

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 28<sup>th</sup> November, 2013

The House met at 9.00 a.m.

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

### PRAYERS

### QUORUM

**Hon. Speaker:** Hon. Members, we are only 15 and I, therefore, direct that the Quorum Bell be rung for 10 minutes in the first instance.

*(The Quorum Bell was rung)*

Hon. Members, you may now resume your seats. We now have a quorum.

### STATEMENTS

Are there hon. Members who are requesting statements? I do not have any record of requests for Statements.

Yes, hon. Chairperson of the Committee on Selection and Leader of Majority Party, hon. A.B. Duale.

### MOTION

#### APPROVAL OF REPLACEMENT IN COMMITTEES

**Hon. A.B. Duale:** Hon. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order 173(2), this House approves the nomination of:-

(i) The Hon. Stephen Kinyanjui Mburu, M.P. to replace the Hon. Rachael Shebesh, M.P. in the House Business Committee; and

(ii) The Hon. Oscar Sudi, M.P., to replace the Hon. Maalim Mahamud, M.P. in the Constitutional Implementation Oversight Committee.

Hon. Speaker, Sir, these are very minor replacements, mainly from the Jubilee Coalition. These changes were brought to the Committee of Selection because hon. Rachael Shebesh is engaged in the Pan African Parliament. The Coalition, through our Majority Whip, decided that hon. Stephen Kinyanjui Mburu replaces her. It is the same for hon. Maalim Mahamud who will be replaced by hon. Oscar Sudi.

I, therefore, ask the Majority Whip to second the Motion.

Thank you.

**Hon. Katoo:** Hon. Speaker, I rise to second the Motion. I would like to put it very clearly that these are voluntary exits from Committees, because of various commitments, as the Mover has said. Hon. Shebesh, having been appointed to the Pan African Parliament, and having taken the position of Speaker's Panel, it is becoming difficult for her to make her input into the House Business Committee. So, she requested that she be replaced.

Hon. (Eng.) Maalim Mahamud is the Vice-Chairman of the Committee on Transport, Public Works and Housing, as well as a Member of the House Business Committee. He could not give his input and time to the Constitutional Implementation Oversight Committee (CIOC). So, he requested that he also be replaced.

It is also good to note that hon. Oscar Sudi was the only one left with only one Committee on the Jubilee side. So, this opportunity came in handy. He is now going to be sitting in a Select Committee. As the Jubilee Coalition, we are trying to regularise matters and ensure that every Member---

**Hon. Speaker:** There is an hon. Member who has a point of order, hon. Katoo. Yes, hon. Esther Murugi Mathenge.

**Hon. (Ms.) Mathenge:** Hon. Speaker, I just wanted to say that if hon. Rachael Shebesh is leaving the Committee I would have expected the Jubilee Coalition to appoint a lady, and not a man. There are many women who are capable, and who can do the job. So, what the Leader of Majority Party and the Majority Whip are saying does not hold water.

**Hon. Katoo:** Hon. Speaker, it is also good to note that these are not positions given on gender basis. Hon. Shebesh was not in the House Business Committee to represent any gender. We have the requisite gender balance in the House Business Committee. So, this has nothing to do with gender.

**Hon. Speaker:** Hon. Katoo there is a point of information from hon. Duale.

**Hon. A.B. Duale:** On a point of information, hon. Speaker, Sir. We are a coalition that respects gender. Earlier on, hon. Opre was replaced by hon. Kajuju. So, that was also another gender.

*(Hon. (Ms.) Mathenge stood up in her place)*

**Hon. Speaker:** Hon. Murugi, I have not even proposed the Question. Proceed, hon. ole Metito.

**Hon. Katoo:** Hon. Speaker, that is why I said that we have gender balance in the House Business Committee. As clearly explained by the Leader of Majority Party, when hon. Opre left this House through a court ruling, the person who replaced him was not a man. It was hon. Florence Kajuju. That ensured the gender balance.

With those remarks, I beg to second.

*(Question proposed)*

**Hon. Speaker:** Hon. Murugi, you may now make your representation.

**Hon. (Ms.) Mathenge:** Hon. Speaker, the explanation given by the Majority Whip is not good enough because if you look at the membership of all the parliamentary Committees, you will see that males are more than females. I would expect that when a woman steps down, she is replaced by a woman. We should not say that because hon. Oporo was replaced by a woman, it should go that way. So, I suggest that you put a woman in that committee.

**Hon. Speaker:** Maybe, you could give us the total number of women in the House. Are we not likely to get into a situation where women will be in all the Committees? Obviously, we also do not want people to be overworked. So, hon. Murugi, you are opposed to the Motion, are you not?

**Hon. (Ms.) Mathenge:** Hon. Speaker, we are not being overworked. We can do the job. In case we feel that we are being overworked, we will say. So far, we have not said that we are being overworked. So, give us the chance to represent our people on the Committees.

**Hon. Speaker:** There is a point of order from hon. Makali.

**Hon. Mulu:** On a point of order, hon. Speaker, Sir. I would like to know whether it is in order for the hon. Member to suggest that women stepping aside from Committees should be replaced by women when a decision was made in this House to the effect that efforts would be made for each Member to be in one Departmental Committee and one Select Committee. Is she implying that even when we have a situation where some hon. Members are not in two Committees, our lady counterparts should be given more Committees without caring about other hon. Members?

**Hon. Speaker:** Yes, hon. Michael Aringo Onyura.

**Hon. Onyura:** Thank you very much, hon. Speaker. Personally, I would have no difficulty supporting this Motion since it appears to be an internal affair for the Jubilee Coalition. However, I would like to take this opportunity to encourage those who are in more than two Committees to voluntarily give up the extra Committees, so that those of us who may not be in two Committees can get an opportunity. I thank the Leader of Majority Party for, at least, going through his lists, analysing them and ensuring that they comply with the requirement that each hon. Member sits in at least one Select Committee and one departmental committee. I would like to see the CORD Coalition also doing the same.

Hon. Speaker, I am one of those hon. Members who have been sitting in only one committee from the beginning. I was told that we would be allocated other Committees. My friend, hon. Kaluma, did so. It was put in writing but no communication has been given so far. Even the Committee that was suggested I could belong to never meets. There must be something wrong.

Although this is, probably, a matter which the House leadership should address, I request your intervention to ensure that that understanding is adhered to. It should be a very easy thing to deal with, or even ascertain. It is just a matter of picking a copy of the list of the 349 Members of this House and indicating the committees each one belongs to beside his or her name. It is an easy clerical matter that should not have taken this long.

Hon. Speaker, as I have said, I have no difficulty in supporting this Motion.  
Thank you.

**Hon. Speaker:** The point you have raised is pertinent. As we can all recall, we spent quite some time, at the beginning of this Session, trying to amend our own Standing

Orders that were passed by the 10<sup>th</sup> Parliament in January in order to specifically address that issue, among others. As you have rightly pointed out, the rule is that a Member must be in at least one departmental committee and one Select Committee. So, I urge the leadership on both sides of the House that where this is not obtaining, it be addressed as we come to the close of this Session, so that we will not have hon. Members complaining that they are on only one committee when we begin the next Session. It denies some hon. Members the right to participate and give input into various committees they could easily serve on.

Going by the numbers, the side that has had the biggest difficulty in meeting the requirement is the one that sits to the right of hon. Speaker; the side that sits to the left of hon. Speaker should have absolutely no difficulty implementing this rule.

I think it is a matter that the House Business Committee and the Committee on Selection will soon be seized of, and ensure that there is fairness. What you speak to is a glaring unfairness on your part and, perhaps, on the part of others who may be in a similar situation. This is a simple matter.

Yes, hon. Francis Waweru Nderitu.

**Hon. Nderitu:** Hon. Speaker, as I listen to my sister here, I can really see that maybe there was a bit of lack of consultation. Most of us are available for consultation, but sometimes we find ourselves just getting up each time there are internal matters. I think we will look beyond that. I would like to support this appointment reluctantly. I know the guy who is taking over is from my county of Nyandarua but as my younger brother has said there---

*(Laughter)*

I would like to say that we are also very distressed because there is a Committee called Parliamentary Broadcasting and Library. This Committee has never met even once. It has never elected its chairperson and we have been complaining. So, you might say that you are in two committees but at the end of the day, even if it is a joint committee---The year is almost ending. So, we need the leadership to tell us whether the committee is not important, so that we look for other committees that we can join. We want to contribute effectively to the development of this nation.

Otherwise, I support.

**Hon. Speaker:** Leader of Majority Party, do you want to address that issue of joint committees?

**Hon. A.B. Duale:** Yes, hon. Speaker. It is a matter that was raised by the hon. Member on two joint committees – the Joint Committee on National Cohesion and Equal Opportunity and the Joint Committee on Parliamentary Broadcasting and Library. It is very unfortunate that the membership that was nominated to serve in those two committees from the National Assembly has not taken their place. They have not elected their leadership because of our colleagues from the Senate who, up to now, and until last week had not raised the quorum to carry out elections.

Hon. Speaker, you remember we said in the HBC that the ultimate solution I think is for us to create a Kenya National Assembly Committee on Library and Broadcasting and one on Equal Opportunity, so that we can expedite the process. I think we can do that after the amendments that might be brought next week to the Standing Orders by the

Committee on Procedure and House Rules. We understand that the matter is before the HBC. Every time the Director of Committees, Mrs. Florence Abonyo calls for elections, the people who are not there are those from the Senate, because the quorum must be from both sides. The Senate membership must attain the quorum and the National Assembly team must have their quorum for the election to take place. However, we have been seeing that it is only our side that has been pushing and attending the meetings.

So, hon. Speaker, the issue of our friends being in the same committee with us is very unfortunate. The objective and rationale of increasing the number to 29 was to make sure that at least every Member of the 349 in the House is in one departmental committee and one Select Committee. So, when we hear that one Member is in only one committee, from where I stand it is not fair and we will look into it as the leadership of both coalitions; CORD and Jubilee. Members of the Committee on Selection should make sure that we take care of your directive. If there are other Members also from even our side who are in one committee, we should make sure they get that opportunity. However, this one on Equal Opportunity and the one on Broadcasting and Library, I think we better move forward and create one for the National Assembly.

**Hon. Speaker:** Hon. Kaluma.

**Hon. Kaluma:** Thank you, hon. Speaker. I stand to support this Motion. I think everything I needed to say has been said by the Leader of Majority Party. I only needed to clarify that, indeed, we had a problem at the beginning in terms placing Members of the National Assembly in various committees. Within CORD, we did sit in a parliamentary group meeting and I was honoured to be requested by our colleague to see that there was a balance in the number of hon. Members in committees.

I wanted to confirm to the Speaker and to the House that, that is something we have been doing very progressively. I can assure the House that there is a letter that was signed by the Whip yesterday. Unfortunately, of late the Whip has been away on Lunga Lunga campaigns, which ended yesterday with the court decision. Before that he was out of the country, but immediately he came yesterday he signed a letter, which I believe is already with the Clerk, putting hon. Onyuro and other members of CORD who were not properly placed in committees, in other committees.

Hon. Speaker, before I end what I wanted to request is that no single committee is bigger and more vibrant and important than the other. I remember when we joined the Committee on Delegated Legislation under the chairmanship of hon. Cheptumo, many of the members who were placed in that Committee thought it would be a very idle one. As the House is currently aware, the Committee on Delegated Legislation is, perhaps, one of the most active committees of the House. So, I would tell Members that in whichever committee you are placed, really ensure the mandate of that committee and what is spelt out in the Standing Orders are achieved. It is the work and thinking that will make the committee active.

I support, hon. Speaker.

**Hon. Speaker:** Very well. Hon. Cheptumo, you have placed some intervention, but I want to put the Question.

**Hon. Cheptumo:** Hon. Speaker, I think what I wanted to raise has been addressed by the Leader of Majority Party. So, it is okay.

**Hon. Speaker:** Hon. Members, you can take your seats.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

## **BILLS**

*Second Reading*

### THE TRUTH, JUSTICE AND RECONCILIATION COMMISSION (AMENDMENT) BILL

*(Hon. (Ms.) Kanyua on 27.11.2013)*

*(Resumption of Debate interrupted on 27.11.2013)*

**Hon. Speaker:** Hon. Grace Kiptui Jemutai, are you with us?

**Hon. (Ms.) Kiptui:** Hon. Speaker, Sir, I had made a request for the previous Motion. I do not know whether it is over.

**Hon. Speaker:** If you are not interested in this, then you can remove your names. Hon. Benson Makali Mulu!

**Hon. Mulu:** Thank you, hon. Speaker, Sir, for giving me a chance to contribute to this amendment. The object of the amendment to the Truth, Justice and Reconciliation Act, is to make a provision so that the report can be discussed by the National Assembly. I want to support the amendment, but there are things that we need to be cautious of. The production of this report has taken a lot of time. I remember a situation where the time for the Commission to complete its work was extended. That means that it took a long time and used a lot of national resources to do the report. With that kind of time and resources spent on the report, it is important that it comes to Parliament. That is why I support the amendment.

However, Kenyans are aware that reports of this nature were prepared in the past and very objective recommendations made by the commissioners or the people in such taskforces. When those reports were brought to this House, objectivity got lost. At times, you find that depending on who is mentioned in the report, Parliament becomes biased, does not look at the report objectively and politics come into play. The report is then changed by the Members to an extent that the original objective of the report is lost. That is my fear even as I support this Motion. This report is voluminous and some of the names that are mentioned in it are mighty in this country. My fear is that Parliament might be looking for an opportunity to get this report to this House and then the normal politics come into play and we protect the big names, which are mentioned in the report.

When this report comes to this House, I would like to see a situation where we debate it as informed by the findings. If that will be done we will be doing justice to Kenyans. In the original Act, the fear must have been that if the report is opened to parliamentary debate, then Parliamentarians may take advantage of that to protect their friends who are politicians like us, those who are leading this country and other senior institutions. Even as we amend this Act to have the report come to Parliament to be debated, as a House, we need to be very objective in our discussions, so that we do not protect people who have gone beyond the call of duty and engaged in impunity.

I support the amendment, but would urge this House that when the report comes, it should be debated very objectively.

With those remarks, I support.

**Hon. Cheptumo:** Thank you, hon. Speaker, Sir, for giving me a chance to contribute to this very important Bill. When we established a commission to deal with an issue that had affected this country for a long time, namely the Truth, Justice and Reconciliation Commission, the intention was for us, as a country, to look back where we had come from and see the challenges we had faced, with a view to addressing them.

Parliament is a supreme institution that is given the responsibility to address every issue that faces our country. The Act, as it is, is such that this House is denied a chance to look at the report objectively, look at the recommendations made therein and as leaders of this country, have a chance to address ourselves to those issues. I understand the concern of some Members; the Member who has spoken just before me raised the same concern, that perhaps, there is an intention to allow Parliament to debate this report, and water down the recommendations made by the Commission. The main purpose of this amendment is to give a chance to this House to address itself to those recommendations, with a view to ensuring that they are within the framework of the Constitution and the objective of the original Act, namely the Truth, Justice and Reconciliation Act.

I had a chance of serving this country as the Assistant Minister for National Cohesion, Justice and Constitutional Affairs when this Commission was established. Through the process of compiling the report, I had a chance of participating in meeting the commissioners, even when there were problems in leadership. It is important for this House to be given a chance to address itself to the various issues. It is my desire and hope that nobody should cast any aspersions or doubt on the ability of the Members to address issues in a very objective manner.

Therefore, the amendment is really justified. It is justifiable because this House should not be denied a chance to address itself to these issues. The 11<sup>th</sup> Parliament has now been known for addressing very serious issues affecting this country. My appeal to my colleagues is that we pass this amendment, so that we are given a chance, each one of us, to look at this report and address the various recommendations.

Our Constitution is very clear. As we debate any issue, interpret an Act of Parliament and pass recommendations, we should do so having in mind that the Constitution is there to protect every Kenyan; so, whatever we agree on as a House, should enable us to comply with the Constitution. I just want to tell to my colleagues that, indeed, when we reach the point of discussing the report, we are going to do so very objectively, realizing that the Kenyan people are watching us as we address these issues.

I support the amendment.

**Hon. Kaluma:** Thank you, hon. Speaker, Sir, for giving me the opportunity to debate this important Bill in the House. Our country has been living in a lot of difficulties to the extent that some people have suggested that, as a country, we are living a lie, hence the reason why the Commission was established to deal with issues of truth, justice and reconciliation in our country.

We have heard in the past cases of high profile deaths which remain unresolved to date. We have had perennial land disputes, save in the last election. I think since multipartism was brought to the country, we have had cases of post-election violence. This was in 1992, 2002, 2007 and 2008.

Hon. Speaker, Sir, in 2008, we went overboard as a nation. I think it is something that all Kenyans still remember. I personally watched it and to date I fear taking the road where it happened. On 28<sup>th</sup> February, 2008, I saw a pregnant Kenyan being hacked to death and the foetus also being hacked. This was simply because the foetus was confirmed to be male.

I want to really dig into our history, so that we can know where we are coming from as a nation and where we are going. We have heard of cases of detention without trial. I can state before this House that the person who inspired me into politics greatly was one Kenneth Njindo Matiba. I knew Matiba when I was in Standard Seven in 1989 when he and hon. Charles Rubia fought for multipartism. That was up to 1990. I remember they were detained in 1990.

As young boys, we would stand in our debating clubs and I would gladly call myself hon. Matiba because of the courage with which that gallant son of this country said we needed multipartism in the country. However, we know what happened to him. We have also known the suffering that he, his family and his friends have gone through. The same case applies to hon. Rubia and, of course, other people who fought for multipartism. We want to know what happened and what made the country to go to the level of not upholding with favour the citizens of this country who were fighting for good governance and the good of the country to the extent that we put them in adverse situations.

Hon. Speaker, Sir, we have had deaths across the country. You knew the late Bishop Alexander Muge. We know the circumstances under which he died; we read newspapers and heard rumours but we do not know what happened. We know several other gallant sons and daughters of this country who died mysteriously.

I have not forgotten the year when Dr. Robert Ouko died. I did not know the gentleman and I never met him. When a great Kenyan dies for the good of the country you feel it. I can remember with outmost clarity the mood that was in the primary school where we were when Dr. Robert Ouko was killed. Of course, there was a host of other deaths.

We know the death of the late J.M. Kariuki the person from whom we got an Act of Parliament dealing with hire purchase, insurance and other things which are of great benefit to Kenyans. To date we only get a glimpse of what happened to those Kenyans we aspire to be like. So, it was good that the Commission was established and, indeed, the previous Parliament deemed it fit to create a law under which we could in great honesty dig into the history of the country.

The Constitution says that Kenya is a sovereign Republic. That sovereignty is exercised by Kenyans either directly or through their elected representatives in the House. The Report is already there. What this Bill proposes is that the Report should come before the representatives of Kenyans, who are seated in this House for deliberations.

Hon. Speaker, Sir, when the Bill was brought before the Departmental Committee on Justice and Legal Affairs, Members were asking whether we were going to use the parliamentary forum to alter the content and substance of the Report. I want to assure the Members of the National Assembly, who are present, that in our considerations, as a country, we indicated that, as the representatives of the people, we cannot be limited in terms of receiving and debating the Report. In fact, this would be a precedent in the



manner in which reports of various commissions have been treated. This one will be coming before the representatives of the people of Kenya who are seated here to deal with it. However, we put a proviso. I think the House will have a chance at the Committee to join us in considering what we were proposing as amendments to the Bill.

We proposed as a Committee that our consideration of this Report should not allow the National Assembly to alter the content, or the substance, of the Report. This will ensure that we do not use the liberty of debate to take over the work of the Commission and begin re-writing the Report. I think we will be urging the House at the Committee stage to pass minor amendments, so that the Report can come to the National Assembly and we debate it as leaders.

Hon. Speaker, Sir, I thank you very much for the opportunity. I support the Bill subject to some amendments, which will be moved.

**Hon. (Dr.) Nyikal:** Thank you, hon. Speaker, Sir, for giving me this opportunity to debate this Bill, which I support.

Hon. Kaluma has narrated in a fair amount of detail and length the history of, or events in this country for which we have never had explanations. They started soon after independence.

There was the death of Pio Gama Pinto. In the case of Tom Mboya, at least, somebody was taken to court but we have never known what that person meant when he asked: "You are just focusing on me, how about the big one?" Up to now, we do not know who that "big one" was.

On the case of J.M. Kariuki, we have never known who killed him. I do remember, as a medical student the bomb blast that preceded the death of J.M. Kariuki. I remember a well nourished Kenyan who died in my hands from bleeding that day at the Kenyatta National Hospital Casualty Room after the bomb blast. We have never known who did those things.

I think 2007 was the climax. There were problems even in 1992. However, 2007/2008 was horrific. I know this because I had the opportunity to see these things. I went to Eldoret to see the victims of the burns in the church. I also went to Naivasha to see bodies, retrieve some and get them prepared. I saw what happened. I will never forget a body at Nakuru mortuary; we could not tell whether that was a male or a female because of the mutilation that had occurred. I think all of us are clear on the television footages. Because of that we had a great desire for healing of the nation in order to move forward.

Through Kofi Annan and the others, we had the Accord which brought peace, but the people who suffered were entitled, at least, to an explanation. There is need for healing when you see your family being pushed into a house, petrol poured and then it is set on fire. The only thing that can heal is the truth. We were afraid of the legal processes because they would have been lengthy. Perhaps, we were afraid of what would come out of them. So, we chose the path of the Truth, Justice and Reconciliation Commission.

We are all aware of how the Commission had a lot of tribulations when it started its work. Eventually, after a lengthy period and deliberations they came up with a report. If you look at this Bill, you will find that the original Act intended that, that Commission should go to the public direct, that is without coming through Parliament, and with minimal interference from the Executive. However, I think the wisdom that it must pass through the House is good and we need to debate it.

Running parallel with this Commission was the Waki Commission, which came up with a report that came to this Parliament. This Parliament made decisions that today we are still struggling with. There was the famous phrase: “Do not be vague, say Hague”. Today, as a country, we have not reconciled with the decision that was made in Parliament. This is because in Parliament we were driven by emotions, partisanship and parochialism at that time. I was not there at that time, but those who were there, I believe were. We made decisions. We thought at that time that some people were being targeted. That was why the other time the Speaker said that the 11<sup>th</sup> Parliament must change the situation and start talking the truth. When I joined politics, I was told that in politics you must lie. You must not take that because it is wrong. Life is physical.

When the lies we tell in the political or social sector meet with the physical reality of humanity, there is massive suffering. So, we must just discuss this matter when it comes before us. We must just be guided by the truth and nothing but the truth and forget partisanship. The phrase, “Do not be vague, say Hague” has taught us to go by the truth. Also, when we come to that we really must also put in place ways that will limit the role of the Executive. I think the Jubilee Government is challenged and must really take the lead because they have the numbers in this House. Jubilee also has control over the Executive. What, therefore, comes out of this Report will be guided by what we decide in Parliament and what the Executive does after that.

So, hon. Speaker, I support this Bill with a caution that when it comes to us we must be guided by nothing, but the truth.

**Hon. (Eng.) Gumbo:** Hon. Speaker, I thank you for giving me this opportunity to contribute to this Bill. Businesspeople regularly undertake what we call a SWOT Analysis. This is nothing other than a situation analysis to help you know where you have come from, where you are, where you are going and how you intend to get there. Thus, hon. Speaker, you look at your strengths, weaknesses, opportunities available to you, and the threats impeding you from exploiting those opportunities.

In more ways than one, a country is nothing but a large-scale corporate entity. This country has many strengths, weaknesses, opportunities and threats. Our progress, however, has been slow as a country because we continually insist on living in denial. At independence, about 50 years ago, the economy of this country was as big, if not bigger than that of the Asian Tigers, that is Indonesia, Singapore, Korea and others. While the economy of the Asian Tigers has grown several times over, ours has virtually stagnated. You look at the case of Singapore, in 25 years the Gross Domestic Product per capita grew from a meager US\$400 to over US\$12,000, that is monumental.

Hon. Speaker, this country has a lot of promise, but the promise of Kenya has been held back by our continuous refusal to pursue and tenuously embrace national reality. This year, we are going to celebrate 50 years of independence. However, even as we do so, the depravity and degradation in certain parts of this country is really appalling. In 1992 and 1997 this country went through tribal clashes which coincided with the elections that were held in those years. After realizing that there was need to do something, this country set up what was then called the Akiwumi Commission. In my view, the Akiwumi Commission did a good job and if we had embraced that Report--- For me, the Akiwumi Commission provided a chance for us, as a country, to undertake national SWOT analysis to know where we had come from, where we were, where we were going and the mistakes that had been made.

I believe that had we embraced the recommendations of the Akiwumi Report of 1999, and even if the unfortunate events of 2008 happened they would not have been to the degree that we witnessed. This is because that Report was very clear about what had gone wrong in the elections of 1992 and 1997. It was clear about who were responsible. It clearly pointed out the politicians who were responsible, the people in the security forces and the Provincial Administration who were responsible, but we chose to live in denial, and so we did not implement the recommendations in that Report.

Therefore, as we look at the Truth, Justice, and Reconciliation (Amendment) Bill, I think it is an opportunity for us, as a country to undertake a detailed SWOT analysis. This country has to move forward. There can be no excuse; as we celebrate 50 years of independence there are whole counties which do not have a single meter of tarmac road. You remember that some weeks back I requested for a Statement from the Leader of Majority Party so that we could look at the level of infrastructure development in the country. What I was really trying to look at was how the disparities that exist in this country lead to degradation, and how that degradation leads to feelings that some people in this country do not believe that they are Kenyans. I even gave an example of an encounter I had in 1994 when we went to the northern part of Isiolo and the people we met there continually asked us how Kenya was. It was surprising to me.

With regard to the degradation levels, had we taken the right steps and ahead pursued the national goals of this country with boldness and commitment, and embraced national unity the way we did when we were fighting for independence, a lot of regrettable things that have happened in this country would have been avoided; even if they were not avoided the intensity with which they happened would have been less. The divisions that we witnessed amongst communities in Kenya, which have really held back the promise of Kenya would not have been to the extent that we see today.

I, therefore, urge my colleagues that, as we debate this Truth, Justice and Reconciliation (Amendment) Bill, let us be candid with ourselves. We have a lot to apologize for even to ourselves. There is a lot of national correction to be made. I want to believe that this country still holds a lot of promise for us, but it is upon us to make sure that the promise of Kenya is realized through our own efforts, even if we get the support of our friends, we must lead from the front.

Hon. Speaker, with those remarks, I support, but recommend amendments.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Speaker, Sir for giving me this opportunity. I wish to indicate that I am very reluctant to support this Bill. The reason I am very reluctant is basically because of the reasons that were espoused by hon. Kaluma. What he was saying is that the Committee on Justice and Legal Affairs has proposed amendments urging the House not to do amendments on the Report. I can almost predict that their amendment is likely to be defeated.

I am not saying we should gag Parliament, it is important that any Report that is concluded be brought to Parliament. However, I want to share my experience. A year just before I came to Parliament, I used to do a lot of work in Rwanda. When I just commenced my work, the people in Rwanda used to talk to the ordinary people and tell them how the country had transformed after the war, how they had done so much, brought healing and reconciliation. If you asked someone if they were Hutu or Tutsi, they would tell you “in this country, we do not mention Tutsi or Hutu because we are one.” I think that is very wonderful and in Kenya, we should adopt that.

After several months working there, I would be driving along the countryside and people had started becoming free. Then I discovered that there were so many subterranean issues. So what Rwanda was seeking to do - and I know the international community does not want to hear this because they have also invested so much time and resources - is to address the many subterranean issues that were hidden under the surface. What, therefore, this means is that there is a point if these issues are not addressed, they will just blow up. Why am I saying this? In Kenya right from independence, we have a way and tendency of sweeping things under the carpet and wishing them away, hoping that they will never affect us.

If we are not careful as a country, we will go worse than the Egyptian way. Let us be bold and brave and deal with those historical issues once and for all. I prefer the way South Africa went. They were very open. Those who were in the wrong came forward and acknowledged their wrong, were forgiven and the country moved forward. We should not have that infamous phrase that we are hearing from the media this year and which is almost abusive, when they tell us "just accept and move on". How do you tell people who are aggrieved to accept and move on? Whether my position is justified or not, listen to me and my side, then we can heal together and move forward.

In this country, whenever I listen to people in the social media - and I will give you an example--- Sometimes, I like going to certain blogs where I can see that majority of our ethnic community may not like me. When I see the things that they say about me by virtue of only my second name, it tells you there is a big problem in this country. Sometimes, I may have said something very nice but somebody comments that hon. Millie Odhiambo said this. If I were to repeat the things I see about myself, it is shocking. In the same manner, if you were to hear what people who are supportive of my side and do not like hon. Duale say, whenever they see his name, it is not that they think he is bad. It talks to the division in this country.

We need a leader who is brave enough to confront the challenges this country is facing. We know that our two leaders are facing crisis in the International Criminal Court (ICC) and it is good ICC has said now we can go digital. I am hoping the conference will allow it, so that the President and the Deputy President can come back here and work on trying to heal the divisions in this country. That is because if we are not careful, we will go a worse route than Rwanda in this country. Sometimes, we like behaving like the ostrich and hope things are okay. It will not go away. Let us deal with the hurt, whether it is on land issues, elections, violence, or whatever it is. Sometimes, it is just a matter of time. I was telling my colleagues during the last Parliament, when we were coming here, I remember as ODM we were herded in a bus and we were coming with a sense of bravado saying "we have the numbers". Three months later, we had no numbers and they had shifted very drastically. There are already undercurrents. We all know that and this country cannot go ahead when we are moving by numbers. Today, if URP is dissatisfied, they will move this way and then we will have the numbers. That is not how a country should move. A country should move forward by embracing each other and genuinely and honestly dealing with the challenges that have to do with inequality, historical injustices and discrimination. Because of that, I will not support.

**Hon. Speaker:** Hon. David Kangogo Bowen.

**Hon. Bowen:** Thank you, hon. Speaker, Sir. I rise to oppose this Report. This county has a history---

**Hon. Speaker:** There is no Report. Maybe, you could be speaking on something different.

**Hon. Bowen:** This Motion.

**Hon. Speaker:** The Bill.

**Hon. Bowen:** The Bill, hon. Speaker, Sir. As a country, we have come a long way and we have our own history. For this country and the people to move on, truth needs to be told. The injustices which were there before need to be investigated for this country to reconcile and move on. In this Bill, many of my colleagues have expressed concerns and---

**Hon. Speaker:** Hon. Johana Ng'eno has an intervention.

**Hon. Kipyegon:** Thank you, hon. Speaker, Sir. I stand on a point of order. I never wished to interrupt my friend but I want to know if it is in order for him, as a member of that Committee who never actually showed that he had any dissent, to come and disown the very same Report in the House.

**Hon. Bowen:** Hon. Speaker, Sir, hon. Ng'eno knows that even at the Committee level, I opposed it because I actually gave my dissension in the Report. I even gave my opinion in my constituency where we had the massacre which was not captured by the Truth, Justice and Reconciliation Commission (TJRC). In the year 2,000, more than 70 people in my constituency were killed. That is not in the Report. In the year 1999, during a polio immunization day, a total of 14 children under the age of five were killed. That is not in this Report. I am on record saying the Commission did a shoddy job. The terms of reference for that Commission were to look into historical injustices. But when they went ahead to put some political utterances and call them historical injustices, they diluted the whole Report and I raised my dissension.

For this country to move on, issues of historical injustices need to be told. Kenyans want to know who carried out the Wagalla Massacre, who killed Dr. Robert Ouko and J.M. Kariuki. Those are the issues that we want to know or Kenyans want to know. Kenyans want to move on. We do not want to go back to those things every other time. We just want to clear it once and for all for Kenyans to move on.

On issues at land, there have been a lot of historical injustices. Many Kenyans are landless in their country and there are so many foreigners who own huge chunks of land. For instance, in the Coast Province, there are prominent people who are not residents who own large chunks of land. I think I must congratulate the President, the Deputy President and the Jubilee manifesto for the title deeds they issued the other day. That is because many of the residents had never seen a title deed. I am also surprised that some people were saying this was being used as a political tool, when we know some of them were in the Government and they did not issue a single title deed. They are now saying that those title deeds were fake. We are telling them that we shall take title deeds to their areas.

In land matters also, we need to see this area. We have seen foreigners owning big chunks of land, while Kenyans are landless; they are squatters in their own country, and this one, we must address. We cannot say, let us forget and move forward when we know there are a lot of people suffering. As hon. Members, we have a duty and mandate, given to us by the people of Kenya, to represent them and reorientation includes fighting these injustices. We want to support hon. Millie Odhiambo that we do it the way it was done in Rwanda.

If you go to Rwanda now, there are no people called the 'Hutus' and the 'Tutsis'. They have decided that those labels need to be done away with and they just call themselves "Rwandese". Here in Kenya, we have so many tribes and we too need to go the Rwanda way for our people to reconcile. Remember what happened in 2007, when this country exploded on political lines. This does not mean that when we have different opinions in politics it should go all the way to our tribes or our people. We need to be one as a country, known only as "Kenyans" and not as tribes. That is why I am saying that for us to move on, let the truth be told, justice be done, and then this country will reconcile and move on.

With those few remarks, I oppose this Bill. Thank you hon. Speaker Sir

**Hon. Speaker:** Hon. (Dr.) Pukose

**Hon. (Dr.) Pukose:** Thank you hon. Speaker Sir, for giving me this opportunity to contribute. I stand here to support the amendments as they are in the Bill. These amendments in effect, will enable the Truth, Justice and Reconciliation Commission Report to be presented to this House, to have it debated and also implemented. For sections that will not be implemented, the Minister concerned will be able to report to this House and let us know why they will not have been implemented. This is good because as the people's representatives, we will hold everybody accountable.

In that Report, we know the challenges since its inception where there was quarreling between the chair, Amb. Kiplagat and his team, and it went through several processes, but all in all we want to thank the TJRC team for having done their best under the circumstances. We know that there were areas that they were not able to capture. These are areas that when the Report is tabled in this House for debate, we will be able to look at and give our input; we are aware of all these challenges.

This country has gone through tremendous processes. We know that during the struggle for independence, all along we felt challenges at one level or another. We have lost lives, we have had political marginalization, we have had land issues that have not been addressed adequately, and we have even had displacement of people through either fighting over resources and fighting over cattle rustling.

When it comes to other areas, like the area where I come from, the county of Trans-Nzoia, the Sabaot community was displaced by the white settlers in 1930s and some were sent all the way to Uganda. Up to today, they have not received any compensation. We have had brothers who moved in later on as colonial workers and they have settled there. We want to look at this Report and see that---

You know currently you might find that CORD coalition is complaining of tyranny of numbers. We who lived in Trans-Nzoia as the Sabaot, have felt the tyranny of numbers right from independence up to today. This has been used by other communities to deny us the leadership. It is only in recent times that through reconciliation mechanisms we have been able to negotiate. It is high time for our colleagues in CORD coalition not to fear the Jubilee machinery that has subdued them; they can also negotiate in areas that we think we can move together as a country and deal with this Report.

In my county, many of our people have no title deeds, although they have been given land. These are problems that we face. Recently, when the President and his Deputy, through their Government, went to issue title deeds in the Coast region, some other citizens were also looking forward to receive title deeds. The Jubilee Government promised that it would issue 3 million or more title deeds. In these other areas, we will

be able to get them. It is irresponsible for some of our leaders to utter that those title deeds are fake, considering that even the person saying that was the Minister for Lands at one time and also the Prime Minister who, at that time would have issued title deeds. We should not do things for political mileage; let us do things for posterity of this country.

When you look at issues of, as my colleague hon. Bowen of Marakwet East has said--- About 15 children in his area were massacred and torched. I was the Medical Officer of Health in Baringo, and these are things that we are aware of. We had children being hit against the wall, when they came back for vaccinations. These are issues that we must be able to speak out very openly, ask for forgiveness and then we go the South African way, where people were able to talk out things and reconcile. I know it is difficult, especially when we are talking about loss of lives. We have seen political assassinations; we have lost J.M. Kariuki, we have lost Tom Mboya, Robert Ouko and other gallant leaders. But there are small people whom we may not have been able to mention because they did not get to the limelight. These are things that we should encourage Kenyans to come out and talk about. At the end of the day, Kenyans also want to look at issues that are being raised. Are they going to be addressed adequately? If they are not going to be implemented, do we have a mechanism by which we will be able to implement issues that have been raised?

These amendments give us an opportunity to hold the Minister concerned accountable so that at the end of the day areas that he is not able to implement--- It also comes with timelines, that within this period of time, once the Report has been tabled, we will be able to report progress on the implementation of the Truth, Justice and Reconciliation Commission Report.

With those few remarks, I support the amendment.

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

**Hon. A.B. Duale:** Hon. Speaker, Sir, first of all, I would like to apologize because I forgot my card. This is the first time to do so. I will not repeat and I promise to come with it in the afternoon.

Hon. Speaker, Sir, first, I want to set the record straight. What does this Bill intend to do? During the 10<sup>th</sup> Parliament, we passed the Truth, Justice and Reconciliation Commission Act in this House and created that Commission to go and look at the history of this country.

Historically, as a country, we should go to the bottom of the truth so that we can create justice and above all, we reconcile our nation. When we did that during the 10<sup>th</sup> Parliament, the provision was that the Report will be laid on the Table of the House and the Executive will implement it without the House considering the TJRC Report.

This Bill is saying that Parliament is not conveyor belt, but it must consider the TJRC Report. It must analyze and create a framework for the implementation of that Report. I come from a region where atrocities were done by the colonial government, the first, second and even the third governments.

In the last Government, the Kenya Defence Forces went to Garissa Market, burnt it, maimed people and raped women and the HANSARD will prove me right because I said that on the Floor of this House. I have no apologies to make. Even as I speak for Government – by then I did not speak for that Government - I am sure that the current Government will not do what those governments did.

Hon. Speaker, the memories of the Wagalla Massacre is historical and a serious human rights violation. In 1980, Garissa Town which I had the opportunity to serve in the last Parliament in this House, suffered the same atrocities like the Wagalla and Mandera people. Therefore, the TJRC Commission did a Report after listening to witnesses. I support this Bill because Parliament will consider that Report, look at the implementation aspect and what is there for those people of Wagalla, Garissa and Malka Mari in Mandera. As Parliament, with an oversight role, how do we follow the implementation of the Report by the Executive?

Hon. Speaker, I support this Bill because it says Parliament must be given the powers to consider the Report in either way. So, some sections of the Report, in my opinion, might be left the way they are as they might be considered. I think Parliament is a House of representatives and there are 349 hon. Members. There might be one or two hon. Members who have issues with that Report and they want to come and convince their colleagues. If they carry the day, then Parliament will consider their arguments.

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

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Shebesh) took the Chair]*

Mr. Speaker, that was the genesis of this Bill---

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Leader of Majority Party, the gender of the Chair has changed.

**Hon. A.B. Duale:** Madam Temporary Deputy Speaker, I am very sorry. Even for the second day, again, I apologize. It was not intentional as I believe and respect gender despite having five sons in my House. I hope this House will pray for me to get a daughter. But still, because of my great wife and my mother, I have a lot of respect for the women of this country, including the Chair.

Therefore, I do not find it very extraordinary because I am a person who believes that the National Assembly of Kenya is not a conveyor belt. It is not a process; it is not the way you sit in Amsterdam as you wait for your next flight. The Kenya National Assembly has the powers of oversight and legislation. Seventy per cent of the hon. Members in this House did not have the opportunity when the 10<sup>th</sup> Parliament was forming and creating the TJRC Act. So, this Bill is saying that we have laid the Report on the Table and that is the end of it.

I think I must have an input on how reparation will be done for the people of northern Kenya who suffered human rights abuses and how the Wagalla Massacre people will be compensated? A framework must developed by this Parliament to show that in the next five years, this Government will do one, two, three and four things. If they do not do, then this House will do the oversight.

When my good friend, hon. Bowen was contributing, it is like there is mix up between the Report and this Bill. This is a small Bill which says that, the Report that was laid on the Table three months ago--- Without this Bill, then nobody, including this House has an opportunity to do even a coma; you cannot even change a coma. This Bill is telling you, if you feel that there was a topographical error in that voluminous Report, then you can only do it if you support and adopt this Bill.



With those few remarks, hon. Temporary Deputy Speaker, with my apologies once again to you; the great Member of Parliament for the capital city, I beg to support.

**Hon. Waiganjo:** Thank you hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to this Bill. I rise to support the Bill. This is an important amendment to the parent Bill so that Parliament will express itself on the Report and that is why I am supporting the Bill.

The TJRC dealt with a wide range of issues, including but not limited to the marginalization of the communities. It dealt with historical injustices and opportunities, skewed resources and also issues of land. The TJRC also dealt with human rights abuses; exploitation of masses by the ruling class and the consistent denial of self-determination between communities. Therefore, it is important for Parliament to ventilate those issues when the Report finally gets to this House. Otherwise, if we do not support this amendment to the parent Bill, then it means that Parliament will not have an opportunity at all to discuss the TJRC Report.

Hon. Temporary Deputy Speaker, Sir, similar commissions have been established world over to address historical and human suffering. Ours was not different and it did its work under the TJRC Act, which granted the Commission powers to recommend amnesty and a broad range of powers to recommend reparations and to even recommend prosecutions. Such recommendations should then be considered by Parliament in its oversight role.

The TJRC Commission sought to pursue national healing and reconciliation. I think it is an important Report to Parliament to have an opportunity to express itself on.

Hon. Temporary Deputy Speaker, the TJRC process provided victims and the general public with a forum within which there was truth telling and pleas for mercy. Allegations and counter accusations were ventilated to a greater effect before the Commissioners. In the process, there were those who, perhaps, felt that the TJRC did not give them a hearing; even after their names were adversely mentioned. Therefore, Parliament is now the forum for those who feel aggrieved by the outcome of the Report of the TJRC.

Hon. Temporary Deputy Speaker, there were those who felt that they were victims and the TJRC failed to give them a solution, even an opportunity to appear before them and also to recount their tales of suffering and misery. For those who did not get such opportunity, then obviously, Parliament is their forum through the people's representatives.

In fact, it was expected that the TJRC would have concluded its work and made recommendations that would have informed the constitutional review process. Unfortunately, the TJRC was bedevilled with a lot of its own challenges. Of course, hon. Members know that the Chairman had issues. The Vice-Chairman at some point also resigned.

Hon. Temporary Deputy Speaker, by the time the constitutional review process was concluded, the TJRC had not concluded its Report. In view of the new constitutional dispensation, and in view of the fact that by the time the TJRC brought its Report the new Constitution was already in place, it is important for Parliament to consider those recommendations because there are situations that you will find therein. The Report may direct certain independent offices that were created by the Constitution, like the Director

of Public Prosecutions, the Inspector-General of Police, the National Land Commission, *et cetera*.

Those institutions are now independent. They are not subject to direction by any other institution. So, if the Report comes with a recommendation directing the Inspector-General of Police or the National Land Commission to do something, it would be against the Constitution. So, it is important that the Report comes to Parliament, so that we can look at the recommendations contained therein and determine whether they go against the Constitution, with a view to allowing them, if applicable. Therefore, it is very important for this House to express itself to facilitate reconciliation and healing because Kenya is a young democracy.

Hon. Temporary Deputy Speaker, the achievements of a young democracy like ours must be guarded very jealously. In fact, as a country that is celebrating 50 years of independence, we are not expected to make any earth-shaking achievements. All that we are expected to do is to survive. This country has indeed survived. We survived the political murders of the first three years of our young nation. The answers for those murders can only be found in the graves. When a murder happens and the victim is buried, you can only get the answers relating to that murder from the grave.

We also survived the coup attempt of 1982 and, of course, the subsequent crackdown on intellectuals, lawyers and judges. We know what happened. Some of those who suffered during that crackdown may not have had anything to do with the coup attempt. The answers to the questions that arose are written on their wounds. This House must express itself to great length about those who suffered and those who need reparations. We also survived the transition from the single party dictatorship to multipartyism, which had great effect on this country but with loss of a lot of blood and health. We know our gallant heroes, including hon. Matiba and hon. Rubia. Their lives will never be the same again but the country survived and moved on because of the efforts that they put in.

Hon. Temporary Deputy Speaker, It is for those reasons that Parliament must look at the Report of the TJRC and debate it, even without changing its substance. We can simply look at it and make recommendations on it. We also survived the turmoil of the civil strife that defined our nationhood following the 2007 general elections. We know what happened. There are people who have never recovered. Some people lost their relatives. We created orphans. People lost land and other property. People were displaced. Subsequently, we also saw a dysfunctional coalition between former President Kibaki and former Prime Minister Raila Odinga, but the country survived. The tales of misery of those who lost their lives in 2007/2008 are written down in the graves and on the walls of IDP camps.

Those are issues that this House must look at and make appropriate recommendations on. On the new dawn of Uhuru Kenyatta's presidency and the attendant local and international challenges that this country is facing, let us agree to support these amendments, so that the Report can come to the House for us to look at. Let us look at the recommendations contained in the Report and hold our country together. Let us debate the Report with open minds and say: "Never again shall our country go down the same path." Let us heal and bring our communities together.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, let us keep in mind the fact that we are debating the Bill on whether or not we should debate the Report. Let us not get into the temptation of straying into debating the Report at this point in time.

Yes, hon. Anami.

**Hon. Anami:** Hon. Temporary Deputy Speaker, I rise to support the amendment requiring us to debate the Report of the Committee.

The Reports alludes to the history of our people. We should be proud of our history because it forms the basis of our existence. We should be proud of our history because on its basis, we are able to chart the future. From the history of our people, we are able to understand why we are where we are. The importance of doing this is that it will set us free from the yokes of denial. The challenges that we have every now and then, be they at the family, community or national level are caused by the state of denial that we find ourselves in.

So, it is important for us to debate this Report so that we can find ways of conducting ourselves appropriately and mainstreaming the principles of the Commission's findings in legislation. That way, we can have legislations that promote integration and cohesiveness amongst our people. In the absence of that, we will not attain sustainable development. We are all desirous of sustainable development but we cannot if we do not understand why we are where we are, and if we cannot understand and manage our environment.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Anami, there is a point of order from hon. (Dr.) Robert Pukose. What is your point of order, hon. (Dr.) Pukose?

**Hon. (Dr.) Pukose:** Hon. Temporary Deputy Speaker, with all due respect to my friend, hon. Anami, it appears that we are repeating the same issues. So, I request that the Mover be called upon to reply.

**Hon. Members:** No! No!

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. (Dr.) Pukose, from the mood of the House, I gauge that your request is not acceptable at this point in time. Therefore, I will allow hon. Anami to complete his contribution.

Hon. Members, I just want to repeat that we are not yet debating the TJRC Report. We are debating the amendment Bill.

**Hon. Anami:** Hon. Temporary Deputy Speaker, I thank you for that guidance. Our Constitution underlines the importance of universal living values, which have been alluded to in this Report, and which we really need to embrace and include in our legislative and governance processes.

Hon. Temporary Deputy Speaker, we are living in an environment of cultural diversity but it is embarrassing sometimes the way we view cultural diversity. We think there is an opportunity for us to divide ourselves when actually it is an opportunity for us to benefit from the ethos and values that are generated by the different communities and the different cultural expressions. This is the time and this report provides an opportunity for us to benefit from our cultural diversity in a positive way so that we are able to integrate harmoniously and be able to benefit from the talents and gifts that each one of us in our community backgrounds have to offer. In this way, then certainly as a nation we will be able to compare favourably with other nations.

On the other aspect of patriotism which is expressed in Chapters 1 and 2 of the Constitution, it has an opportunity to succeed through discussion of this report and implementation of the recommendations that have been made therein.

I would like to join those who have supported this Bill and so I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Ronald Kiprotich Tonui.

**Hon. Tonui:** Thank you, hon. Temporary Deputy Speaker for this opportunity to support this amendment. I think this amendment is here so that it can give us an opportunity to bring that Report to this House. This is the House where we resolve issues of national importance and the issues which are in that report are of national importance and that is going to be a great opportunity to go through it and sort out these issues.

As a House, we are dealing with oversight over all issues. So, we must provide the way forward on the issues which were raised in that Report. Coming from a region where people were displaced for multinationals to take over and plant tea plantations without compensation, I believe it is going to be wonderful to get an opportunity to deal with such historical injustices.

Hon. Temporary Deputy Speaker, I know there have been several issues related to land because it is so dear to all of us and even to the people I represent in this House. I remember at one point there used to be a Minister called Kimunya who used to refer to title deeds belonging to a certain section of this country as pieces of paper. I was very excited when he lost in the elections. I did not find him in this House. I believe by now he understands that thing called a title deed is very important. It is not a piece of paper.

*(Laughter)*

Even the other one who also missed the gate to State House, the other day, said that the title deeds being given out in Coast Province are fake. The issues of title deeds and land are very critical to all of us and we should give them the importance they deserve.

So, this amendment is simply to give us a chance to interrogate that report of the Truth, Justice and Reconciliation Commission. I know they were bickering when they were working on this but I trust that Report more than any other report because the fellows who were there were not speaking the same language. If they were working simply as a team, I am very sure we would have gotten a doctored report but because they were at parallel, I am very sure whatever went into that Report must be very truthful. So, I would really wish to have that Report tabled here, we interrogate it and we provide the way forward for this country. After all, we were elected to come here to make decisions on which direction the country should go.

Otherwise, thank you very much for this opportunity.

**The Temporary Deputy Speaker** (Hon.) (Ms.) Shebesh): Hon. Joseph Nkaissery.

**Hon. (Maj.-Gen.) Nkaissery:** Thank you very much, hon. Temporary Deputy Speaker. I stand to support this amendment and I would like to thank the Chairman of the Committee for bringing it. This is a House of rules and with representatives of people, we need to know what was in the Report and, therefore, this amendment is meant for that report to come to this House.

Hon. Temporary Deputy Speaker, the TJRC was meant---

*(Hon. Members stood in the pathways)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members who are on the pathways, please either leave the House or sit down. Hon. Kamama and hon. Bosire, please comply.

**Hon. (Maj.-Gen.) Nkaissey**: Thank you, hon. Temporary Deputy Speaker. The TJRC was meant to bring a report which will heal this country and, therefore, it is very important for this Parliament to read it and make recommendations according to what is necessary for this country.

I support this amendment because in that Report, there are certain sections which were done shoddily and it is important that the representatives of the people as required by the Constitution should tell them the truth and, therefore, the report should reconcile this country. It should bring unity to this country. It is not meant to bring disunity or injustice. We do not know whether the Report is saying the truth or not. We do not know whether that Report is driving justice. We do not know whether that Report is recommending reconciliation for this country and, therefore, it is very important that this amendment has come so that this report is brought to this House. I would like to commend the Leader of Majority Party – a very brilliant friend of mine who has articulated the most important areas which we need to look into.

So, we wanted to know whether the recommendations made on historical injustices are in the Report. So, that is why it is very important that this Report should come to this House.

Hon. Temporary Deputy Speaker, when you look at the issue of land, and you know I speak for the larger majority, the real owners of this country – the Maa people – we want to know whether the Report is recommending benefits for the people whose land has been taken illegally. We want to know what compensation will be given to the people who lost their lives. So, it is very important that this Report should come to this House. There are very many issues and if you allow this Parliament to be a rubber stamp, as one of my colleagues has said, then what is the point of this House to this country?

Hon. Temporary Deputy Speaker, we must be bold enough. We must have value judgment to make this country a better place for our citizens and if this Report is not going to measure up to that requirement then we may have to make a decision. I heard some of my colleagues saying the substance of the Report may not be touched. Yes, if the Report is for the benefit of this country but if the Report is not for the benefit of this country, this House has by law a right to amend it so that this country can heal and move forward.

We said that we should not discuss the Report. I read the Report and there are certain areas which are very shoddy. I have to mention this. I was a young Major in the army and the army was assigned to go and perform a national duty. Just because I am a Member of Parliament and I was an Assistant Minister for Defence, the Commissioners erred. In fact, they apologised later although there was no need for apology because my name is in the Report. This amendment will give me the opportunity to clear my name. So, it is very important that this Report is brought to this House so that the truth can be told and Kenyans, who have been given a raw deal, can have the opportunity to come

forward and say: “This is what happened”. Can you have a Major operating an army on his own? He has to be assisted. Seriously, although the Chairman, Mr. Kiplagat called me and apologised, we even had a Major-General in that Commission. I cannot believe that they can write a useless Report.

To come back to the amendment, it is very important that Kenyans are given the opportunity to reconcile this country, compensate the people who were hurt by the State and also the families of the people who disappeared. We want to know whether those recommendations are in the Report. It is very important that this amendment is there. I urge my colleagues to support this amendment so that this country can heal and we can move it forward.

With those few remarks, I support.

**Hon. Dawood:** Thank you, hon. Temporary Deputy Speaker. From the outset, I wish to support this Amendment Bill. In supporting the Bill, there is a trend in this country where Reports are shelved never to be seen. It is only fair that this Report is brought to Parliament, so that we can address the historical injustices and truth and reconciliation can take place. When I say that reconciliation should take place, there should be reparations for all the land which probably people have lost. They should be compensated for that.

A point in mind is the 2007/2008 post election violence cases where many people lost a lot of land. They are holding titles. We have just been told that titles are there, but they do not have the land. So, while we debate this Report, we should make recommendations and the Minister who has been replaced by the Committee in Article 49, should implement it. The Report should be brought to Parliament and the implementation should be done by the Minister, unlike previously where the Minister was the heart and soul of the Report and whether he implemented or not, it would not have mattered.

Therefore, with this Amendment Bill, we will go very far and we will get to the bottom of what we need to do as a country. Reconciliation will be forthcoming and hopefully, with implementation, the people who have lost their land or who need justice will be given the justice they have been crying for. Who is better placed to analyze the Report than the National Assembly? We are the people’s representatives who need to do this. The reports which are envisaged in this Amendment Bill should be implemented.

With those few remarks, I wish to support. I wish to ask the Chair to reduce the time, so that we can finish this debate faster.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, I do not think you can speak, take your time and then ask for other people’s time to be reduced. Hon. Wario.

**Hon. Wario:** Asante sana, Bw. Naibu Spika wa Muda kwa kunipa fursa hii. Kifungu 94(1) cha Katiba ya nchi yetu kinatoa uwezo na mamlaka ya utunzi wa sheria kwa watu wa Kenya na hili Bunge. Kwa hivyo, yeyote mwenye ndoto ya kubeba taka na kutuletea na sisi tusifungue kuingalia, hiyo ni ndoto iliyopitwa na wakati. Mimi nina wajibu na Bunge lina wajibu. Kifungu 95(2) kinasema kuwa Bunge ni lazima lijadiliane juu ya matatizo yanayowakumba Wakenya na ipitishwe na itafute suluhu.

Kwanza kabisa, naunga mkono Hoja hii. Pili, pengine ripoti iliyoletwa hapa ina mapendekezo mazuri na mabaya. Bunge itayachukua mapendekezo mazuri na itarekebisha mapendekezo mabaya ili yawe ya manufaa kwa watu wa Kenya. Kuna watu

ambao wamedhulumiwa. Ripoti inasema kinaga ubaga kuwa kuna Wakenya ambao wamedhulumiwa. Wale Wakenya wanastahili malipo. Je, malipo hayo yanatosha? Kwa mujibu wa Ripoti hii, kama hatutaifungua na kuirekebisha, pengine malipo yanayopendekezwa ni madogo kuliko dhuluma waliofanyiwa Wakenya. Ni lazima Bunge liangalie mapendekezo hayo na fidia watakalolipwa wale waliodhulumiwa ili kuona ikiwa inatosha. Ni juu yetu sisi Wabunge kuangalia na kukubaliana.

Kama kuna msamaha, ni mikakati gani ambayo tumeweka na ni mchakato gani ambao tumetayarisha ili wale waliodhulumiwa kwa roho safi waweze kusamehe? Siyo tu kupendekeza msamaha, kusema kuwa Wakenya wemekubaliana, Ripoti imepita na maneno yameisha. Ni lazima Bunge liangalie jambo hilo.

Nikimalizia, rafiki yangu na Mwenyekiti wa Wabunge Wafugaji, Mhe. Gen. Nkaissery amesema kuwa ametajwa. Wale ambao wametajwa ni haki yao kupewa fursa ili kujulikane kama ni kweli wamehusika ama wametajwa tu. Tume yenyewe ya Ukweli, Haki na Maridhiano ilikuwa na matatizo mengi; mara mwenyekiti achunguzwe, mara naibu wake amejiuzuru na matatizo mengine. Kwa hivyo, hata hatujui walitulia lini na wakaja na Ripoti hili. Je, Ripoti hii ikitaja mtu, mtu yule alipewa fursa ya kujisafisha? Sheria inahitaji kuwa ukimtaja mtu, ni lazima umpe fursa ya kujieleza.

Kwa hayo machache, Bunge lina wajibu na naunga mkono.

**Hon. Chea:** Thank you, hon. Temporary Deputy Speaker, for this opportunity. I also wish to express myself on this Bill. From the outset, I support this Bill. My understanding of this Bill is that it seeks to further empower the role of the National Assembly. If you look at Article 95(1) of the Constitution, you realise the powers that are vested in us by the people of Kenya to represent and deliberate on their issues.

The presence of the Report before the Assembly will assist us to sit down, go through it, consider and specifically make reference to the various amendments and recommendations that have been put in it. Going forward, I wish to appreciate the fact that there have been historical injustices in this country. Coming from the coastal region, in particular Kaloleni Constituency, there have been issues that remain unresolved. I am sure that the people of Kaloleni and Coast region will be ready and happy to hear about the circumstances that led to the mysterious death of hon. Ronald Gideon Ngala who apparently was from my constituency, and of course, whose party I contested the parliamentary seat and won.

The people of Kisauni would also like to know what happened to hon. Emmanuel Karisa Maitha who died in a foreign country. These are issues that I believe we will have an opportunity to look at once the Report finds its way to this House. We will see how best we can perfect it.

But most importantly is the land question. The people of Coast have for very many years complained about land issues. I must say from the Floor of this House that we acknowledged and appreciated when title deeds were brought to Coast region for distribution. I think I will be among the very first people to condemn any person who will be out to say that these were just mere pieces of paper that were distributed and they have no effect.

Coming from a legal background, I know what these title deeds mean. I know the old men who have been looking for these title deeds for very many years. These men are really happy that they have received them and they are now doing what appertains to those titles.

Hon. Temporary Deputy Speaker, you will agree with me that this country has history. There are very many commissions which have been formed. There are also very many Reports which have been prepared but they have ended up lying on the shelves and have not been brought to the House for deliberations. We should welcome the Report, debate and consider it now that it will be brought before this House.

With those few remarks, I humbly support this Bill.

**Hon. ole Kenta:** Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to also express myself on this amendment Bill. I would like to say from the outset that I support the Bill because whoever decided that it should bypass Parliament in the discussion or the implementation of this Bill was wrong. This is because we cannot be denied the opportunity to look into the issues that really affect our people. We are the people's representatives and nobody can change that because that is a constitutional mandate and we should carry it out.

The fact is that Kenya needs reconciliation not because of the problem of the ordinary person but because of the problem of the political elite. Since independence, and I think that is where the problem emanates from, whichever community rules it takes everything for itself and excludes the others. I believe that if we bring this Report to Parliament, as elected leaders, we will ensure that our communities do not follow old scars.

The fact is, and it cannot be denied, the issue of land is the major cause of upheavals from 1960s to date. I am afraid that this still continues. Unless we come and tell our people that this happened but it shall not happen again, we are not doing anything and these problems will continue.

As I speak now, people are still marginalized in leadership, resources and in many other ways. I believe that if Parliament does not take measures to ensure that there is equal opportunity or everybody is given an opportunity to rule himself or manage his or her resources then we will go back to the old wars.

Parliament has the authority to ensure that it reins in what we call absolute power. Lord Acton said that power corrupts but absolute power corrupts absolutely. It is the role of this Parliament to ensure, by looking at that Report, that those powers of yesteryears do not recur to destabilize our country.

I would like to take this opportunity to thank the President of this Republic because when he came here to give his pillars of leadership, he said that political emancipation will emanate from the consideration of passing chances and rectifying of the same.

I believe that unless we look at the historical injustices and rectify them like the Wagalla Massacre and the 1901 and 1911 agreements between the Maasai and the white people, we are in trouble.

I am saying that let Parliament do its work and we cannot be denied that constitutional right. I request my colleagues to support this Bill, otherwise, we are saying that we are usurping our responsibility.

**Hon. Wandayi:** Thank you, hon. Temporary Deputy Speaker, for giving me a chance to contribute to this important Bill. From the outset, I must express my amazement at the fact that Parliament is today debating this very important Report without having enough Members in the Chamber. This matter is very important that to say it otherwise is to think that what has happened in this country in the last very many



years was nothing. It is important to understand the background of this Report as a country. From the outset, I must state that I will oppose it for various reasons.

Hon. Temporary Deputy Speaker, the original Truth, Justice and Reconciliation Act was enacted way back in 2008 after the aftermath of a very catastrophic period in our country's history. This was a period in which many Kenyans lost their lives through reckless acts of people who knew each other. That was the symptom of the long simmering differences and problems that had existed in this country for very many years.

The Bill was enacted and it gave birth to the Truth, Justice and Reconciliation Commission. That Commission was given the mandate to go round the country to collect and collate views of the Kenyan citizens on matters pertaining to historical injustices that we are all aware of.

This Commission was not formed in vain but it was formed to address very serious historical injustices that had left the country divided terribly.

*(Hon. A.B. Duale consulted with hon. Members)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): The Majority Leader, Hon. A.B. Duale, please take your *Kamukunji* outside the House or you take your seats.

**Hon. Wandayi:** Thank you, hon. Temporary Deputy Speaker. That really shows the contempt with which people really view this matter that we are currently addressing.

The country has been left divided terribly along very many lines namely ethnic, regional, racial, gender and many others. Therefore, this Commission was supposed to help us reconcile as a nation and move forward. That reconciliation was only going to be possible if the truth was known or unearthed. This is because there can be no reconciliation without the truth being known. There can also be no reconciliation without justice being done to the people against who injustices had been perpetrated for very many years in this country.

It is important to note that the people responsible for occasioning pain and suffering to fellow Kenyans were not just ordinary people. Those who bear the greatest responsibility for the injustices that Kenyans have suffered in various parts of this country for all these years are not small people but are big people. This Commission was a bold step towards addressing this very serious matter.

Hon. Temporary Deputy Speaker, this Act deliberately ring-fenced the Report of the Commission against any possible mitigation or interference and that was the reason. It was clear that if the Commission was going to undertake its mandate and do its work in the right manner, it was bound to name names of powerful individuals – it was bound to name people who had been untouchable for very many years. It was bound to unmask the faces behind some of the worst atrocities ever committed in this country like the Wagalla Massacre and the murders of J.M. Kariuki, Tom Mboya, Robert Ouko and so on. It was to unmask the names of people who had grabbed public land in this country, the people who had been responsible for tribal clashes in this country way back from 1992. That is exactly what this Commission did within its mandate as per the original Truth, Justice and Reconciliation Commission Act.

So, here we are long after the Report has been published--- In fact, even the Report was frustrated after it was published because there was no provision for the Report to be handed out to the President. But again that handover which is supposed to be

ceremonial was delayed. Those who were doing this are the same people who have been named in the Report. Therefore, this Bill's only intention is to create a convenient avenue to delete some of the names mentioned in this Report. It will be the saddest day in the history of this country when this Parliament, in its own wisdom is going to pass this Bill. This is because it shall have closed the doors to any possibility of making the victims of the injustices get justice.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): There is a point of order from Eng. James Rege.

**Hon. (Eng.) Rege:** Hon. Temporary Deputy Speaker, judging from the mood of the House will I be in order to ask the Chair to call upon the Mover to reply?

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I will allow the Member on the Floor to finish what he is saying and then put that Question.

**Hon. Wandayi:** Thank you, hon. Temporary Deputy Speaker. I knew that I had to face a fight back. You know impunity fights back. Impunity manifests itself in various forms.

*(Laughter)*

This House is going to do what many Kenyans had feared would happen. It is going to create an avenue for the big shots, especially those who have the opportunity to sit in this House and to delete their names from this Report. What of those people who have been named and they are not in this House? Who will ever fight for their names to be removed from this Report? If we create an avenue for this Report to be mutilated, what shall we have said to the nation? That it was all a waste of time and money to put in place a TJRC way back in 2008 and spend taxpayers' money going round the country and at the end of the day do nothing?

I can see the Committee is saying that by giving this Parliament an opportunity to mutilate this Report, it will guard against changing the context, text, form, *sijui* substance--- There is no way you can open debate on this Report without changing its substance, context, text, or whatever other thing you can call it.

**Hon. A.B. Duale:** Hon. Temporary Deputy Speaker, hon. Wandayi cannot keep on misleading this House every day. The Committee has said that Parliament is to consider this. That is within the right of the Committee. Again, you cannot call a Committee of Parliament mischievous. Is he in order, really? When it comes to the Third Reading, the House has to reject or agree with this. We are now in the Second Reading of the Bill.

**Hon. Wandayi:** Hon. Temporary Deputy Speaker, anybody who understands English Language – I hope he understands the English Language – will realize that the Report states thus: “Provided that any such considerations shall not interfere with the context, text, form and substance of the Report.” Once you give room to this House to amend this Report, why on earth would you not be able to change the context, text, form and substance? It is semantics. It is taking us round in circles. The upshot of this is that they are sanctioning the mutilation of this Report.

I, therefore, want to oppose this Bill.

**Hon. Dido:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. I rise to support this Bill. I wish to support it for several reasons.

**The Temporary Deputy Speaker** (Hon. Ms. Shebesh): Order, hon. Member! There was a point order that was raised about asking the Mover to reply. I request that you use the time given--- As you know we have changed the sitting of this House so that it sits in the morning of Thursday to do as much business as possible. I do not want to stop people from speaking but, please, reduce on your time and do not repeat what other speakers have said. Please, do not debate the TJRC Report. We are not there yet.

**Hon. Dido:** The thrust of this Bill takes us to historical precedents in other countries. Firstly, there is the 14<sup>th</sup> Amendment of the United States of America to correct the rights against the black people since the Emancipation Proclamation of 1862. There were rights which had not been recognized. If we had taken the route of truth, justice and reconciliation in 2008, even the debate of moving us to the ICC would not have happened. This is because we want this nation to heal rather than build walls and allow people to sit on the two sides of the divide.

The importance of this Bill goes to the heart of those communities affected since the colonial times. I am speaking for the people in the Arid and Semi-Arid Lands whose rights until today in terms of equal opportunity, marginalization on land ownership, employment and insecurity have not been recognized. This Bill sets us on a road so that we recognize the issues that hurt this country. If the National Assembly addresses itself to those issues then those rights and underpinning issues can be addressed.

In the implementation of this Report, that is what I am really concerned about. Two days ago I was called by my constituents. We were to drill a borehole and the neighbouring constituents came by and said, “You are drilling a borehole within our boundaries.” When we looked at the maps, lines were drawn without really looking at where the communities should settle, or where they have settled historically. It is as a result of the challenges posed by land issues such as the ownership and boundaries since the colonial times.

We cannot wish away that many bad things happened in this country but it must heal, we cannot live in the past and we must walk into the future. Thank you, hon. Temporary Deputy Speaker, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Samuel Moroto.

**Hon. Chumel:** Thank you, hon. Temporary, Deputy Speaker. I rise to support this amendment because I know it will be this House that will save the face of Kenya. There are so many historical injustices but we cannot work on them individually or the community it affects alone. This is a unifying House where all elected here, are for the interest of Kenyans, although we come from different communities. Our common interest is to put Kenya in unity, peace and love, so that we can progress.

This is a reconciliation issue where we address injustices that happened during the colonial time and after independence. Up to now, we still have some issues as some Members have raised. The other day, you heard of the problem between the Pokot and Turkana, this is still on land. There is also a problem even in Trans Nzoia where the landless are many and some people are being brought from elsewhere to come and occupy land. In fact, to make those people suffer more. This is the place where we are now saying, if we support this it is going to help. I want to congratulate the Committee because it has come up with something good that will help Kenya.

Some of us come from this area and sometimes back we used to occupy the whole of Trans Nzoia with other people, but we were moved by the colonial government and

then after getting independence, instead of taking us back to our land some other Kenyans were brought to that place who claim to be more important than us, but we were not going to reflect. This is Kenya, we know how we can approach issues because already people are living there together and are related through intermarriage. So there is nothing we can say we have to reflect because that cannot help, ours is just to see as this House on how we can help.

The Report, although it has not yet come to a time when we can discuss it, I was wondering how my name also appeared in it because I was just a teacher, a unionist who was championing the rights of teachers. I was not there in the 1980s and 1990s when multiparty was coming up and when people were fighting for independence, but now I am being mentioned. I am a number one Christian. Anyway, we will get to a time when we will discuss it. Mine is just to appeal to this House that let us be united, it is in this place that we will bring Kenya to the level that will be desired by many other people. Otherwise, we should not divide ourselves here and utter these small things.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Kelvin Wanyonyi.

**Hon. F.K. Wanyonyi:** Thank you, hon. Temporary Deputy Speaker. I have come in late but I wanted to come much earlier so that I can contribute as time is not on my side. I come from Trans Nzoia and as hon. Moroto has said, that is where injustice actually is still begging for solutions to the problems. There are people who were displaced during the clashes of 1991 to 1992 and they are still landless. I know of a case where 54 families were displaced and a Good Samaritan bought five acres for them, but these poor Kenyans have now multiplied; 1,000 families live on five acres. We want to know what really happened.

In essence, this report hopefully will not be altered. As it was mentioned, we hope that the names will not be deleted, so that we know who did what at a certain time. As somebody mentioned, I think this idea of reconciliation came from South Africa and they are now living in harmony. We hope what has been happening and what happened in the past will be forgotten after people know who did what. The people who are mentioned in this Report, we want them to apologize and for those who have died, for example J.M. Kariuki who was killed, we want to know who did it. Mr. Ouko, the great man of this country was murdered but to date we do not know who killed him.

I do hope that one day, through this Report, we will get to know the truth. In a way, I support it because it will help us to heal these wounds. Also, in the past we have had reports that have been gathering dust on the shelves. It is good that this Report has come to this House and I hope and pray that after this debate, it will be implemented to the letter and there will be no alteration whatsoever. Hon. Moroto says he is one of them and we also want him to explain what happened in Trans Nzoia because it is clear names have been mentioned and as Kenyans we have to take the bull by the horns and ask them to tell us what really happened. Lastly but not least, I do hope that this Report is not altered and I am happy that the Leader of Majority Party is here. Please I want to repeat it once more, let us not alter the contents of this Report. Some of us do not have it, and we wish to see the way it was.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I now call upon the Mover to reply. I am told hon. Ngeno will be doing it on behalf of the Committee.

**Hon. Kipyegon:** Thank you, hon. Temporary Deputy Speaker. I am not going to take a lot of time since the mood of the House is for this particular Bill to be moved. From the outset, I want to thank the Members who have made serious contributions to this amendment and to this particular Bill. I must also say that I want to appreciate all others who have registered their consent and those who imagine that the intention of this amendment is to actually mutilate the Report. I do not believe the intention of the Committee Members who sat and actually made the proposal for this amendment intended to mutilate the Report.

Our intention was to allow Kenyans through Members of Parliament to ventilate this Report and not to actually remove other people's names. I want to urge all Members to allow this Report to come to this House and to support this particular amendment so that we can at least know and understand the matters which were actually investigated and looked into. This Report is meant to heal this country and bring the truth. It actually gives us an insight of what has been happening. We come from so many backgrounds which, of course, explain many things and some remain unexplained.

For those of us who come from areas where we have been having recurrent clashes, we need to know exactly what causes them. We come from areas where people do not understand why they are living there. We need to know why in some areas, there are land issues which some other people do not know about. If we allow this Report to be debated here, looked at and ventilated, we will be able to know who did what, in which capacity and what can be done to those particular people.

I wish to request this House to just agree with us, that we do not intend to mutilate the Report. There is a section and actually a part in that amendment which guards that particular Report against any mutilation.

Hon. Members, we must agree that we shall be together when debating the Report, when it is agreeable. Therefore, I just want to beg my friends who have been trying to stop that Report from coming to this House. I want to urge this House to agree so that we look at the Report, debate and ventilate it as well as monitor its implementation. What is very important in this particular Report is not just to look at it, or hear that some people have been adversely mentioned. The very important thing is the implementation part.

Hon. Temporary Deputy Speaker, this House has been very crucial in matters of implementation and that is why we want to be included and this House is allowed to participate in that process. Otherwise, we will be looking at these reports gathering dust in the shelves. Therefore, the intention of the Committee, the House and the supporters of the amendment Bill are to agree that we ventilate the Report. Otherwise, with those few remarks, I beg to move.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Thank you, hon. Kipyegon.

Hon. Members, we will not be putting the Question for obvious reasons. Therefore, we will move to the next Order.

*(Putting of the Question deferred)*

*Second Reading*

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

*(Hon. A.B. Duale on 27.11.2013)*

*(Resumption of Debate interrupted on 27.11.2013)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, the debate on this Bill had begun and hon. (Eng.) Gumbo was on the Floor. He has a balance of eight minutes.

**Hon. (Eng.) Gumbo:** Thank you, hon. Temporary Deputy Speaker, for giving me a chance to start from where I left.

Yesterday, I had said that I am opposed to this Statute Law (Miscellaneous Amendments) Bill, for the simple reason that the amendments proposed are not minor. The word “county” might suggest that they are minor, but they are not.

I was on the process of looking at various Acts that have been proposed for amendments. I started and went to the Air Passengers Charge Act which is proposed for amendment on the apportionment of the service charge collected for external journeys between the Kenya Airports Authority and the Kenya Civil Aviation Authority.

In my view, this Act needs a comprehensive amendment because, as far as I am concerned, this is a reality worldwide. Airport authorities are actually nothing but facilities managers. But in Kenya today, we have a situation where the Kenya Airports Authority is actually having more clout than the Kenya Civil Aviation Authority, which is the regulator.

This is wrong because aviation safety is actually the docket of the regulator, not the facilities manager. The facilities manager may play a small role, but it is not their key function. Their key function is to look at how clean the airport is; make sure there is power, water and the passengers are comfortable at the airport. But when it comes to the aviation safety, this is the docket of the regulator, which is the Kenya Civil Aviation Authority.

Hon. Temporary Deputy Speaker, in this country we have a bulk of landing fees which is collected by the Kenya Airports Authority. Landing is not an event, but a process. But we tend to equate landing with the time when the aircraft hits the tarmac; that is just an event. It is a process largely controlled by the instruments of the Kenya Civil Aviation Authority. If those instruments were to go down, I can tell you, there will be no landing in this country.

In my view, this Air Passenger Service Charge Act needs to be comprehensively reviewed because the suggested minor amendments here are not enough. Similarly, the proposal in the Kenya Airports Authority Act, Chapter 395, to increase the number of independent board members--- What are we trying to do here, are we trying to entrench cronyism?

Hon. Temporary Deputy Speaker, we have seen in boards of corporate bodies in this country where the oversupply of board members only leads to entrenchment or micro-management by board members who find themselves idle. It was explained yesterday when the Leader of Majority Party was moving that the reason is to have sub-committees. But why can we not let the senior managers be the ones to run these sub-committees? So, I am also opposed to that one.

Hon. Temporary Deputy Speaker, I have to agree that the proposed amendment to the Postal Corporation Act is good as it bestows the corporation's temporary assignments that are necessary for it to survive. We know, for example, these days selling stamps alone and posting letters cannot make you survive. We have discussed this matter with the postal corporation as a Committee and, I think, this proposed amendment is right.

Hon. Temporary Deputy Speaker, I have serious issues with the proposed amendment of Salaries and Remuneration Act, especially the proposal to give full time membership to the members and commissioners under Article 232 (b) of the Constitution. Who are these commissioners? These commissioners are nominees; from the Parliamentary Service Commission, Public Service Commission, Judicial Service Commission, Teachers Service Commission, the National Police Service Commission, the Defence Council and the Senate, on behalf county governments.

Hon. Temporary Deputy Speaker, in the last Parliament, this House nominated somebody who had been vocal about the welfare of hon. Members when he was here. When he went to the Salaries and Remuneration Commission (SRC) he became turncoat and a seller-out. A total chameleon and he is now fighting hon. Members. He was just fighting for hon. Members when he was here to get the benefits. He is there now enjoying on account of the trust that hon. Members placed on him.

I, therefore, plead with the Leader of Majority Party, to pull down the proposed amendment. The functions of the SRC are just to set and regularly review salaries. Why do you need full time commissioners; to do what? Is setting salaries a full time job? This is national and for me it is no.

Also, why are we doing the proposed amendment to the National Police Service Act? In yesterday's Order Paper, we had a proposal to amend this Act comprehensively. But most importantly, this is very mischievous because it tries to remove the requirement for gender parity in the deputies of the Inspector General of Police. We have made strides and I am surprised that our lady colleagues are not seeing what is hidden here. I think this is targeting – I am sorry – Mrs. Kaindi, who is the only senior police lady officer in that rank? Why are we removing this requirement for gender parity?

Hon. Temporary Deputy Speaker, on the proposed amendment on Leadership and Integrity Act, I hope we realize what this amendment will bring forth. What it does will effectively slap a ban and prohibit State officers from participating in *Harambee*. Are we for this?

Therefore, I have a lot of issues with this, but I am pleading with the Leader of Majority Party, who moved this amendment, that there are a lot of proposed amendments which are an affront to the Constitution and should be pulled down.

I oppose the amendment as proposed.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill.

I want to say at the outset that I want to very seriously oppose this Bill but having spoken with the Leader of Majority Party, I will still oppose it but not with the same might and strength. In a very rare moment, we have discussed with the Speaker and we have agreed to take a bipartisan approach to some of these issues because they affect all of us. When Kenyans suffer, they do not suffer as Jubilee Kenyans or CORD Kenyans. They all suffer as Kenyans. If you look at the amendments that have been proposed to the

Public Benefits Organisations Act, you will see that they seek to take away the resources that the Government is not able to give.

Hon. Temporary Deputy Speaker, I come from a constituency, which I think is the epicentre of HIV/AIDS in the country. The Government is not able to provide medicines in my constituency. I come from a very poor constituency. It is Non-Governmental Organisations (NGOs) that provide the basic resources that the Government is not able to provide in that constituency. Unfortunately, most of us look up to civil society organisations, which people have branded negative. They are not negative, otherwise, I would not be in this House. They are not negative, otherwise, we would not have an increase in the number of women in this House. We would not have had the space that we have had in this House.

However, I agree with the issue of accountability. I called for it when I was in the civil society. If we want the Government to be accountable, civil society organisations must also be accountable. So, the issue of accountability must be there. However, I oppose the issue of control of civil society organisations by the Government. Let us leave the civil society to operate within reasonable space and freedom and support our people. It is not just the Leader of Majority Party, a lot of hon. Members have taken a bipartisan approach. I even heard the Chairman of TNA, the other day, raise concerns with some of the provisions of this Bill.

Hon. Temporary Deputy Speaker, I would like to encourage hon. Members that we have some informal discussion, in respect of which we have agreed with the Leader of Majority Party. We can then raise the issues that we think are of grave concern to us as Members, so that we can leave them out. I know that I cannot talk to everything within 10 minutes. Yesterday, I sat down and looked at this Bill. I spent eight straight hours, after we rose, just looking at this Bill.

I am a lawyer. I slept at about 3.00 a.m. I am wondering how much time the people who are not lawyers will take. I did not even go through the entire Bill even after spending eight straight hours on it. What I am saying is that the House and the Committee Chairman must guide us when we talk about miscellaneous amendments. It speaks to minor amendments, and not major amendments. Therefore, we must have a mechanism of ensuring that we do not allow major amendments done through this kind of Bill.

Hon. Temporary Deputy Speaker, the other issue is that I am seeing an increase in the number of Bills being brought to this House for amendment in an attempt to clawback on the gains that we had made in the Tenth Parliament. I want to appeal to our colleagues on the other side of the House; I know very many people who are reformists, including the madam seated on the Chair. I am sure that it is not your team that is moving this because you did not draft the Bills. Please, move away from the issue of tyranny of numbers because when we pass bad laws, it may not affect me today but it will affect you tomorrow.

Perhaps, they are the 10 people that Senator Keter was talking about. I do not know whether they are the ones but, obviously, there are some mysterious people in the Executive who are sneaking clawbacks into the law with a view to consolidating the powers of Cabinet Secretaries. I have no problem with Cabinet Secretaries, but why have a Cabinet Secretary who is more powerful than the President? What are they trying to



achieve? I cannot speak to all of them but I just want to mention some of the other provisions that I am not happy with, due to time constraints.

Hon. Temporary Deputy Speaker, the presentation of the Bill is also wanting. What is normally required of a Statute Law (Miscellaneous Amendments) Bill is that it must have very comprehensive provision for the sections that are being amended. For some very mysterious reasons, this has not been provided. An example is the National Intelligence Service. I do not know whether, because they are dealing with security issues, they are so secure that even us, who are supposed to pass the amendments, should not know what the amendments entail. That is the approach they seem to be taking. We need to know what we are amending.

I want to mention very quickly some of the amendments that I do not like, starting with the definition of “Cabinet Secretary” under Cap.2 *vis-a-vis* the new Constitution. I wonder what mischief we are trying to cure by removing the Director of Public Prosecutions from the Advocates Disciplinary Committee, under Cap.16. On the Kenya Airports Authority, I know that we are trying to make Kisumu an inland port. I do not know whether there is mischief but it will be good. However, I would like to know what we are trying to achieve by this amendment since I am not an expert in that area. If it is a good thing, I will support it. We do not just oppose for the sake of opposing.

Hon. Temporary Deputy Speaker, another amendment that I have a problem with, which I spoke to, is on the Criminal Procedure (Amendment) Bill, which is seeking to deny suspects the right to bail. The Constitution says that we can limit the right to bail but when we do so, it must conform to Article 24(2) of the Constitution, which says that no limitation shall derogate from the core right. What this amendment is seeking to do is derogation from the core right that is provided in the Constitution. Again, I have noticed that we are making an amendment to change the name of “the Mohammedan Marriage and Divorce Act” to “the Muslim Marriage and Divorce Act”. I do not oppose but it will be nice for us to understand why. Under the Prisons Act, I would like to know why the Government is removing remission, when the Constitution acknowledges the power of mercy that the President has.

The second part of the amendment to the National Hospital Insurance Fund makes some sense because it brings the issue of competitiveness, but the first part of the amendment does not make any legal sense. I may not explain myself very well because I have very little time. We had opposed the amendments to the Air Passenger Act in January but it has been sneaked back through this Bill. The amendment is basically increasing revenue. There is nothing wrong with doing this but we need to understand that, that is what we are doing.

Hon. Temporary Deputy Speaker, why are we limiting the application of the Public Officer Ethics Act to State officers, and not to all Government officers? Why are we allowing counterfeiting outside Kenya? Why are we removing key agencies from the Kenya Copyright Board like the Kenya Plant Health Inspectorate Service and the Pharmacy and Poisons Board? Who wants to import counterfeits unchecked?

I have issues with the amendments proposed to the Merchant Shipping Act and the Youth Council (Amendment) Act, which is taking away power from the youth. If this amendment passes, we may have to change the name of the Act from that of the Youth Council Act to the “Old Persons Council Act” because it will no longer be about the youth. It will be about old people pushing the youth the way they want. I have a problem

with the Vetting of Magistrates Act, especially when we are pushing their mandate period to 2015. This was part of the reforms.

Hon. Temporary Deputy Speaker, kindly give me just one minute to wind up. I have several issues. We have agreed with the Leader of Majority Party that I write them down because we do not have enough time. One of the issues on which the Leader of Majority Party had issue with, is the Kenya Defence Forces Act, where it talks about deployment on the Garissa issue. We refuse that it has to come to Parliament. We are now removing it again. I have issues on almost 31 of the 49 Acts but due to time constraint, I cannot mention all of them. On that basis alone, it shows that we need to seriously relook at the Statute Law (Miscellaneous Amendments) Bill.

With those remarks, I do not support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Benson Makali Mulu.

**Hon. Mulu:** Thank you, hon. Temporary Deputy Speaker for this opportunity. I have actually been looking forward to this opportunity. I had to leave a meeting of the Budget and Appropriations Committee to come and contribute to this Bill.

I rise to oppose this Bill and the reason why I am opposing is that many of the areas which I wanted to cover have been covered. So, I just want to focus on two issues. If these two are either amended or dropped, I will support this Bill. I want to start with the issue of the National Youth Council. When you look at that issue, what this Bill is proposing is that a Cabinet Secretary is going to appoint a team of officers who will form a committee and then this committee or Council will be having power to monitor and even control the budget of the National Youth Council. That is captured on page 944, S171. The question I am asking myself is: Why should an elected body which has been elected by Kenyan youth all the way from the village, sub-location, location, district, province and the national level be put under an appointed authority? That does not work. It is like saying this House which is composed of elected Members of Parliament has an appointed authority which oversees or supervises our activities. On the basis of that, I cannot support this Bill. I think that particular amendment is not in good faith and this is one of the amendments I will be proposing that we either drop it or I will oppose this Bill.

Hon. Temporary Deputy Speaker, when you read through this Bill, it has very good things but to some extent we are giving the youth of this country a raw deal. Look at the whole idea of granting a Bill to a Kenyan, we want to take away that right and we know that in this country the people who get arrested most of the time are the Kenyan youth and then we are saying the police be given the mandate to actually take away that right from the youth. So, it means we will have a lot of our youth in jail. We cannot go and talk on their behalf to get out of jail and I think this is really unfair. So, when you look at the clause on the National Youth Council, I think we are being unfair to the youth.

Hon. Temporary Deputy Speaker, the other area I want to focus on is what we are calling the Public Benefits Organisation Act and this is relating to the NGOs. When you look at this Bill the object is to make minor amendments. This particular section on the Public Benefits Organisation Act actually has 10 pages of amendments and I am wondering. We have just been discussing a Bill on the Truth, Justice and Reconciliation Act which is even less than 10 pages and it is a standalone Act. So, I do not really see why we should have 10 pages of amendments to a particular Act and we are saying it is

minor. To me, this is not minor and that is why I am saying this is another area unless it is dropped or amended, I will not be supporting this Bill.

Let us look at the issue of this country. It is a known fact that during the previous governments, some parts of this country before we got the Constituencies Development Fund (CDF) and before the county governments came into existence, did not know of an existence of a Government. The only institutions which were known were NGOs and in some places you could get Kenyans saying that the Government they knew was the NGOs because of what they were doing. Then we are saying we want to restrict these NGOs to a level where they can only get 15 per cent of their funding from external sources. So, the question I am asking myself is: The Government does not fund NGOs. We have people of goodwill out there who want to fund NGOs so that Kenyans can benefit and yet we want to restrict that funding. Are we really serious as Kenyans? By saying that, I am not saying we do not demand accountability. Actually, I stand for accountability and the NGOs must also be accountable but we are saying the way to make them accountable is not by restricting the amount of money they get.

Hon. Temporary Deputy Speaker, I want to quote statistics and it is a known fact that statistics do not cheat. If you look at the current Budget of 2012/2013 of this Government, about Kshs152 billion was contributed by the NGOs in terms of activities and programmes. When you look at the number of people employed, about 400,000 are either directly or indirectly employed by NGOs. Compare that with the manufacturing sector which employs about 200,000 people. Look at the area of governance and human rights and I know very well you have been a champion here, were it not for NGOs the kind of freedom we have in this country in terms of governance and human rights issues would have been far behind. So, this is a sector which has really made Kenya as a country to move forward.

Hon. Temporary Deputy Speaker, last but not least if you remember the early years of 1990s coming towards 2000, there is a time when the Government of Kenya was seen to be so corrupt from our external partners that none of them could channel their money through the Government. What happened? As Kenyans were suffering because the Government did not have money, the same good external partners channeled their support through NGOs and that is the only way we managed to survive. Otherwise, if the NGOs were not there, this alternative funding channel would not have been there. This is why I am saying this Bill in terms of the NGO world, I think we are not doing a good service to them. I plead with the Leader of the Majority Party to either drop this section or if not it will not do any good for Kenyans.

So, I plead that this section needs to be relooked at but at the end of the day the bottom-line is that they must be ready to be accountable. For example, in Kitui Central where I come from we have a number of these NGOs doing a lot of development work but I would want that when we sit on a table just as I explain to Kenyans on how I am using my CDF in terms of development activities, the NGO world should also be able to tell Kenyans or the Kitui people what they are doing using the resources they are getting from our friends, either internally or externally.

Hon. Temporary Deputy Speaker, the other bit which I think we really need to look at is the issue of the Salaries and Remuneration Commission.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Your time is up. You can wind up.

**Hon. Mulu:** Okay. Hon. Temporary Deputy Speaker, as I wind up I want to say that as Kenyans we are thinking about moving from full time commissioners to part time commissioners and I do not think this amendment is in line with the thinking.

So, with those remarks, I oppose this Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Benson Mutura Kangara.

**Hon. Kang'ara:** Thank you, hon. Temporary Deputy Speaker. I rise to support this Bill but it is only after we discussed it with the Leader of Majority Party. There were some concerns and I agree with Members that there are some issues that we need to look at. I do not want to speak about the Leader of Majority Party but he is in agreement with most of the concerns of these Members. I serve in the Departmental Committee on Justice and Legal Affairs and I have some issues to pick with the Attorney-General (AG) who is the principal legal adviser of the Government. He is not doing his job. These amendments, however miscellaneous they are, are bulkier than the current Constitution. Before these Bills come to this House, the AG as the principal adviser to the Government consents to them. He forwards them to our Committee and then before we deliberate on the Bills we get a memorandum from the AG requesting the Committee to look at some clauses. Surely, that beats logic since the AG should be thorough in doing these Bills and see that areas of concern are looked at.

Hon. Temporary Deputy Speaker, otherwise, this House is left with a lot of issues to comprehend, do or rather to undo what the AG was supposed to have done in the first place. There are issues which the Departmental Committee on Justice and Legal Affairs is faced with and we do not even know the way forward. We are appealing to you to make a ruling over this issue. We have never deliberated on this Bill that we have here as a Committee but it is already in the House and the House is superior and the Bill has to go on. However, there are other issues, like in today's newspaper there is an advert requesting members of the public to give memorandum to this House and as per Article 118(1)(d) of the Constitution and our Standing Order No.127(3), the issue of public participation is very key to these issues. This is a House of order and rules and I am at pains to explain at what point the public participation will come in because the advert is there. People were supposed to have given their memorandum by Monday which is also short of the requirement of the seven days that the public is supposed to give them. Then after giving their memorandum, the Committee is supposed to deliberate on the issues and give a report in 21 days to this House.

I am looking forward to the Speaker's guidance. The Bill is already here and we are deliberating it in the Second Reading stage. On the other hand, we are also asking people to bring memoranda to the Committee and raise issues. I am not a lawyer, but the way we are doing things, we are leaning towards the people who comprehend issues of law better. Their timeline is too short and the issue of public participation has to be done. The Wanjiku's from all corners of this country need to know what we are discussing in this Committee. It is painful, for example, for the Bill, which was referred back to this House. It makes Members look like they are fighting against the same public who voted for them and who have faith in them. They are looking at us to deliberate and give guidance on issues.

There are some other areas which are of concern and very key that we have to look at, for example, the issue of the Vetting of Judges and Magistrates Board. They have

done well and as a Committee, they have been giving us the reports timely. The issue of vetting in this country is key, but we have to distinguish between vetting and interview. At the moment, the Board is seeking an extension of two years to clear the backlog of vetting the almost 400 magistrates. The work of vetting is heavy.

The other day, I learnt that there is another vetting board by the National Police Service. They intend to vet over 70,000 police officers within a span of two years. We have issues with the police as politicians. Personally, I may have issues with the way the police acted in one way or the other, but let us do things in a more civil way and be guided by the law. The vetting committee of the National Police Service has no personnel. They do not have benchmarks for the vetting process. You cannot vet 70,000 officers in a span of two years unless we have a sinister motive. That should not happen. That is why I also have an issue with the Attorney-General. Let us guide this country. The police service is a disciplined force just like other forces.

I have seen, even in the Bills that we have, that when it comes to professional bodies, they guard their own be it the Law Society of Kenya or the Engineers Association of Kenya. In the police vetting process, I would be happy to see police officers in the vetting panel because they understand that job. Let us not bring people from outside into the vetting board. We do not know how they will do to those who are found unfit in the force.

Right now, crime rate in the country is on the increase. The statistics are clear that most of the criminals are people who have been in the police force. My appeal to this House is that we need to be clear in vetting the police officers. It may be a crisis in waiting. Let us have a proper team in that Commission. We need to have people who can conduct research and report back and who are clear on the benchmarks of the vetting process. Some of the things the disciplined forces have been doing are not proper. I listened to Maj.-Gen. Nkaissery saying that he was mentioned in one of the reports, yet he was a junior officer then, but he had to do the job of the seniors because he was commissioned to do that. There are tricky issues that need to be well looked into.

When we are debating this issue, some people have taken sides from different coalitions. We have been told on numerous occasions that this House has no Government or the Opposition. We are one House, as the National Assembly. I wish to appeal to the Leader of Majority Party and the leadership of this House to work together. Some of these Bills, as they told us during the induction, have grey areas that need to be harmonised. We need to harmonise these areas and see the way forward. Otherwise, I beg to support the Bill.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member for Makadara, the issues that you raised were addressed yesterday substantially about the Committee not having debated this Report. I believe the Communication was given from the Chair yesterday on that issue.

**Hon. Kang'ara:** Hon. Temporary Deputy Speaker, the concerns were raised, but there are new developments. There is an advert in the newspapers requesting the members of the public to give memorandum. So, in the Committee, we do not know what to do. Do we request the Clerk to issue another advert in the Press that people's opinions are not required?

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, if you are aware, when we reduce the time for publication of a Bill, it means that we are

reducing the time and the parameters that are allowed within that Bill, including that public participation because this House agreed to do so. So, once you are part of this House and you have agreed to reduce the publication time of a Bill, you really need to know the repercussions. Hon. Muchai.

**Hon. Muchai:** Thank you, hon. Temporary Deputy Speaker, for affording me this opportunity to speak to this Bill. I rise in strong opposition of this Bill even after having talked to the Leader of Majority Party. I am convinced that the manner in which this Bill is sailing falls short of the expectations of the Kenyan Constitution.

Article 10 of the Constitution declares the national values and principles of governance to include democracy and participation of the people. The question that I ask is: Is this Bill sailing through the National Assembly in a democratic manner? Has this Bill brought on board sufficient public participation? In my understanding, as much as you have advised the Member who was on the Floor, public participation will not only entail the submission of written memorandum. It may also involve the people appearing before the Committee and expounding on what is contained in their written memoranda.

My second line of opposition to this Bill is that its mission is to make minor amendments to the Statute Law (Miscellaneous Amendment). This Bill does not define what is minor or what is major. I am at a loss. The proposals contained in this Bill particularly with regard to the desired amendment under the Industrial Court Act affect every working man and woman and every investor in this country. This Bill proposes radical amendments to this Act which require very deep contribution by both the investors and the working men and women in this country.

In fact, I recall the proposed amendments were a subject of another Bill in the Tenth Parliament. It is just a question of cut and paste. The amendments were thrown out by the Tenth Parliament and are being reintroduced in the 11<sup>th</sup> Parliament. These are major amendments, in my opinion and they are far from being minor. It is important that you give guidance on the direction in which the amendments in this Bill which are major should take. This is because the Bill does not declare that it seeks to make major amendments but minor amendments. So, we need to interrogate the Bill with a view to establish what is minor and we allow it to sail through. However, we also take up what is major because an amendment to a substantive law like the Industrial Court Act requires substantive input by the players within the labour sector. It also requires substantive debate before the Floor of the House.

Hon. Temporary Deputy Speaker, the other amendments that are being sought are under the Public Benefits Organizations Act; that is the NGOs. These amendments have far reaching effects on the operation of the NGOs in this country and they are far from being minor. These are major amendments.

So, I seek your guidance on how major amendments proposed under a Bill that seeks to make minor amendments to the Statute Law (Miscellaneous Amendments) should be dealt with. The Bill proposes far reaching amendments on the Salaries and Remuneration Commission Act. This is because it seeks to have the Chairperson of that Commission sit on full time basis. I wonder what will be the work of the Chief Executive Officer who is employed to work on full time basis. He is mandated to collect and collate information for the Commission.

Hon. Temporary Deputy Speaker, in my opinion, if we allow these amendments to pass, then we will be establishing two centres of power within the SRC. This is where

the Chairman and the Chief Executive Officer who sit on a full time basis have to find work to do.

Even though you have given guidance, Standing Order No.127 says that a Bill, having been read the first time stands committed to the relevant Departmental Committee. In this case, the relevant Committee is the Departmental Committee on Justice and Legal Affairs. It was incumbent upon this Committee, once the Bill was committed to the Committee to have ensured that it gave ample opportunity to the public to make their input and compile a report which should have been tabled before this House.

I am of the view that given that the Bill is in the Second Reading, we will end up debating this issue and effecting amendments without sufficient input of members of the public on a report being compiled by the Departmental Committee on Justice and Legal Affairs.

Hon. Temporary Deputy Speaker, I want to seek your guidance, particularly on the issues where major amendments are proposed to a Bill that seeks to make minor amendments. Subject to that guidance, I will, probably, change my view as to whether I should oppose it or--- However, I stand firmly on the issue of having to oppose this Bill all through.

With those few remarks, I beg to oppose.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, I will not repeat what I have already said to the other Member. I have given communication to that effect. The communication was repeated yesterday. It is clear that the procedure that is being followed was adopted by this House when we reduced the publication time. The other effects follow in terms of public participation. So, please, let us not belabor that point. We approved that Motion as a House.

**Hon. Omulele:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to speak to this Motion. At the outset, I would like to oppose this Bill. I oppose it not that it is all bad, but it is my position that if we pass this Statute Law (Miscellaneous Amendments) Bill in the status it is in today, we shall actually be allowing some drastic and adverse provisions that will affect our society in the negative.

Consistent to that, I would wish to state that this is the classical Bill that we call an oxymoron, in legal parlance. It is an oxymoron because it has some very positive provisions. I would like to point out some of them. I have looked at this Bill and seen the proposed amendments to the Criminal Procedure Code, Cap. 75 of the Laws of Kenya and specifically at Section 123 in which we want to relook at the exceptions to the right to bail.

After we promulgated our Constitution and provided that bail is available to all people as a matter of right, we have had a situation where criminals have gone to court and they have been given this bail and they come out to commit even more heinous and serious crimes. They have thumped their noses at society and told us that we cannot do anything. I think it is only fair that we limit a little the circumstance in which people who abuse this kind of right will have access to bail.

I know hon. Millie Odhiambo has spoken to the fact that this limitation may be going adverse to the provisions of Article 24 of our Constitution, but we must look at the Constitution holistically. In availing rights to all of us and in defining the same rights, the Constitution has clearly stated that these rights shall only be enjoyed so far as we allow

the greater public to enjoy its rights also. If we are going to exercise our rights and insist on our rights in such a way that we shall step on the toes of others and hurt society, then it is all fair that this particular freedom and right is curtailed---

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, you will have eight minutes when the debate continues.

Hon. Members, the time being 12.30 p.m. the House stands adjourned until today, Thursday 28<sup>th</sup> November, 2013 in the afternoon at 2.30 p.m.

The House rose at 12.30 p.m.