.

Hon. Wakhungu: Thank you hon. Speaker, Sir. It was a point of order when the Leader of Majority Party was speaking. But now that you have given me the chance, I seek your guidance in reference to the letter that Mr. Kinyua had written. If you look the contract of M/s Erad Supplies and General Contracts Limited, it had been signed on 26th August, 2004.

When you look at Mr. Kinyua's letter, it brought advice after the contract had already been signed. So, is it in order for the Leader of Majority Party to mislead this House and the public at large that Mr. Kinyua who is currently the Chief of Protocol at State House and Head of Public Service or whatever the case, was observing due diligence? When you look at the dates clearly, it is a misleading idea. So, it is my humble request that this must be put on record that Mr. Kinyua was doing an afterthought.

Hon. Speaker: Now that the Leader of Majority Party is not on his feet, you can actually use the chance given that you are likely to have some point to ventilate in the manner you are now doing. This chance is for hon. Nyamweya.

Hon. Nyamweya: Hon. Speaker, Sir, I want to thank the Chair of this Committee and hon. Members for the thorough job they have done in this investigation. I also thank you, hon. Speaker, for your ruling today. This goes a long way to make Parliament discuss any issue which is of public interest for the Republic of Kenya.

I want us to go through the Report on page 7. On page 7, Hala General Trading is given 40,000 metric tonnes at a price of US\$229; Euro World Commodities Limited is given 40,000 metric tonnes at a price of US\$229; M/s Erad Supplies and General Contracts Limited are given 40,000 tonnes at US\$233; Purma Holdings Limited are given 30,000 metric tonnes at a price US\$189 and Freba Investments is given 30,000 metric tonnes at a price of US\$190. Common sense dictates that if you do not believe one company will be able to deliver these goods at ago, the obvious choice was that Freba Investments to get more tonnes. First, you start with Purma Holdings because they had quoted at US\$189.

Clearly, it indicates that there was something wrong in the whole procurement process. If the process was fair, then the lowest bidder should have been given a bigger portion to supply. Probably, there could have been a special reason why the highest bidder was awarded the business. When you look at the documents of Erad Supplies and General Contracts, who had quoted Kshs203 million, first of all, they failed to secure a bid bond. A bid bond is not conditional. It is either a bid bond as per the term stated or it is not there. I am not a lawyer, but that is very clear. You either comply or you do not comply. From the word go, this firm did not comply. Secondly, they went ahead and got another performance bid. The bid bond does not exist. The next question you will ask the management of the board is: What happened? Clearly, that company did not comply with the basic requirement to go to the next stage of tender evaluation. But, nevertheless, they went ahead. When they went to the other stage, another bid bond was given by I&M Bank. I will ask the Central Bank of Kenya to look into the banks which aided that fraud. If the bank did not give the performance bond and could have followed due process, fraud would not have happened. The banks are very important in this country. The next issue is what happened with our banks. Why did the two banks get involved in this transaction

with somebody who was not their customer? The report is coming out that Erad General Supplies was not a customer to those two banks.

The next issue which comes to mind is the Accounting Officer or the CEO of NCPB. He must tell us who told him to do what he did because he was not alone. We may look at Erad, condemn them, but let us look at the players who enabled him to commit that crime. The first group is the banks. When a bank gives a guarantee or a performance bond, it is a serious instrument and you take it the way it is. It is a serious instrument. I will ask the Kenya Bankers Association to take up this issue. How many transactions have happened like this one where fraud is committed because the banks are aiding people to steal public funds?

More importantly, this is the only way we can fight wastage. The Auditor-General says that 30 per cent of our money goes to wastage. It is the only way we can instill discipline. This issue is not about parties. It is not about where I come from. It is about Kenya. We need to conserve resources for this country, so that the penny that is available is used for this country. I can tell you, Members, if we avoid the wastage, we will not have to look for money from foreigners. We will be a self-sustaining economy. The only problem that we have is the wastage that is there. Even the NCPB, how come they did not have a lawyer to argue that case? Were they conniving all of them? When you look at the documents which are presented, you realise that there were contracts and there were no valid documents which could have enabled somebody to go to court. An arbitrator was appointed.

If you look at the report of the Committee, you wonder what is happening here. The NCPB provides storage facilities for the whole country. Somebody wanted to vandalize the facilities so that, at the end of the day, they take them. That was the whole idea of the process. Members, let us support this report. More importantly, action needs to be taken against the organisations and the people who participated in the fraud. The Permanent Secretary, Treasury, is in charge of funds in this country. How can he write a letter and he is ignored? What went wrong? How can he say that the supplier should supply before he is paid and nobody listens to him? He is the one who has the wallet. He is the one who is going to give money.

We have condemned somebody in the Department of Special Programmes, in the Ministry of Agriculture, but we should be told what went wrong in that process. If there are other faces which are not seen, then as Members of Parliament, we need this matter to be interrogated, so that more facts and truth can come up. That way, we can know what went wrong. The man is running away with a judgment in court. I am happy about what the Speaker has said today; that we need to protect public assets. Our responsibility as Parliament is to protect what belongs to this country and what belongs to indigenous taxpayers. The NCPB is managed by taxpayers' funds. It is not a private property. It has reached a stage where they do not have furniture. There are no chairs and somebody is purporting to have won a contract. Normally, when local suppliers are given tenders, they supply and then ask for their money. That is the procedure. There is no way you can get an advance payment in form of a Letter of Credit.

With those few remarks, I support this report. Let us make Parliament what it should be, a watchdog for the Republic of Kenya. We should forget about bi-partisan politics. Let us support this report as Kenyans and as Members of the National Assembly.

Hon. Njuki: Hon. Speaker, Sir, thank you for giving me this opportunity. From the outset, I want to thank the Committee that placed me in PIC. For that, I have a reason to tell my people of Chuka Igamba-Ng'ombe that the constituency is in the only county in Kenya which does not have NCPB storage facility.

For avoidance of doubt, for those who do not know what NCPB does, it is the body that normally regulates the availability of maize in the market and also the prices. When there is too much production, they take the grain and store it, so that we do not have flooding in the market and farmers are not exploited because of low prices. Then when there is a shortage, to avoid the prices going up, they normally release the maize so that again, farmers are not exploited. You can imagine what has been happening for the last few months. Since the time the properties were attached, the price of maize has been going up. Without mincing my words, this scandal is much bigger than the Goldenberg, Anglo Leasing and anything else that has happened in Kenya because it touches directly on the food reserves of poor *wananchi*. It is about Wanjiku and the common man. It has nothing to do with the big traders and the people in the higher society.

If you look at this report and the organisations that have been mentioned, you wonder what has happened to morality in Kenya. From this report, when the contract was advertised, one company of a famous lawyer called Ahmednassir, bought the tender documents even though they did not return them, according to the report. Later in the report, the same Ahmednassir's company is the one that represents Erad Company in defrauding the Government. I remember when that lawyer came to PIC, he said he took the case because he looked at the simplicity of the case. That it was one of the easiest cases that he could handle without giving a thought or reference to Kenyans or what was going to happen when NCPB is taken away. He could be the granny murray of the Judiciary, but you do not granny murray with Kenyans in this particular case.

When drought was declared in 2004 - and I want to concur with the Leader of the Majority - that may have been a very artificial drought. There was a shortage of 180,000 metric tonnes of maize because, at the end of the day, all the companies supplied only 70,000 metric tonnes of maize, leaving a shortage of 110,000 metric tonnes of maize. I have not heard of a report of any Kenyan who died out of that crisis because of the shortage of maize. That means there is a possibility that there was a artificial shortage of maize in that particular case.

Hon. Speaker, if you look at the contract that was made between Erad and National Cereals and Produce Board, it was crafted in a way that actually, the witness who witnessed the contract was not a Kenyan. You wonder in a business of this magnitude, why would you have an agreement that is not witnessed by Kenyans who actually experienced the problem and are the ones who were directly affected by that maize shortage? We should have been very passionate about the delivery of maize.

Hon. Speaker, there was no maize that was supplied. The contract was timebound because it says very clearly that the maize was supposed to be delivered in four weeks and way beyond four weeks when Erad Suppliers had not supplied the maize, NCPB had the mandate to cancel the contract. However, that did not happen. It was still left to go on beyond the time of the contract and they were allowed to go on and engage arbitration when the contract could have been cancelled. Then that leaves a begging question: Why did NCPB staff or whoever was involved and the highest authority at that time not cancel the contract? Why did they let them to go ahead? I have seen a letter from the Permanent Secretary Kinyua saying that the money should have been diverted to buy maize locally. He put it very clearly that the companies that had not supplied maize should not be given the chance to supply.

Hon. Speaker, I would like to support what the Committee has actually recommended, that we need to conduct a very clear-cut investigation so that all the concerned parties are brought to book. It does not matter which role you played. As long as you did something that

actually made the price of grains and maize in Kenya to go up, then you should be brought to book.

With those few remarks, I support the Motion. Thank you, hon. Speaker.

Hon. Speaker: Hon. Wamalwa.

Hon. Wakhungu: Thank you very much, hon. Speaker, Sir. I am a member of that Committee and I rise to oppose. I want to oppose with reasons because I am part and parcel of the Committee. When we wrote this report, we went through it and we were meant to have another session to clear some of the inconsistencies that were there. I want to highlight some of the inconsistencies that are in the report. A good report, after looking at the observations and the methodology, must be a logical flow.

First, I want to start by looking at the letter that we have referred to which was written by Mr. Kinyua. Mr. Kinyua was the PS in the Ministry of Finance. He wrote the letter on 28th of August, 2004. The contract was on 26th. So, by us coming here---

Hon. Speaker: There is a Member on a point of order, Benson Makali.

Hon. Mulu: Thank you very much for giving me this opportunity. I rise on a point of order. If you look at this report on the page after 20, hon. Wamalwa has actually signed it. Is he in order to mislead this House that he is not part of this report?

(Applause)

Hon. Wakhungu: Hon. Speaker, Sir, I have just gotten my Standing Orders and looking at Standing Order No.199(5), it says: "A report having been adopted by a majority of members, a minority or dissenting report may be appended to the report by any member(s) of the Committee." So, I am rising to ask: Why was my dissent not here? This is because I did not support this and I made it very clear. That is why I am saying this is an assumption which has been made and I want to do the reference of what *Mheshimiwa* has said. When you look at that page he has mentioned - where we have signed - this is the attendance date. This is the time we were in Mombasa to look at the report.

Hon. (Dr.) Laboso: *(Inaudible)*.

Hon. Wakhungu: Can I finish please, hon. Deputy Speaker? You had your chance. Please, can you protect me from the Deputy Speaker?

Hon. Speaker: Proceed.

Hon. Wakhungu: Hon. Speaker, Sir, when you look at the date that the Chairman has signed, it is on 16th October. These are some of the inconsistencies which are there and which I want to point out. There is so much to be told about this report and if you give me a few minutes I am going to demonstrate this.

Hon. Speaker, Sir, I raised the issue. There is no way you can go to Mombasa to do report writing. When you look at that page, it is saying: "Report Writing Retreat." People were signing because they were present to do the report. It was not the date for adoption. So, somebody somewhere is misleading this House. If I am wrong, we have some members of that Committee. Some members of the Committee have decided to move out. We know very well Martin Luther King Junior once said: "There comes a time where silence is betrayal." Today, I want to be counted. I am always decisive in my decisions. I do not fear anybody. I speak without fear or favour. This day---

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

Hon. Wakhungu: Protect me from the Chairman, hon. Speaker, Sir. This day was for report writing; it was not for adoption.

Hon. Speaker: A point of order by hon. Keynan.

Hon. Keynan: Hon. Speaker, with due respect to hon. Wamalwa, I will go further and, indeed, ask for the production of the entire HANSARD Report to show how hon. Wamalwa behaved throughout the proceedings and, in fact, in one of the meetings, how one of the witnesses named him for obvious reasons.

Hon. Speaker, it is good to be frank. It is good to be consistent. I did not want to take this route. In fact, I will ask, because the department is under you, for the production of the entire HANSARD proceedings in Mombasa. He was party to it. If he changed his mind from Thursday to today - as hon. Duale has said - then, please, for heaven's sake, do not suck the Committee into your own personal, regional, tribal and trivial issues.

Hon. Speaker, I want you to order for the production of the entire HANSARD Report and all PIC proceedings are covered by the HANSARD and, therefore, everything will come out. Therefore, I want to confirm that hon. Wamalwa participated in every deliberation. He was part of it. He supported the report and, in fact, celebrated that this was one of the best reports. If he has changed, I want to invoke the provisions of Standing Order No.91 because we cannot allow this House to be used as a conveyor belt. There is responsibility of statements of fact. I will be asking for hon. Wamalwa to be named and I want to invoke the provision of Standing Order No.91 which states: "A Member shall be responsible for the accuracy of any facts which the Member alleges to be true and may be required to substantiate any such facts instantly."

Hon. Speaker, if he fails to do what he is saying, then I will move to the next one, Standing Order 91(2). It states: -

"If a Member has sufficient reason to convince the Speaker that the Member is unable to substantiate the allegations instantly, the Speaker shall require that such Member substantiates the allegations not later than the next sitting day, failure to which the Member shall be deemed to be disorderly within the meaning of Standing Order 107 (*Grossly Disorderly conduct*) unless the Member withdraws the allegation and gives a suitable apology, if the Speaker so requires."

Hon. Speaker, and this is as read with the provisions of Standing Order No.107 – Grossly disorderly conduct – which states: "Conduct is grossly disorderly if the Member concerned-

- (i) creates actual disorder;
- (ii) knowingly raises a false point of order;
- (iii) uses or threatens violence against a Member or other person;
- (iv) persists in making serious allegations without, in the Speaker's opinion, adequate substantiation;
- (v) otherwise abuses his or her privileges;
- (vi) deliberately gives false information to the House;
- (vii) votes more than once in breach of these Standing Orders;
- (viii) commits any serious breach of these Standing Orders; or
- (ix) acts in any other way to the serious detriment of the dignity or disorderly procedure of the House."

In fact, this is more than what is stated. He was part of the Committee. He appended his signature and yet here he is, because of tribal considerations and other considerations, purporting to mislead this august House---

(Several hon. Members stood up)

Hon. Speaker: Hon. Keynan! I think it is---

(Loud consultations)

Hon. Keynan: Okay. Let me withdraw the part where I used the word “tribal”. What I am trying to say, hon. Speaker, is that this commits any serious breach--- I want to confirm that hon. Wamalwa was part and parcel of this report. The HANSARD will bear me and other Members out. I want the entire HANSARD proceedings of this report to be produced and that is what will confirm what every Member said. Every Member participated and that remains the true and factual position. The day before we were to submit the report to you, he was among the Members who asked to see the report once again before we filed for the Motion or tabling of the report. Everything has been done in line with our own procedures. Therefore, I want hon. Wamalwa--- If he has changed his position, then he has the right to do so but, please, do not impute any improper motive on the membership of the Committee.

Hon. Speaker: Hon. Members, the point of order is with regard to what hon. Wamalwa has said. It is only fair that hon. Wamalwa now addresses the issues that have been raised by hon. Keynan. Hon. Wamalwa, it is with regard to the issues of your attendance, concurrence and all the rest, but I also want to confirm that it is still your right if you choose to even change your mind even now or even tomorrow or any other day. You cannot be bound merely because you participated. It is your right.

Hon. Wakhungu: Thank you, hon. Speaker. I do not fear to be named and the truth shall set me free. Why the Chairman has decided to sit next to me--- When I had gone to the gents, he followed me there to convince me to support this report. I told him that I was going to oppose the report.

(Loud consultations)

Hon. Speaker, the issue here is this: I had a dissenting issue. I was here. We have met Members and they will bear me witness. I said that there must be consistency in terms of the logical flow and I want to demonstrate this. It is not anything to do with tribe, with due respect. I am guided that he has withdrawn that bit.

Hon. Member: He should apologize!

Hon. Wakhungu: He should apologize, hon. Speaker because he should not take these things for granted. I am a national leader!

Hon. Speaker: He did! Please, proceed! He did.

Hon. Wakhungu: I am a national leader and my constituency is cosmopolitan. As a matter of fact, I come from Rift Valley where the NCPB is a critical thing. You cannot allow people--- We did the investigations very well but, when it came to the report, you sneaked in some things which I am not part of. I want the HANSARD to be produced to show where I said that I am celebrating this report as the best report ever. If not, we should name the Chairman.

Hon. Speaker, as I move, the retreat was for report writing and not for adoption. You can see the date. Indeed, I was there and signed. Look at the date the Chairman signed this. It is on 16th October, 2013. That means that we had a difference of some days. I sat in that Committee because of the interest of NCPB. One of the critical things was the Report of the Auditor-

General. The Report of the Auditor-General has just been tabled today. We have not seen that report. If you look at the date that report has been signed---

(Loud consultations)

Hon. Speaker: Hon. Members, even if you disagree with the Member, allow him to make his point. You had your time! Allow hon. Wamalwa to make his point.

Hon. Wakhungu: Hon. Speaker, hon. Muchai is not a Member of that Committee and yet he is saying that I am misleading the House.

Hon. Speaker: Ignore him!

Hon. Wakhungu: I ignore him. I will ignore him as usual, hon. Speaker.

(Laughter)

Hon. Speaker, the report that the Chairman has tabled today is dated 5th August, 2013. When we went for the retreat, the report reads 7th August, 2013. It has just been conveniently brought back with two days. I was part and parcel of this.

The other issue has to do with the Inspectorate of State Corporations. It appeared before us. I was very keen. He said that he is going to table a report here because a lot of investigations have been carried out. When I look at the Report from the Inspectorate of State Corporations, the annex is missing.

I want to discuss things to do with procurement. This is highlighted in the Public Procurement and Disposal Act. There is nowhere in the law that states that when you have got a bid bond from KCB, then you must go and get a performance bond from the same bank. It is nowhere! So, we should stop misleading. If these people got a bid bond---

Hon. Member: It is a must!

Hon. Wakhungu: No! No! It is not a must that it should be the same bank.

Hon. Speaker: Do not listen!

Hon. Wakhungu: It is not a must that it should be the same bank. The bid bond and the performance bond are two totally different things. There is nowhere in the law where it is indicated that you must go to the same bank that gave you the bid bond in order to get the performance bond. The two are totally different things.

We have the minutes here in terms of the technical evaluation. This report says that there was no evaluation that was done.

(Several hon. Members stood in their places)

Hon. Speaker: Hon. Members I will look with disfavor Members purporting to claim to rise on points of order especially when you have contributed. It is because you are eating into the time of the other Member. If you merely do not agree with a point that has been raised, that is not a point of order. You had your chance!

Hon. Wakhungu: Hon. Speaker, when you look at the Public Procurement and Disposal Act, there are two types of evaluation. We have the technical evaluation and the financial evaluation. It does not guarantee you that if you are the lowest bidder, you should be given the contract. The technical evaluation is the one which is a prerequisite. We have the technical

evaluation here as an annex. If you allow me, hon. Speaker, I want to go to that annex so that we share.

If you look at the technical evaluation which was out of 60, you will find that---

(Loud consultations)

Hon. Speaker: I will not allow anybody to interrupt him now. I can see that some of you who have --- Let him make his mistakes. Allow him to make mistakes and you correct him. It is his right to make the mistakes.

Hon. Wakhungu: Absolutely! So, when you look at the technical evaluation on Annex 3, you will realize that the technical evaluation was done and a company by the name Hala General Trading got 45 and Versatrade International got 38.2. When it comes to evaluation, it is the responsibility of NCPB. If there is anything flawed that was done, then it was done through the Ministry and the NCPB, but not from the suppliers.

I want to address the issue of LC. This is like giving an advance payment and it is allowed. It was said that there was drought, a national disaster. So, the element of emergency had to come in. Those of you who have done finance know that the Letter of Credit is just to guarantee you that when you supply, there is availability of funds from which you will be paid.

Hon. Speaker, if you go to the contract, you find that there is provision for the LC. After you have been awarded the contract and you produce the performance bond, that is the time you are allowed to sign the contract. It is very well highlighted and provided that any company that has won the contract would be issued with an LC. This is where it started. Why is it that other four companies were given LCs but M/s Erad Supplies and General Contracts Limited was not given? So, when they went to court, there was arbitration. As a matter of fact, the arbitrator was appointed by NCPB, and not M/s Erad Supplies and General Contracts Limited. So, when the matter was taken to the arbitrator, the arbitrator awarded M/s Erad Supplies and General Contracts Limited. The company was given the arbitral award because of contravention of the provisions of the contract by the Government, and not because it supplied maize. So, I want us to be very clear on this matter.

The law is like a double sword. You cannot give someone a contract and breach it, and then demand that merit should be on your side. I want this matter handled objectively. This is a House where people debate and come to a consensus. When those people went to the High for the decree, the lawyers were there. Everything is noted. They have even gone to the Court of Appeal. How is it possible for one to compromise the judicial process, right from the arbitration stage to the High Court and the Court of Appeal? Is it really possible? Today, we are celebrating a reformed Judiciary. It is not possible. This matter is being handled by the Court of Appeal.

Hon. Speaker, it is, therefore, not in order for the Committee to come up with such a report. Where I come from, we grow a lot of maize. The NCPB is very critical to the people of the Rift Valley region. We should not come here to just make allegations for the sake of this report being adopted by this House. I was there. The report has inconsistencies in respect of which I request that they be corrected. That is what we want to talk about. I am happy that the Leader of Majority Coalition is here. He was here, praising Mr. Kinyua. Mr. Kinyua's letter has misled the Committee because he wrote it when the contract had already been signed. So, to me, Mr. Kinyua's intentions were not straightforward, having written this letter after the contract had been signed. So, we cannot come here and celebrate. Why did he not write the letter before the contract was signed?

Secondly---

Hon. A.B. Duale: On a point of order, hon. Speaker.

Hon. Wamalwa: Can you allow me to finish, Leader of Majority Coalition?

Hon. A.B. Duale: Hon. Speaker, I am happy that, as the substantive Speaker, you are on the Chair. I want to raise two issues and ask whether the hon. Member is in order.

It is not how you shout or where you come from that will change the content of a report. Our Standing Orders are very clear that if you partly disagree with a report, you move an amendment. I want to set the record straight. I will read out the law for him. As I said earlier, let us remove the debate---

Hon. Speaker: Hon. Duale, you rose on a point of order but you are now arguing.

Hon. A.B. Duale: Hon. Speaker, I am not arguing. Is he in order? I want to read out the law because I want you to get me right. M/s Erad Supplies and General Contracts Limited quoted the highest price amongst the bidders who submitted quotations. The relevant provisions are in Section 30(8) of the Exchequer and Audit Act. The Public Procurement Regulations, 2001 say that the successful tenderer shall be the lowest evaluated bidder. It is in law. That is why people go to the Public Procurement Oversight Authority to complain whenever this provision is violated.

Hon. Speaker, the law is contrary to what is stipulated in this report. Is the hon. Member in order to mislead the House?

Hon. Speaker: Hon. Members, I can see that there are very many requests on this matter. I would like every one of you to express yourself on the matter. However, if you do not agree with a particular point made by another Member, that is not sufficient ground for you to rise on a point of order. In fact, allow him to even misquote the law. You will quote it correctly when your time comes.

Continue, hon. Wamalwa.

Hon. Wamalwa: Hon. Speaker, as I continue, I would like to give the Leader of Majority Coalition free lessons.

Hon. Speaker: Hon. Wamalwa, we have no time for that!

Hon. Wamalwa: Hon. Speaker, in the procurement process, there is technical evaluation and financial evaluation. The aspect of price comes in during the financial evaluation. You get the points and add them up. You then put it in terms of percentage. So, irrespective of the variances in the scores relating to the price and the technical evaluations, you look at the overall score, and not the score relating to the price. I want the Leader of Majority Coalition to go back and look at the law nicely.

Secondly, a company and its directors are totally two different entities. If an issue happens, it has to do with the entity that is the company. When it comes to the directors, they are different entities. That is why we are saying that these recommendations are not consistent with the law. I agree with the report but there are parts of it which are not consistent with the law, which I am requesting to amend. That is where I am bringing my point. So, can the Leader of Majority Party listen and understand these things?

With those few remarks, I oppose and I am going to bring an amendment.

Hon. Member: Where is it?

Hon. Wamalwa: I am drafting it right here!

Hon. Speaker: Next is hon. (Dr.) Pukose.

Hon. (Dr.) Pukose: Thank you, hon. Speaker---

Hon. Speaker: Hon. (Dr.) Pukose, just a minute. There is a point of order by hon. Kaluma.

Hon. Kaluma: Hon. Speaker, I am grateful for the opportunity. I was begging to draw the attention of the Chair and the House to recommendations numbers six and seven at page 96 of the report. This is an important report because we are seeking to save a national investment. It is also a matter touching on corruption. We must, therefore, deal with it in a manner that neither embarrasses the House nor gives the idea that we are acting in vain. So, I am seeking your guidance on recommendations numbers six and seven at page 96. Recommendation number six reads: -

“M/s Erad Supplies and General Contracts Limited and the individual directors namely Mr. Jacob Juma, Hon. Major (Rtd) John Waluke and Grace Sarapay Wakhungu should fully compensate the Government of Kenya through the NCPB an amount of Kshs313 million and any other monies received following the execution of the arbitral award and litigation in line with Sections 51 and 54 of the Anti-Corruption and Economic Crimes Act, 2003 and any other relevant laws and principles of law including that of equity.”

Hon. Speaker, what is essentially being recommended is that monies paid pursuant to the arbitration and, of course, the decisions of the court being mentioned in the report, should be repaid. My worry is that this recommendation is being made, which I am not sure the House can make, as to the setting aside of the award and, indeed, the decisions of the High Court and possibly that of the Court of Appeal upholding the award. Having brought this to the fore, I would want to relate with the Judiciary, particularly on matters of court decisions. Recommendation number seven says: -

“The Government should not pay M/s Erad Supplies and General Contracts Limited or any of its directors namely---”

The payment that the Government is being recommended not to make is, of course, the payment ordered in the award and upheld by the various court decisions. Can we, as a House, reach a level where we can make such recommendations and sustain such recommendations without setting aside the court decisions? How do we deal with the matter? I am saying this because this is a very important matter. We want to deal with it in the confines of issues that will enable us to deal with the issue of corruption and sustain this important public investment. I am seeking the directions of the Chair as to whether we can validly make such recommendations, in the context of what we are doing, so that we can go into a proper debate of the report with those two purposes in mind.

Hon. Speaker: Hon. Kaluma, the issue you have raised is, indeed, quite weighty. I wish the Serjeant-at-Arms officer could move away. The rule applies even to the officers of the House. The Speaker should have access particularly with regard to addressing the Member who has raised an issue. Hon. Kaluma has raised a matter that, perhaps, this House needs to seriously think about. If the sum of Kshs313 million is as a result of an award which award I think may have been confirmed by the High Court and then becomes the subject – if I understood you correctly – of some appeal that is still pending, there is a real risk that enforcement or implementation of this recommendation will be in vain. This is because implementation of resolutions of the House is by the Executive arm of the Government. If the Executive arm of the Government has a court order and a decree waved at it and a resolution of the House, they will be torn in between. They will not know which one to implement and which one not to implement. But more importantly, the domain of interpreting laws, especially matters which are of contractual obligations is, in my view, exclusively in the Judiciary.

(Applause)

I want Members to look at this carefully.

Earlier in the day, I indicated that even in Britain, they had to discontinue the procedure where the House of Lords could sit on appeal on all matters including decisions which had arisen from the House. What this would amount to is to place the House in an appellate position.

It is important that you debate this matter but pay attention to this recommendation because if the matter is still being the subject of court determination, and has been determined to some point--- Remember if you choose a judicial process, then you must remain faithful to it to the end. Continue appealing until you get to the highest level.

(Applause)

It is important that before we even conclude this matter, hon. Members, you address this particular issue. I want you to reflect on this because the Executive which is supposed to be the implementer of our resolutions needs to receive clear instructions.

Our own Committee on Implementation will find out whether the Executive has implemented the resolution or not. I understand hon. Kaluma to be saying that the Executive is likely to come up and say: “Look, we have been slapped with this court decision which has made this award---” Unless we are saying that we want the Executive to disregard the Judiciary or court decisions. The way to deal with court decisions is to appeal. I think I was very clear even in my earlier Communication that matters of this nature could very easily put us in a very big constitutional crisis. It is not just the Legislative arm because this will affect all the three arms of the Government.

On one hand, the Executive is required to implement court decisions and on the other hand, we expect the Executive to implement our resolutions. We need to be clear on this. It is not enough that we cite Section 51 or 54 of the Anti-Corruption and Economic Crimes Act, 2003. This is because even when the Ethics and Anti-Corruption Commission has issues, it takes them to the same courts for determination. They will take even the Directors of Erad to court if they think they need to recover the money. They will not bring them here. So, if they take this company to court claiming that the money which it has received was received fraudulently, it is again the same courts to decide whether to agree with EACC or not.

We may be saying that we will not agree if the court determines this matter one way or the other. However, we do not implement the resolutions. I would like to invite as many of you as possible to really address this issue. The report has got very many valuable parts but I think it is important that you address this one even as you proceed. Who was on his feet?

Yes, hon. (Dr.) Pukose.

Hon. Onyonka: On a point of order, hon. Speaker, Sir. Due to your wise ruling, will it not be worthy for us to technically look for a way on how we can hold the debate on this matter until we are able to come up with a position on the matter?

Hon. Speaker: Even as you debate, I want you to address that point. I would not like to appear to be part of this discussion least of all because I have been a past Chairman of that Committee. I am aware and alive to the report which we made. We recommended that the Executive deals with this matter but the Executive has not dealt with it as it should have.

Let us hear hon. Nyamweya.

Hon. Nyamweya: Hon. Speaker, Sir, I want to bring to your attention this report from No.8 on page 96. We are going to draw a conclusion. What we are saying is that investigations need to be carried out given the information we have. After that, the report recommends for action because there is fresh evidence that has come out. The Committee is not saying that we do what my colleague has said. The Committee is saying that there is fresh evidence that has come up which needs to be investigated. It is saying that we take up the matter. After that has been done, people should be surcharged because they have taken the money.

Thank you.

Hon. Speaker: Hon. Nyamweya, unfortunately, a surcharge only applies to people who are serving in the Government. That company is not a Government body nor are the directors. So, a surcharge cannot apply to them. If you read the law on surcharge, you will find that it does not apply to people who are not in the Government because such people cannot be surcharged. If I were to borrow some of the words that you are using, those who may have connived could be very well the subject of surcharge and all the other recommendations that you have made here. I think it is the net import of this, from a constitutional point of view, that is troubling. Let us hear more of ourselves.

Hon. Kimaru: Hon. Speaker, I believe that by the foregoing, we have got a glimpse of some of the underlying currents; constitutionality being one of them and also the respect of the institution of the court. It is my humble view that by invoking Standing Order 96, the Committee will be given an opportunity to go back and address those grey areas that seem to be coming up quite rapidly. Some of them we cannot say are idle. Some of them are not idle, indeed, and, therefore, they need to be addressed. I support the spirit of the Motion but, again, I would like us all to adhere to our Constitution.

We cannot in the same breath contend that we are protecting the Constitution while on the other hand flagrantly also not respecting the very tenet of that very Constitution. I am sure there is an opportunity for the Committee to go back and finetune this report to what would be acceptable constitutionally and even as Parliament, let us not seem to overturn the rulings of courts. What are we inviting in that instance? Are we not inviting anarchy of sort or a strange set of constitutionalism?

Hon. Speaker, I would recommend, going by Standing Order 96, the Motion be adjourned so that the Committee has an opportunity to revise it. It is not enough for you to write a report that is not implementable. I think in legal parlance you say that it is an exercise in futility. We do not want to take a lot of time to engage in such an exercise. But I am sure we can come up with something else that will be acceptable, implementable and, indeed, dignified.

Thank you.

Hon. Speaker: Hon. Kimaru, I hear you. But it is also important that the Committee would be amenable because at some point, I may have to make some ruling on this matter, particularly with regard to this subject. This is because I am alive to the fact that the Judiciary, in exercising their independence, are entitled to make whatever ruling they make. It is for that reason that there is a mechanism of appeals. One level is allowed to make a decision one way or the other. The party that is dissatisfied is expected to lodge an appeal and so on and so forth. I am unlikely to listen to the Judiciary even when they are exercising their independence, if they were to step on the toes of the House, especially when it comes to our own procedures. They have absolutely no business touching on our procedures.

When it comes to interpreting the rights of individuals against others, indeed also adjudicating on the rights of the Government and of the citizens, that of course, is the exclusive

domain of the Judiciary. But I think it is important and I am happy that hon. Kaluma has raised this point. I can see hon. Keynan would want to---

Hon. Shimbwa: On a point of order, hon. Speaker, Sir. Thank you, for the opportunity.

Regarding what hon. Kaluma has actually raised, I want to correct the position because the Jubilee Government has actually set a precedent. It was in the case of Patni where the courts had actually awarded him and then it was overturned. So, the precedent is there.

Secondly, we must agree that there are individuals in this country who are super smart that they are always conniving with other individuals in the name of legal advisors---

Hon. Speaker: What is your point of order?

Hon. Shimbwa: The point of order is that the precedent is already in the country.

Hon. Speaker: Hon. Shimbwa, we only follow precedents which are available. If a member of the public decided to go to court and surrender his or her rights, that is not a precedent. Whether they are coerced to do so or not, there is nothing to borrow or learn from there. I think let us just address this one within the confines of what we have. This is a very serious matter. Those people going to church and other places can be left for the time being.

Let us hear from hon. Keynan.

Hon. Keynan: Thank you, hon. Speaker. First of all, I think we are mixing so many things. I do not want to take the route suggested by hon. Kimaru. This report is the property of the House. We are entitled to make amendments. In fact, we have just consulted with hon. Kaluma and we had agreed in changing the wordings of those two clauses, 6 and 7 and that will satisfy what hon. Speaker has suggested. So, to that extent, there is no need for the adjournment of this particular Motion.

Any other Member is entitled to bring an amendment and the House will look at the substance. So, this is your property, feel free as long as the amendment is not frivolous and does not change the whole content of the report. You are at liberty.

Hon. Speaker, what hon. Kaluma suggested makes a lot of sense. We will agree with the Vice-Chair. Hon. Kimani is drafting an amendment and that will cure that particular aspect as far as the judicial issue is concerned. If there is any other issue that deals with the functions or the separation of institutional role, as far as the Judiciary is concerned, we will be more than willing to take amendments into account and it makes a lot of sense.

I am sure the hon. Vice-Chair will circulate the same and that particular aspect will be cured. Any other hon. Member who has a reasonable amendment, please bring it and let us look at it and if it makes sense, the House will approve. This is your property.

Hon. Speaker: I think that should resolve the matter which was exercising your minds a lot.

Hon. (Maj-Gen.) Nkaisery: Thank you, hon. Speaker. I think hon. Kaluma brought a very fundamental issue and when you look at this report, there are quite a number of glaring anomalies. I want to support my colleague who has said that we need to adjourn this Motion to allow the Committee to go back to the drawing board.

Hon. Speaker, you can invoke the provisions of Standing Order No.1 and also 96, so that we do not waste too much time on an issue which the Committee did not have consensus. So, this is a very important matter. We need to look at this issue critically. The recommendations of the Committee will enable this House to arrive at a very appropriate decision.

Hon. Speaker: But hon. Nkaisery, even as you sit, the Chairman of the Committee, when moving the Motion, said that it was unanimous with the exception of two Members. So,

when you say that there was no consensus, perhaps, you need to get time to speak, so that you can demonstrate that there was no consensus.

Hon. (Maj.-Gen.) Nkaissery: Hon. Speaker, Sir, when you look at the report, it has no consensus because two Members did not sign it. When you listen to some of the Members who have been contributing, you can see the direction they are taking. It is important to adjourn this Motion, so that the Committee can look at the issues raised on the Floor of the House, decide and come with a consensus. That is just a proposal.

Hon. Speaker: Well, about the route of the Members debating, those who are for proposals for amendments will be given the chance to do so, to address any anomalies that they think are there. In fact, the Chair of the Committee has just stated that point, that they are willing and amenable to proposals for amendments as long as they meet the ends of the report of the Committee. So, let us allow hon. (Dr.) Pukose to make his contribution.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, Sir. Initially, when this report was presented to the House, hon. Kaluma made a suggestion that the Justice and Legal Affairs Committee should have been involved in its preparation. What informed that was the issue about the stage at which the appeal was within the judicial circles. We are talking of the issue having moved from the High Court to the Appellate Court. When you look at it, even the mood of the House, it is suggesting that we adjourn this Motion and have the Members make their input. It is not that we are throwing out the report because this is a very good report. It is quite good and it is a report that should set the threshold for this House because when we go outside there, we want to be counted as Members who have contributed positively to that report, and not a report that has been done---

Hon. Speaker: Hon. (Dr.) Pukose, if you could just hold a bit, kindly. Hon. Members, do not go the route of Standing Order No.96. The report is already with you in the House. So, please, it is your own Standing Orders. The report is already with you. You can propose amendments. Again, I am usually very lucky because I do not have to vote. So, it is you, if you have any amendments, who will move them. It is you who will decide on the fate of those amendments. Indeed, if I understand what the Chairman and the Vice-Chair have said, particularly with regard to the intended amendment, which I have just been shown, they are very positive. Perhaps, you just need to give them some time but you can make your contribution to this.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, Sir, for that guidance. Considering what hon. Nkaissery has said, the amendments are only going to be moved in two areas. There are other areas that will need further amendments. At the stage at which we are in, we want to interrogate the whole report. We are not throwing out the report. We are only adjourning it to a later date when we are able to look at the various amendments.

Hon. Speaker: So, are you contributing or are you addressing me on the issue of adjourning the debate? If you are not contributing, perhaps, you may very well resume your seat, so that other Members who want to contribute to the report can contribute. Do not frog a dead horse. The matter is settled. There is nothing out of order. Even if there are other areas to be amended, that is your function.

(Hon. Wario stood up in his place)

Let him finish. I can see that you are the next on the list.

Hon. (Dr.) Pukose: Hon. Speaker, I think I will reserve my contribution considering the development that has happened.

(Laughter)

Hon. Speaker: I think hon. Pukose, you had really wanted to contribute to this report.

Hon. (Dr.) Pukose: Hon. Speaker, I wanted to contribute but considering what has happened, I reserve my contribution.

Hon. Speaker: Hon. Wario, let me just guide you this way. You are at liberty to make your contribution. You have also indicated that you have some amendments which you wish to move. So, you can choose to move them.

Hon. Wario: Thank you very much, hon. Speaker, Sir. Maybe, before moving the amendments, I was the first Member to raise an objection under Standing Order No.89 (3)(c). Unfortunately, by then I was not armed enough to prove my case. With your permission, I want to table a decree of the court and invite the House to read page 19 of this report.

Hon. Speaker, Sir, page 19 of this report confirms that there is, indeed, a court case pending in the Court of Appeal. I am not concerned with who did what, but I am concerned with the legality of the question before this House. Who will stop other unscrupulous traders tomorrow from coming to this House and use this House as a conduit to refuse orders of a court?

(Applause)

Hon. Speaker, if you read page 8, recommendation number one is that the Committee advises the Government not to pay. Adjudicating conflicts between Kenyans, I believe, is purely the role of the courts and that Committee is not the court. That is not the role of this House. I, therefore, beg to ask you to see that this thing is *sub judice* and is not correctly before this House. The Committee should wait for the ruling of the Court of Appeal and then come up with its investigations and recommendations. Read page 19, the Committee has confirmed that. They recommended in recommendation 19(e) that the Attorney-General should come in and support the National Cereals and Produce Board in the Court of Appeal.

So, hon. Speaker, Sir, we should not take this House for a ride. We cannot justify an illegality done by Parliament. We are Members of Parliament. We have sworn to protect the Constitution. Thank you, hon. Speaker, Sir.

(Hon. Wario laid the document on the Table)

Hon. Speaker: Yes, hon. Gichigi.

Hon. Gichigi: Thank you, hon. Speaker. I rise to raise a legal point. Is it in order that this House be sort of gagged from debating this issue of approving the recommendations made by the Committee, particularly the ones that are recommending further investigations by EACC? It is possible that even where a case has been concluded, certain offences may have been committed in the course of the transaction and in the course of the process? In fact, even the judicial process itself might be subject to certain criminal elements.

Hon. Speaker, so, my point is that while we cannot order the Judiciary to do this and that-- In its constitutional mandate, we cannot do that but again, we cannot be stopped from saying that EACC can execute its constitutional mandate by investigating the whole process, including

the judicial process. That is my position. I know we cannot order a judge to make a certain judgment.

Maybe, as the amendments are being suggested, one obviously is on how the Government and NCPB can seek legal recourse to reverse what has actually happened.

That is a recommendation that should come out very strongly in this report. But we cannot say that we should not debate this report because crimes can be committed even in the Judiciary.

Hon. Speaker: Hon. Members, there is nothing really to even excite. We want to adjourn.

Hon. Keynan: Hon. Speaker, Sir, with due respect, the report has a number of elements. There are submissions by witnesses, then there are Committee observations based on what the witnesses said and then there are recommendations. The best way is for any Member who sees that there is any anomaly here, please, flag it, bring an amendment and it is going to be very easy. That is the way instead of making reference to the submissions by a witness, which we have no control of because witnesses could say anything. You can only interrogate us on the basis of the recommendations and the conclusions we have made. A witness can say a judge is like this, but that is for that witness. It is not for the Committee. It seems that debate on this report will continue even tomorrow. I want to suggest that hon. Members who have seen something wrong are at liberty to bring an amendment. Like hon. Kaluma's amendment makes a lot of sense. We have already agreed on one and we are going to amend. Bring another amendment, hon. Wario, if there is another one. But as far as this is concerned, we understand, appreciate and know what constitutes *sub judice*. The fact that a case is registered there does not mean that Parliament cannot debate the issue and there was a ruling by your predecessors.

Let us make a distinction on some of these issues. Please, hon. Wario should bring an amendment and we will be more than willing, as a Committee and as a whole House, to go through it and if it makes sense, have it captured in an amended form.

Hon. Speaker: Very well. Hon. Members, it will not be right for me to just adjourn the House without indicating what direction we are going to take with regard to the various issues you have raised. But allow the Office of the Speaker some time up to around 2.30 p.m or 3.00 p.m. tomorrow to make a decision with regard to the matter of *sub judice* that has been raised by hon. Ali Wario.

ADJOURNMENT

Hon. Speaker: Otherwise, it is now past 6.30 p.m. and the House is adjourned until tomorrow Wednesday, 30th October, 2013, at 9.00 a.m.

The House rose at 6.33 p.m.