

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 23rd April, 2015

The House met at 9.30 a.m.

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

PRAYERS

Hon. Speaker: Hon. Members, we do not have quorum. Ring the Division Bell.

(The Division Bell was rung)

We now have quorum.

PETITION

HARASSMENT OF TRUCK DRIVERS BY KENHA OFFICIALS

Hon. (Ms.) Sunjeev: Hon. Speaker, I the undersigned, on behalf of the Kenya Long Distance Truck Drivers and the Allied Workers Union, draw the attention of the House to the following:-

THAT, aware that in the recent past there have been widespread allegations of corruption and harassment of Kenya Long Distance Truck Drivers and the Allied Workers Union by the Kenya National Highways Authority (KeNHA) officials and weighbridge managers who have been charged with the responsibility of manning weighbridges across the country;

THAT, the Kenya National Highways Authority (KeNHA) officials and weighbridge managers have caused unnecessary challenges due to alleged accusations of overloading by the truck drivers, which has led to untoward delays in delivery of goods to their destinations and even caused losses to the transporters;

THAT, the harassment and delays caused to drivers at weighbridges has led to loss of jobs, and on several occasions exposed them to starvation and prone to cold-related diseases due to lack of food, water and lodges at weighbridges as evidenced by the attached affidavit;

THAT, on several occasions trucks' keys and importation documents have been confiscated by weighbridge officials which has intensified hindrances in moving the trucks;

THAT, the Petitioners on several occasions and especially on 8th August and 15th December 2014, did raise their concerns regarding the said harassment and alleged corruption claims;

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THAT, we the undersigned, on several occasions and especially on 8th August and 15th December 2014 did raise our concern regarding the said harassment and corruption evidence by the attached correspondences we made to KeNHA and has not been fruitful to date;

THAT, there are no clear specifications for weighing special trucks at the weighbridges in the country;

THAT, most weighbridge stations do not have health facilities to cater for the long distance drivers who may fall sick on the way as they await clearance on the weighbridges;

Noting that interventions aimed at addressing the myriad of challenges faced at the weighbridges by the drivers and allied workers are proving to be impracticable and further noting that issues in respect of which this Petition is made are not pending before any court of law or any constitutional or legal body, therefore, your humble Petitioners pray that the National Assembly through the Departmental Committee on Transport, Housing, and Public works:-

- (i) Investigates corruption allegations made by Kenya Long Distance Truck Drivers and Allied Workers Union on some of the KeNHA officials and weigh bridge managers.
- (ii) Investigates whether there are clear weighing specifications for special trucks.
- (iii) Investigates how many weigh bridge stations have health facilities to cater for long distance truck drivers.

Thank you.

Hon. Speaker: Is there any Member who would wish to make a comment? I assume the Members whose cards are in would like to make comments. Hon. Maanzo.

Hon. Maanzo: Thank you, hon. Speaker. I would like to comment on the Petition by hon. Birdi in that there are three main weighbridges in the country. Sometimes what a truck weighs in Mombasa and what it weighs in Mlolongo is different from what it weighs in the Rift Valley. This affects many people and the Kenya National Highways Authority seems to be new and not familiar with their work. They have a mixture of policemen and civilian employees working together and the main idea seems like to take bribes at the end of the day.

In fact, many people want something done at the weighbridges because they frustrate business people so that at the end of the day they get a bribe. We support this Petition and we will participate in the relevant Committee if it will be committed to do so, so that we can assist business people in this country. We want to assist the transport sector to make profit without being harassed by the authorities which are supposed to be taking care of their businesses. They pay tax like any other people but at the end of the day they end up with a lot of frustrations.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Mithika Linturi. Your card is in.

Hon. Linturi: Sorry, hon. Speaker, I did not have anything. I might have pressed the microphone accidentally, I apologise.

Hon. Speaker: Let us give hon. Richard Makenga.

Hon. Makenga: Thank you, hon. Speaker. I also want to comment on the Petition. I want to support that the long distance drivers are harassed by weighbridge officers mainly on flimsy grounds. They may be arrested at the weighbridge for alleged

overloading and maybe the extra weight is only 1,000 kilogrammes. Instead of being taken to court, they are detained and their minimal travelling allowance gets exhausted and that creates a lot of hardship for them.

It is high time this House investigated the harassment that takes place at the weighbridges. Thank you, hon. Speaker.

Hon. Speaker: Hon. Emmanuel Wangwe.

Hon. Wangwe: Thank you, hon. Speaker. I also want to make an input on this Petition occasioned by the role the transport sector plays in both the integration in East Africa and the trade position of Kenya. Kenya being a senior trading partner in the East African Community, it is important that we open up any kind of non-trade barrier which might hinder trade expansion of Kenya. It is important that whatever little that happens, we must open up. If at all there is an obstacle on the way as hon. Birdi has said, we must look at it and make sure that we open it up so that Kenya remains the most superior economy.

Looking at the rise of Tanzania our immediate neighbour, the port of Dar es Salaam is opening up very fast. So, if we encourage these kinds of obstructions on the road, it means they are going to rise and eat into our market. So, it is important that we look at the Petition very seriously and make sure we open the market for the East Africa region.

Thank you, hon. Speaker.

Hon. Mwangi: Thank you, hon. Speaker. I support the Petition. When you go to weighbridges like Mariakani, Mlolongo and the newly established one along the Thika Superhighway, you can see clearly that they are conduits of corruption because for every kilogramme that is overweight they charge Kshs1,000. That is a very high demand and they have made the prices of goods in this country to be higher due to corruption.

I support.

Hon. Speaker: Hon. Robert Pukose.

Hon. (Dr.) Pukose: Thank you, hon. Speaker. I want to support the Petition by hon. Birdi on behalf of the long distance drivers. One of the biggest challenges has been the transport of large goods. We have the challenge of the railway network because the huge cargo has also destroyed our roads. Instead of the KeNHA looking at how they can protect the roads and make sure that these goods are transported in a way that the long distance drivers do not suffer, they engage in corruption.

Yesterday, this House passed a very important Petition by the Departmental Committee on Justice and Legal Affairs on fighting corruption in this country but we need to look further because many of the Ethics and Anti-Corruption Commission (EACC) officers have always been just arresting policemen and people within the KeNHA who take Kshs100 or Kshs1,000. This action strengthens the secretariat because whenever we sack the chairman it means that people will say that the chairmen will come and go but they will always remain. So, it needs this House even to go further and think whether the EACC is serving any purpose for this country and whether we are in the right track or we should disband it all together so that we look for other ways of fighting corruption as a country.

Thank you, hon speaker.

Hon. Speaker: Hon. Zainabu Chidzuga.

Hon. (Ms.) Chidzuga: Asante, Mhe. Spika. Naunga mkono ombi hili kama alivyozungumza Mheshimiwa. Jana tulizungumzia mambo ya ufisadi na tukachukua hatua kulingana na sheria vile ambavyo imetupatia uwezo. Lakini huu usiwe ndio mwanzo ama isiwe ndio tumeishia hapo kwa sababu ukiangalia matatizo yalio katika barabara zetu hususan barabara ya Mombasa, Eldoret mpaka kuvuka mpaka Uganda, barabara zimeharibika vibaya sana. Zimeharibika kwa sababu magari yanabeba uzani zaidi ya vile inatakikana. Unashangaa hivi vituo vya kupima uzani viko katika maeneo mbalimbali, mbona barabara ziharibike na yale magari hupita pale? Inamaanisha kuna mengi ambayo yanafanyika katika vile vituo vya kupima uzani na hakuna hatua inayochukuliwa. Sijui kama tunaweza kupendekeza kupitia hapa kwamba pengine wale maafisa wote wanaosimamia vituo hivyo waondolewe tuweke watu wapya na tuanze kuwachunguza sawasawa. Hiyo inaweza kutusaidia wakati huu.

Ukiangalia upande wa matatu, matatu nazo tulisema tuwekewe mikanda wakati wa nyuma na ikawekwa lakini hivi sasa hakuna mikanda na ukiangalia vile zinavyobeba, bado tunaharibu mpangilio wetu ambao tulikuwa tumeuweka kisheria na hali tunahesabu kwamba kuna watu wanasimamia maeneo hayo.

Tunaomba tuendeleze vita dhidi ya ufisadi. Kama vile Rais wetu alivyojitolea, na sisi pia tujitolee hivyo hivyo ili tuweze kusafisha hali hii ambayo imetuharibia uchumi wetu. Barabara zetu zinahitaji pesa nyingi sana ili zirekebishwe na kuwekwa katika hali ambayo inastahili. Hatuwezi kufikia kiwango hicho ikiwa ufisadi unaotendeka katika vituo vyetu vya kupima mizani hautakabiliwa vilivyo.

Ninaunga mkono maombi haya ambayo yameletwa na Mheshimiwa Birdi.

Hon. Speaker: Hon. Rose Nyamunga!

Hon. (Ms.) Nyamunga: Thank you, hon. Speaker. I also support the Petition by hon. Birdi.

Apart from the fact that the delay on our roads is leading to a lot of corruption, the issue of drivers being over-delayed on our roads has also led to the spread of HIV/AIDS. You realise that most drivers spend almost three or four weeks on the road. According to statistics, drivers keep mistresses at each and every weighbridge station. This has led to the spread of HIV/AIDS. As a result, a lot of families have broken up. Kenyan roads have become a big highway for all the traders across the East and Central African region. Most of the goods destined for Uganda, Rwanda, and Burundi pass through Kenya. There should be a lot of efficiency on our roads. Is it possible that we put in place a contact-free system? When it comes to payment of overloading fines, it should be contact-free so that there is no contact between truck drivers and the officers manning the weighbridge stations.

Hon. Speaker, with those remarks, I support the Petition.

Hon. Kihagi: Thank you, hon. Speaker. I also rise to support the Petition raised by hon. Birdi. It is true that our weighbridge stations are havens of corruption and congestion. Motorists and truck drivers waste a lot of time. The Gilgil weighbridge is notorious. At times, the hon. Members who go to Nakuru and western Kenya witness the snarl-ups, which cost drivers in excess of four hours. As an economy, we cannot afford to have someone who is going to undertake some business spend four hours in a traffic snarl-up. I wonder why adequate measures have not been put in place to ensure that there is a smooth flow of traffic around that area. It is a sorry state, about which to-date nobody

seems to have taken any action. We have seen some effort towards ensuring that the land around there is protected. However, what we should do at this point in time is to ensure that our people, goods and services move faster.

As has been said, corruption can be eliminated purely by automation. Can we have automatic machines? Can we have proper widening of our roads so that traffic moves faster? The officers there should also be properly facilitated so that there can be transparency. When you pass through that station, you find people transacting business behind trucks and in some makeshift structures, where a lot of corruption takes place. So, the Departmental Committee on Transport, Public Works and Housing should move to such places and provide oversight with a view to proposing what ought to be done. We should look into these issues properly.

Hon. Speaker, with those remarks, I support the Petition.

Hon. Speaker: Finally, let us hear hon. Justice Kemei.

Hon. Kemei: Thank you, hon. Speaker. I rise in support of the Petition by hon. Birdi.

The weighbridges we have in this country have become citadels of corruption and havens in which transport crews waste a lot of man-hours. They have become places where we condone excess axle loads of trucks transporting goods. They have actually defeated the purpose for which they were established. If there is any area we should focus on in terms of handling corruption in this country, it is the weighbridges.

Hon. Speaker, with those remarks, I beg to support.

Hon. Speaker: Hon. Members, the Petition is referred to the Departmental Committee on Transport, Public Works and Housing for consideration. While they do so, it is imperative that they invite hon. Birdi.

Next Order!

PAPERS LAID

Hon. (Ms.) Abdalla: Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Departmental Committee on Environment and Natural Resources on Senate Amendments to the Environmental Management and Co-ordination (Amendment) Bill, 2014

Hon. Chepkong'a: Hon. Speaker, I beg to lay the following Paper on the Table of the House:-

The Report on the Departmental Committee on Justice and Legal Affairs on its consideration of the Fair Administrative Action Bill, 2015

Hon. Speaker: Next Order!

MOTIONS

SENATE AMENDMENTS TO THE PUBLIC SERVICE (VALUES AND PRINCIPLES) BILL

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

THAT, the Senate Amendments to the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014) be now considered.

Hon. Speaker, this is one of those Bills with constitutional timelines. It is also one of those Bills that originated from the National Assembly. Since it also touches on counties, it was referred to the Senate. The Senators looked at it and, in their own wisdom, amended it. So, it had to come back to the National Assembly. They have amended four clauses. I am happy to report that the Departmental Committee on Administration and National Security has considered the amendments and agreed with all of them.

I wish to call my colleague, hon. Washiali, to second

Hon. Washiali: Thank you, hon. Speaker. I beg to second.

(Question proposed)

Hon. Speaker: Hon. Members, these may look like simple procedures but they are very important. This is because they are grounded in the Constitution. The Question cannot be put unless we have the requisite quorum.

I will exercise some discretion and skip putting the Question and instead go to Order No. 9 but when we collate, the Question can be put before we go to Order No. 10. If we do not, everything will have to be deferred to the afternoon. Next Order!

SENATE AMENDMENTS TO THE ENVIRONMENTAL MANAGEMENT
AND CO-ORDINATION (AMENDMENT) BILL

Hon. (Ms.) Abdalla: Thank you, Hon. Speaker. I beg to move the following Motion:-

THAT, the Senate Amendments to the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No.31 of 2014) be now considered.

Whereas we agree with some of the amendments proposed by the Senate, we have some major policy disagreements with the Senate on at least three of the clauses. We agree with the Senate on the amendment on Clause 8 because it is basically enriching the Bill. We, however, disagree on the amendment on Clause 10 in which they wish to replace the representative of the Attorney-General in the National Environment Management Authority (NEMA) Board with a representative of the Council of Governors (CoG). This is a fundamental amendment that we as a Committee feel should not be approved based on the reality that policy development is a national Government function. Should we agree with this amendment, we will be opening a Pandora's box where the CoG will want to be represented in all national Government parastatals even those that are serving on matters relating to functions that are clearly stipulated to be functions of the national Government.

Based on that, we disagree with the Senate's proposed amendments on Clause 10 of the Bill. We agree with the Senate's proposed amendments on Clause 12 because it is basically helping to make the Bill neater by dealing with a typographical error. We agree with the proposed amendments of the Senate on Clause 20(a). However, we disagree on

Clauses 20(b) and 20(c). Here, the Senate's amendment proposes to reduce the numbers of persons appointed by the Cabinet Secretary (CS) under Section 31(f) from two to one member and replacing the one member with a representative of the CoG. Again, the Public Complaints Committee is a national Government function that is undertaken by a national Government institution working on a stated role given to it by the Constitution. So, for the Senate to propose a representative of CoG, this is opening another Pandora's box that will in essence be going against the Fourth Schedule.

We again reject the Senate's amendments on Clause 23 which reduces the time required to develop a National Environmental Action Plan from three to two years after the commencement of this Act and further reduce the planning period from six to three years. Based on experience, Kenya had the responsibility in the current Environmental Management and Coordination (EMCA) Act to produce a state of the environment report annually. This has been found to be unrealistic because changes in the environment do not happen annually. As such, based on the fact that experience has shown that it is unrealistic to have short plans and quick reports, we had expanded that time. We also wish to reject a similar amendment on Clause 25 which also reduces the time in which a county's plan can be produced and a county's report on the state of the environment can be produced. The justification is the same with that one of Clause 23 that it is unrealistic to expect changes to occur in the environment in such a short notice. Maybe Members of the Senate looked at these years as an issue to merely do with a timeline. However, when you look at the actual work required to produce a National Environmental Action Plan, it has to take into account inputs from the 47 counties. It has to take into account what has been achieved in the previous planning period to build to the next one. Therefore, it is not an issue of reducing mere periods of time but one of appreciating the work required to produce these documents. We believe that the Senate might not have taken the issues that are raised into serious consideration.

On Clause 40, the Committee agrees with the Senate on the amendment because we appreciate that the making of regulations and issuance of guidelines is a function of the Cabinet Secretary. In these amendments that we have agreed or disagreed with the Senate, the killer disagreement is on the issue of having representation of the CoG in these two national bodies. We will end up having the CoG wanting to be in any institution. They will tell us they want a representative in the Kenya Medical Supplies Agency (KEMSA) Act the next time we are reviewing the KEMSA Act. They will do the same if we are amending any other Act. So, based on the fact that policy development remains the role of the national Government, national Government institutions responsible for policy formulation should not be tied to having representation by the CoG even in fully devolved functions such as health. The Cabinet Secretaries should be given a free hand to choose individuals with the best possible qualifications to represent in the same.

I wish to request hon. Kenta to second.

Hon. Speaker: Hon. Moitalel ole Kenta.

Hon. ole Kenta: Thank you, hon. Speaker. I wish to support my Hon. Chairlady of the Departmental Committee on Environment and Natural Resources and second the proposals. I believe in what she has said. The Senate is actually trying to encroach on the powers of the national Government. This is something that this House should resist

because when you have the representative of the CoG in each and every national institution, then we are losing the line between devolved governments and the national Government.

I support and second. Thank you, hon. Speaker.

(Hon. (Ms.) R. K. Nyamai walked in the Chamber)

Hon. Speaker: Hon. Members, it would be good if hon. Rachel Nyamai could relax and take some seat. Hon. Members, it is fair that all of us follow the proceedings. I am sure some of you may not have listened to the contributions made by the Mover, hon. Amina Abdalla. You have to make some serious decision here because the net effect of what she has said is that some of the amendments proposed by the Senate appear, in the Departmental Committee on Environment and Natural Resources' view, to infringe on the functions of the national Government as contained in the Fourth Schedule of the Constitution.

Throwing them out is not that easy. The consequence is that Article 112(2)(b) of the Constitution will set in because it means that you do not agree with some but the Committee agrees with the others. That is why it was important, in my view, that everybody listens and is on board so that you make a decision one way or the other.

(Question proposed)

Hon. (Ms.) R.N Wanyonyi: Thank you, hon. Speaker. I stand here to support the recommendation of the Departmental Committee on Environment and Natural Resources as far as the amendments---

Hon. Speaker: Hon. Wanyonyi, let me just interrupt you to do some small business. You will still continue.

Hon. Members, I had deferred putting the Question on the Motion No. 8 on the Order Paper. You have heard that your Committee has agreed with the Senate amendments.

SENATE AMENDMENTS TO THE PUBLIC SERVICE
(VALUES AND PRINCIPLES) BILL

THAT, the Senate Amendments to the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014) be now considered.

(Question put and agreed to)

*(Resumption of Debate on Environmental
Management and Co-ordination (Amendment) Bill)*

Hon. Speaker: We revert to business No. 9 on the Order Paper. Hon. (Ms.) Wanyonyi continue.

Hon. (Ms.) R.N. Wanyonyi: Thank you, hon. Speaker. I stand here to support the report of the Committee on the amendments by the Senate. I would in particular like to bring out clause 10 in which the Senate was proposing that we do away with the representation from the Attorney-General and instead replace it with the Council of Governors. It is very clear that the functions of the national Government are quite clear and those of the county government are also clear. In this regard, the National Environment Management Authority (NEMA) is a function of the national Government and the proposal that we include representation from county governors is in itself, to me, a violation of the function that is supposed to be of the national Government. We need to be so clear that if we bring out the issue of the governors in the representation of national functions, then we are mixing issues. We are mixing the functions. It is good that the Senate, in its recommendation, adheres to the fact that national functions should be left to the national Government and that county functions should be left to the county government. In this regard, I support this report in respect of the recommendations of the Departmental Committee on Environment and Natural Resources. We should adopt the Report as presented by the Committee.

Hon. J.K. Ng'ang'a: Thank you, hon. Speaker. I also want to support this Motion. There are some issues that we, as Members of Parliament of this House have to scrutinise and differentiate. We need to differentiate what belongs to the national Government and what belongs to the county government. If we try to devolve this noble professional task to the county we need to realize that county governments are still very new. They need to be stable first. So, it will be unwise for us to take this task to the county governments.

My colleagues, there are many forests in our country but at the moment they are almost finished. If we do not take care of them; if we do not try to salvage them, very soon we shall be left with no forest in our country. I am talking about this from experience. Where I come from, we have the Mau Forest which has been destroyed. It is said that if you destroy the environment, the environment will destroy us. So, it is upon us to retain it so that it can also retain us. If we do not maintain it, very soon we shall have no catchment tower in our country.

Thank you. I beg to support.

Hon. Murungi: Thank you, hon. Speaker. I also want to support the Report as submitted by the Departmental Committee on Environment and Natural Resources. We considered these amendments from the Senate and as a Member I was present in that meeting. We agreed strongly on some of the clauses that they had amended which were positive to the Bill but some of the clauses, as my colleagues have said, were not positive. We have the example of Clause 10 where the Senate is trying to entrench the Council of Governors to whatever is happening at the national level. If we go that route, I can see the CoG beginning to engage in all aspects of the national Government. We do not want to start that. The institution of NEMA is a very serious parastatal and if you go to Schedule Four of the Constitution, you will see all the devolved functions under NEMA.

This Bill has incorporated county environment committees where they have representatives. The county executive in charge of natural resources and environment sits in that county environment committee. So, if there are any issues that they want to

canvass on matters to do with environmental management, they can do at that level but allowing a member from the CoG to sit in the NEMA board is not appropriate. Thank you.

Hon. (Ms.) R.K Nyamai: Thank you hon. Speaker, for giving me this opportunity. I would like to support the Motion raised by the Chairperson, hon. Amina Abdalla. First of all, I congratulate her for being vigilant and tackling matters of environment and all the related issues in a professional way. I would like to focus on the issue of NEMA. The institution of NEMA handles various functions including matters of policy and research touching on various Ministries.

The Committee has made a very good conclusion that we need to support as a House and ensure that we do not set a precedent by allowing such an amendment which is going to affect the work of NEMA in this country.

Hon. Speaker, I would like to say that this is equal to usurping the powers of the national Government. We know that NEMA is a national Government institution which is supposed to give support to all counties and this is going against Schedule Four which is very clear on the functions of the national Government and functions of the county government. Accepting such an amendment can set a bad precedent where we will see the county government also wanting to be represented in other institutions that are at national level. I would like to give an example of what we saw a few days ago. We saw a county that said it wanted to take total management of a medical training college within the county while we know very well that training is a national Government function. I have a feeling that chairpersons who are in charge of functions that have been devolved need to be very vigilant to ensure that counties do not usurp power. I believe counties do not even have the capacity to manage such an institution and we should reject that amendment that the Senate has raised.

I highly support the Committee Report that NEMA remains a national Government institution.

Thank you, hon. Speaker.

Hon. Geni: Thank you, hon. Speaker, for giving me this opportunity to contribute on this sensitive issue. NEMA is a very critical and important body in this country because we know we are an agricultural country.

In these amendments, we did not see any reason of removing the Attorney-General's representative and replacing the same with the Council of Governors. In such a body, it is only fair and important that we have somebody from the State Law Office who will be assisting in some of the legal matters, given that we will have always these wrangles from those who do not want changes in environment. We also did not see any reason for this proposal to reduce the timelines from two years to one year on the commencement of our reports and workplans.

With those few remarks, I support the Report.

Hon. ole Ntutu: Thank you, hon. Speaker. I also want to support the Committee Report and say that the Constitution is very clear when it comes to the two levels of Government; the national and the county government. Therefore, when you look at clause 10 as said by the Chairperson, the contention here is the representation of one person nominated by the CoG. I do not know why the Senate did not see that when they were trying to form the county development board, the governors totally refused and rushed to

the courts saying they did not want anyone to play the role of oversight on issues to do with development. Therefore, I do not see why we should have a person represented by the county government.

We should be very careful not to confuse the functions of the national Government and those of the county government.

I support and thank you, hon. Speaker.

Hon. (Dr.) Ottichilo: Thank you, hon. Speaker. I stand to support the Report of the Committee. I am a Member of that Committee but---

Hon. Speaker: Hon. Members, I think as we discuss this matter, it is important that Members look at the wording of the Motion and appreciate that the contributions by the Members are in support of the Report of the Committee which rejects some of the amendments from the Senate. It is not fair for Members, when it comes to voting, to vote without knowledge and information.

Proceed, hon. Otichillo.

Hon. (Dr.) Ottichilo: Thank you, hon. Speaker. I want to specifically address this House on two main issues which I think the Senate lost the boat completely. This is the issue to do with preparation and formulation of a national environmental action plan. This is a very long participatory process. It is a process that starts at the grassroots level and goes all the way to the national level. So, it is a process that takes a long time. When the Senate proposes that we should reduce the period for preparing this national action plan from three years to two years, it is a tall order and NEMA cannot achieve that.

As a Committee, we looked at the issues and from experience, it has been shown that the minimum period you can use to come up with a national environmental action plan is three years and that is why we have recommended three years. In the previous NEMA Act, it had indicated that every two years, NEMA should prepare and present to this House a status report of the environment. It was not possible for the NEMA to do it because it is a process you cannot undertake in two years. We completely reject the proposal by Senate that the period should be reduced.

Equally, for the Senate to indicate that they want the county environmental action plan to be prepared in one year instead of two years again is a tall order for the county government. First of all, the county governments have yet to establish expertise and capacity in environmental monitoring and environmental action plan preparation. So, reducing the period from two years to one year is clear that they will not achieve it. It is pointless for us to recommend to the county executive committee to prepare county environmental action plan in one year when they do not have the capacity and the process itself has to be participatory. So for that reason, we reject the proposals by the Senate and go by the proposal by the Committee.

I support the Report of the Committee.

Hon. Speaker: Hon. Members, it is fair to appreciate---

(Hon. (Ms.) Mbarire consulted Hon. (Ms.) Nyamai loudly)

Hon. (Ms.) Mbarire, this is the National Assembly. It is fair to appreciate that this Bill originated in the National Assembly and therefore what you are debating is the proposed amendments from the Senate which your Committee proposes that you reject.

That is why I said it is fair for Members to look at the wording of the Motion so that you know how to vote. I am assuming now everybody knows how to vote.

(Question put and agreed to)

What that means hon. Members is that then the Bill will go to the Committee of the whole House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Cheboi) took the Chair]*

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! We are now going to the Committee of the whole House on Fair Administrative Action Bill, National Assembly Bill No.10 of 2015.

(Hon. Cheboi consulted with the Clerks-at-the-Table)

Hon. Members, upon consultation we will not be dealing with the Fair Administrative Action Bill immediately because the Committee and its Chairperson are still tidying up a few things. We will go straight to the Environmental Management and Co-ordination (Amendment) Bill, National Assembly Bill No.31 of 2014. Actually, it is the second one, that is, the Public Service--- Give me just a minute, hon. Members. We will be starting with the Public Service (Values and Principles) Bill, National Assembly Bill No.29 of 2014. We are now considering the Senate amendments. We will move to it very quickly because it is a fairly straightforward Bill, hon. Members. It is something that we are going to dispose very quickly.

CONSIDERATION OF SENATE AMENDMENTS TO PUBLIC SERVICE (VALUES AND PRINCIPLES) BILL

Clause 7

THAT, clause 7 of the Bill be amended by deleting sub-clause (6) and substituting therefor the following new sub-clause-

- (6) Every public institution shall -
- develop standards for the responsive, prompt, effective, impartial and equitable provision of services;

-) facilitate the introduction of modern and innovative procedures, technologies and systems for the delivery of its services;
 -) simplify its procedures and ease formalities related to access and delivery of its services;
 -) ensure the adaptability of public services to the needs of the public;
 -) ensure that its services are delivered closer to the users of the services; and
- develop mechanisms for monitoring and evaluating the effectiveness of public service delivery.

Clause 8

THAT, Clause 8 of the Bill be amended in sub-clause (2) by inserting the words “and accountability” at the end of the sub-clause.

Clause 13

- THAT, Clause 13 of the Bill be amended-
-) by inserting the following new sub-clauses immediately after sub-clause (3)-
 - (3A) If after three months a service Commission has not investigated and determined a complaint, the officer responsible for handling the complaint shall give the complainant satisfactory reasons, in writing, for non-compliance
 - (3B) Appropriate disciplinary action shall be taken against any officer who is found to have unreasonably delayed in handling a complaint made to the service Commission.
 -) by deleting sub-clause (4) and substituting therefor the following new clause-
 - (4) A person aggrieved by the decision of a service Commission may seek judicial redress.

Clause 15

- THAT, Clause 15 of the Bill be amended-
-) in sub-clause (1) by deleting the word “satisfactory” appearing immediately after the words ‘a public officer to be’ and substituting therefor the words “exemplary, outstanding or innovative”; and
 -) in paragraph (b) of sub-clause (2) by deleting the word “satisfactory” appearing immediately after the words ‘public officers who offer’ and substituting therefor the words ‘exemplary, outstanding or innovative’.

(Question of the Senate Amendments proposed)

The Temporary Deputy Chairman (Hon. Cheboi): Do I see some interest? I see the Member for Naivasha. Do you want to speak to this particular one, hon. Kihagi? You have removed your card. So, let me see the indication of Members who want to speak to this particular one. It is fairly straightforward. Hon. Metito, do you want to speak to this one?

Hon. Katoo: Hon. Temporary Deputy Chairman I just want, for clarity purposes, to let Members understand that when I was moving the Motion No. 8, I indicated that the amendments on clauses 7,8,13 and 15 were referred to the Departmental Committee on Administration and National Security. The Committee agreed to pass all those clauses. Therefore, we have no objection. The reason given by the Committee is that the Senate aligned it more to the Articles of the Constitution. They made the Public Service (Values and Principles) more accountable, impartial, effective and responsive. So, these are the reasons being given by the Committee. For those reasons which include transparency and accountability and the need to enhance the principle of good governance, I urge the House that we agree with the amendments of the Senate.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. I see no other interest. I think hon. Abdalla wants to speak to the Environmental Management and Co-ordination (Amendment) Bill.

(Clauses 7,8,13 and 15 of Senate Amendments agreed to)

Let us have the Mover to move reporting.

Hon. Katoo: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Public Service (Values and Principles) Bill, National Assembly Bill No.29 of 2014 and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): We will proceed to the next Bill which is the Environmental Management and Co-ordination (Amendment) Bill, National Assembly Bill No.31 of 2014. In this particular one, we are also considering the Senate amendments.

CONSIDERATION OF SENATE AMENDMENTS TO THE ENVIRONMENTAL
MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL

Clause 9

THAT, clause 9 of the Bill be amended in paragraph (a), in the proposed new paragraph (ba), by inserting the words “and their utilization and conservation”, immediately after the words in Kenya”.

(Question of the Senate Amendment proposed)

(Clause 9 of Senate Amendment agreed to)

Clause 10

THAT, clause 10 of the Bill be amended in paragraph (d), by deleting the proposed new subsection (1)(f) and substituting therefor the following new subsection- (1)(f) one person nominated by the Council of County Governors.

(Question of the Senate Amendment proposed)

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I beg the House to reject this amendment from the Senate based on the fact that the National Environmental Management Authority (NEMA) is a national body mandated to perform national functions in accordance with the Fourth Schedule to the Constitution. Therefore, there is no policy or legal basis on which the Council of Governors should be represented in this body. I beg that we reject this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): I see a lot of interest. There are eight interests here. I hope all of them want to speak to this particular one. Hon. Pkosing, do you want to speak to it? I will give a few Members on this particular one. You realise that this is a fairly new one though we have done one or two so that we can be up to speed.

Hon. Losiakou: Hon. Temporary Deputy Chairman, allow me to agree with the Chairperson of the Committee. If we allow the Council of Governors to come in then, they have no business. In my understanding, NEMA is like a national Government company. So, if the national Government has designed in the implementation of its own mandate and services that it implements through NEMA, then they have no need.

Secondly, if you look at Article 186(2) of the Constitution, it will tell you very clearly that if there are roles which the national Government and the county government are doing, then each government can actually implement it their own way. If that is the case, we do not see the reason why we should include county governments in this one.

Finally, if we were to go the way Senate has proposed, then it means that even with regard to water--- Water is provided by the national Government and county governments. This will mean that at the county level, we will also need a national Government officer to sit at the county. We will defeat the purpose of the Constitution in all this.

I support the Chairlady.

Hon. Anyango: Hon. Temporary Deputy Chairman, the mistake here is for the Senate to have wished to remove the representative of the Attorney-General and replace him or her with the nominee of the Council of Governors. It is true that environment is a national Government function, but we are talking about representation of all the environment programmes. We will require the involvement of the counties and their contribution. In fact to an extent, they are duty bound under the Constitution even to allocate resources to strengthen the management of the environment within their own counties. Some counties will have very serious environmental issues and so leaving everything to the national Government, the residents may feel that their county government should also chip in.

Instead of removing the Attorney-General, as the Senate has recommended, we should just add the representation of the Council of Governors and retain the rest of the Board as it is. I do not know what the Chairperson of the Committee has to say in this regard.

The Temporary Deputy Chairman (Hon. Cheboi): Committee Chairperson, is there something you want to clarify? Let us get the Chairperson and then I will give opportunity to a few more Members to contribute on this particular one as we see how we are going to proceed with it.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, I wanted to clarify to hon. Dalmas that we considered the view of just retaining the Attorney-General and having a representative of the Council of Governors. The reason as to why we thought it would not be the right thing to do is that, under environment, the role of policy development is a national Government function while implementation of the policies is a devolved function. Based on that, in this Bill, we have re-created environmental committees that are similar to the National Environment Management Authority (NEMA) in every county, to which the NEMA officer in the county is secretary. Why would you deny a chance to people with the expertise that would give a national view in policy development in very technical matters to have a representation?

Our more fundamental fear is that policy development in the environment is a national Government function. If we bring on board the Council of Governors in this one, next time we will want to have the representation of the Council of Governors in every parastatal carrying out national Government functions. We will be opening a Pandora's Box. We will then say that we need representation of the Council of Governors in the Cabinet. We should do such thing based on a real need. The networking being suggested could be dealt with in a different framework, and not through this formal framework of the Board of NEMA. This is not a caucus. That is where we differed. We had even thought of reducing the number of persons to be nominated by the Cabinet Secretary and reserve a slot for the Council of Governors.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): That is fine. I see interventions by Hon. Nooru of Mandera North and hon. Dalmas Otieno. Do you have an intervention on that one, hon. Nooru? You have removed your card. I hope you are not contributing. If you want to contribute then you will have to queue. I called on you because your card was in the intervention slot.

Hon. Nooru: I wanted to contribute, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): You wanted to contribute? Then let me first get those who are on intervention. Let us hear from hon. Dalmas Otieno.

Hon. Anyango: Hon. Temporary Deputy Chairman, I am surprised by the fear and magnification of that fear to an extent of some people demanding county representation in so many other national boards. Inclusivity and participation of all stakeholders is a principle accepted under the Constitution. I do not find the fear that if you allow representation of the Council of Governors in one board, then the Council of Governors will want representation in many other boards. We need the input of the county governance mechanisms in policy formulation, even if it is just at that level. At the implementation level, they will be involved automatically.

The Temporary Deputy Chairman (Hon. Cheboi): But hon. Dalmas, the Committee has proposed a rejection. Are you supporting or opposing it? I am trying to get something out of your contribution.

Hon. Anyango: Hon. Temporary Deputy Chairman, I do not find the rejection justified. If anything, we should amend what they had considered in the Committee and add the Council's representation without having to remove the representation of the Attorney-General.

The Temporary Deputy Chairman (Hon. Cheboi): Let me give chance to a few more Members. The Committee is proposing a rejection. I wanted Members to either support or oppose the rejection by the Committee. The direction that hon. Dalmas has taken is that he would be interested in an amendment to it, which unfortunately we do not have at this point in time. Let me get a few more Members to speak to it and then the House will make a decision. Let us have the Member for North Imenti.

Hon. Dawood: Thank you, hon. Temporary Deputy Chairman. I support the Chairperson of the Departmental Committee on Environment and Natural Resources and disagree with hon. Dalmas. If we let---

The Temporary Deputy Chairman (Hon. Cheboi): If you are supporting the proposal by the Committee for rejection, go ahead and do so.

Hon. Dawood: Hon. Temporary Deputy Chairman, I support what the Chairperson of the Departmental Committee on Environment and Natural Resources has said. Do we have the Council of Governors represented in the policy-making organ when they are the ones who are supposed to implement the resultant policies? We need to develop policies which can be implemented. If we let them through in the manner that the Senate wants we will have a scenario similar to that of the proverbial camel who entered the tent and took it over, throwing out the owners of the tent. Let the Council of Governors stay out of the policy-making organs and wait to implement the policies that will be formulated.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, let us be as brief as possible. Let us hear the Member for Runyenjes, hon. Mbarire.

Hon. (Ms.) Mbarire: Thank you, hon. Temporary Deputy Chairman. I support the position of the Departmental Committee on Environment and Natural Resources. We need to be very clear on the roles of the national Government and the county governments. The role of national Government in matters of natural resources and environment is that of policy formulation. As long as the Committee has provided for a structure at the county level that can then liaise with the NEMA, I see nothing wrong with us keeping them away from the NEMA Board. Much as I have listened to hon. Dalmas Otieno, who says that we should have no fear, there are reasons to be cautious. If we allow the Council of Governors to be represented in the NEMA Board, it will be the beginning of many more demands that they will eventually come up with. Clearly, since devolution came to be, there have been efforts by the county governments to take over every national function. They are now demanding that they be part of security. There are certain roles of the national Government that are so critical that they should be played by a neutral person across the board.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, let us be brief because we cannot afford to re-open debate on this matter. You should be winding up, hon. Mbarire.

Hon. (Ms.) Mbarire: Hon. Temporary Deputy Chairman, I support the position of the Departmental Committee on Environment and Natural Resources. I hope that the Members who have an opposite opinion can hear us on this one. It is very critical.

The Temporary Deputy Chairman (Hon. Cheboi): Let us hear hon. Chidzuga. As we have her, we will make a decision on this basis; if you are supporting the rejection, you will say ‘nay’, if you are supporting the Senate amendment, it will be ‘ayes’. Let us have a brief contribution that is straight to the point, hon. Chidzuga.

Hon. (Ms.) Chidzuga: Asante sana, Mhe. Naibu Mwenyekiti wa Muda. Nimesimama kuunga mkono msimamo wa Kamati ya Mazingara na Mali Ghafi. Tutakapokubaliana kuwa magavana hawawezi kukaa katika bodi hii ambayo ni bodi kuu inayosimamia mipangilio ya Serikali, itakuwa ni kama tumemfungulia mlango mtu atakayekuja kubadilisha mipangilio iende sawa na kule kwake anakotawala.

Kwa hivyo, kama kweli zile kamati ambazo zinasimamia mambo ya mazingira katika maeneo ya kaunti watahitaji neno lolote, kuna mwandishi ambaye ni mwakilishi wa Serikali Kuu. Kama wana neno, litapitishwa mpaka lifike kwa hii Bodi kuu kupitia kwa huyo mwandishi. Lakini kukaa katika hii Bodi itakuwa ni kama kwamba tumetoa nafasi wao waje waanze kuingilia mpangilio ambao ni wa Serikali Kuu. Hiyo itakuwa kinyume cha Katiba.

The Temporary Deputy Chairman (Hon. Cheboi): That is fine. We have to be brief. We do not want to open it for debate. I will give a chance to hon. Abdinoor.

Hon. Nooru: Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Abdinoor.

Hon. Nooru: Hon. Temporary Deputy Chairman, I agree with---

The Temporary Deputy Chairman (Hon. Cheboi): You are not hon. Abdinoor. Anyway, it is okay. Proceed. Hon. Abdinoor, I will give you an opportunity.

Hon. Abdinoor: Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): No. Let us have the senior--- Have you removed the card? There is a total mix there. Let us start with hon. Adan Nooru.

Hon. Nooru: Thank you, hon. Temporary Deputy Chairman. I concur with the proposal made by the Committee through the Chairperson. The law is very clear that there are two levels of Government. We have the national Government and the county governments whose functions are very clear. We do not need to mix up issues. This is a policy matter and the implementation is done at the county level. The county level has been given an opportunity to have their own committee. If there is anything for which they want to liaise with the national Government or the National Environment Management Authority (NEMA), they can do it through the normal structures that have been put in place.

So, I support the amendment proposed by the Chairperson of the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): I will give an opportunity to two more Members. I want Members to understand that what we have before us is a Senate amendment. If you agree with the Senate amendment, you will vote “Aye”. If you

agree with the Committee's proposal for rejection of the amendment you will vote "Nay". This is something that Members must be very clear on.

I will give an opportunity to hon. Abdinoor and two other Members. They have to be very brief and straight to the point.

Hon. Abdinoor: Thank you, hon. Temporary Deputy Chairman. I support the position of the Chairperson of the Committee. One, NEMA has a national function. It does not have a county function. Two, what the Senate has done is to remove the Attorney-General and put the Council of Governors. The Attorney-General was to provide legal advisory to the Board. The CoG cannot perform that function in that Board. Three, the CoG is just a caucus and they are institutionalising it through this amendment. If we allow this amendment by the Senate, the CoG will sit in the Kenya Roads Board (KRB), Kenya Wildlife Service (KWS) and National Security Advisory Committee. So, I support the position of the Chairperson.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. Let us have Hon. Nicholas Ngikor, the Member for Turkana East.

Hon. Ngikor: Hon. Temporary Deputy Chairman, I support the proposal of the Chairperson of the Committee. As Hon. Nooru says, if the CoG is just a caucus, I do not know how it becomes a body which will be included in the affairs of NEMA. When we bring them in, a lot of things will be messed up because the Governors are trying to undermine all the work that is being done by the national Government. Their work is executive. They are supposed to implement. So, we cannot bring them on board.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. You have been heard, Hon. Ngikor. In fact, it is now important we take a decision. I wanted to give one more Member a chance, but there is some unanimity of sorts. Can we have hon. M'eruaki? That should be the last one.

Hon. M'uthari: Thank you, hon. Temporary Deputy Chairman. I rise to support the rejection of this Senate amendment. This is because there is this tendency by the Senate to try and expand the mandate of the county governments at the expense of the national Government. This is very bad. They should play their role and let the national Government play their role. At the same time, you cannot say: This is from the county governments and this is from the national Government. If we mix up policy making and implementation, there will be chaos.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. We will now make a decision. We will have many more Members contributing to the next clauses. I want to be clear again because this is a first. Those Members who want to support the Senate amendment, because that is what we are debating now, will vote "Ayes". Those who support the Committee proposal for rejection will vote "Nay".

Hon. (Ms.) Odhiambo-Mabona: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Cheboi): What is your intervention, Hon. Millie?

Hon. (Ms.) Odhiambo-Mabona: Thank you, hon. Temporary Deputy Chairman. I had put this intervention at the right time but unfortunately I did not catch your eye. It

would be wrong to have it on record that the CoG is a caucus. It is a legal entity and not a caucus.

The Temporary Deputy Chairman (Hon. Cheboi): I did not get you clearly.

(Hon. Cheboi consulted with the Clerks-at-the-Table)

Okay. That is perfectly in order.

*(Question, that the words to be left out be left out,
put and negatived)*

(Clause 10 of Senate Amendment negatived)

Clause 12

THAT, Clause 12 of the Bill be amended in the marginal note of the proposed new Section 14 by deleting the word “Board” appearing immediately after the words “of the” and substituting therefor the words “Director-General and Directors”.

The Temporary Deputy Chairman (Hon. Cheboi): We do not seem to have any amendment on this one.

(Question of the Senate Amendment proposed)

*(Question, that the word to be left out be
left out, put and agreed to)*

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

(Clause 12 of Senate Amendment agreed to)

Clause 20

THAT, Clause 20 of the Bill be deleted and substituted therefor with the following new clause—

20. The principal Act is amended in subsection (1) of Section 31—

(a) by deleting the words “Public Complaints Committee” wherever it appears and substituting therefor the words “National Environmental Complaints Committee”;

(b) by deleting the words “two members” appearing at the beginning of paragraph (f) and substituting therefor the words “one member”; and

(c) by inserting the following new paragraph immediately after paragraph (f)—

(g) one person who has demonstrated competence in environmental matters, nominated by the Council of Governors.

The Temporary Deputy Chairman (Hon. Cheboi): On this one, because there are amendments to particular sub-clauses, we will go sub-clause by sub-clause.

(Question of the Senate Amendment to Clause 20(a) proposed)

Do we have an amendment to that one? I thought the amendments are on (b) and (c).

*(Question, that the words to be left out
be left out, put and agreed to)*

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

(Clause 20(a) of Senate Amendment agreed to)

(Question of the Senate Amendment to Clause 20(b) proposed)

The Temporary Deputy Chairman (Hon. Cheboi): The Mover, hon. Abdalla.

Hon. (Ms.) Abdalla: Thank you, hon. Temporary Deputy Chairman. We are proposing that we reject the Senate's amendment because in essence what they are saying is that the National Environmental Complaints Committee--- This is a committee that you go to complain about a factory that is polluting your river or such kind of issues. It is basically quasi-judicial. They are saying that we reduce the names of the individuals that the Cabinet Secretary (CS) can propose from two to one. They are proposing in paragraph (c) that the other one member comes from the CoG. We do not see the legal basis for having that one person representing this body. It should be open to the discretion of the Cabinet Secretary to give us the best qualified persons to serve in this tribunal rather than to tie his or her hands.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I will give a few more Members, probably two. Let us start with hon. Njogu Barua.

Hon. Barua: Thank you, hon. Temporary Deputy Chairman. I stand to support the position of the Committee of which I am a member. I will be very brief. I would like to suggest that we reject it on the basis that the CoG does not represent any special interest on matters of the environment. The other thing I am wondering about is: What extra expertise is going to be accorded that Committee by merely giving the CoG a nominating position? We should reject this proposal.

Lastly, the CoG wants to convert itself into a nominating authority illegally and not according to the Constitution. I support the views of the other Members that the CoG and Governors in general have an intention of penetrating all national organs for reasons we do not understand.

For those reasons, I support the Chairperson of the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): Very well, let us have the Member for Igembe Central, hon. Iringo, very briefly.

Hon. Kubai Iringo: Thank you, hon. Temporary Deputy Chairman. I support the Committee on this rejection. Let it go with the same spirit as in Clause 10 because we have already rejected it. Let us move in the same direction. Equally, this is not about balancing of gender or people from different regions; we are talking of professional

representation. Therefore, two people are quite a deal. The Council of Governors should not have a hand in this one because this is a policy and we need technical people. Therefore, when they are two of them, one of them can sit in for the other.

*(Question, that the words to be left out
be left out, put and negated)*

(Clause 20(b) of Senate Amendment negated)

(Question of the Senate Amendment to Clause 20(c) proposed)

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, as I said the amendments are interlinked in terms of membership to the National Environmental Complaints Committee and as such part (c) was just a linkage. Therefore, we are proposing rejection of parts (b) and (c).

Hon. Nderitu: Thank you, hon. Temporary Deputy Chairman. I would like to support the Chairperson. Just as my colleagues have said, the issue of Governors looks like is tantamount to interference. When looking at the major roles or the functions of the Governors as stipulated by the Constitution, I feel they are running away from their main roles. I do not think even members of the society are satisfied that the Governors are fully functioning. Therefore, I support the rejection. The matter should be as we had decided earlier on.

The Temporary Deputy Chairman (Hon. Cheboi): Very well, the last one I am giving here is the hon. Member for Rongo.

Hon. Anyango: Hon. Temporary Deputy Chairman, on this one, I agree with our Committee that the Senate is extending the request by the Council too far and that this should remain as established at the national Level. They do not need this representation. However, it is not right to continue with the attitude that the Council of Governors or the Senate are undermining the national Government. The use of the words “undermining” or “plotting to undermine” is not correct. The interdependence and interactive processes in governance and decision-making should be accepted as a principle that will apply. However, where it is specific that somebody is going beyond what is necessary for that purpose of achieving better representation then we treat it as such.

*(Question, that the words to be left out
be left out, put and negated)*

(Clause 20(c) of Senate Amendment negated)

The Temporary Deputy Chairman (Hon. Cheboi): Order Members, there is need for a lot of concentration on this particular one, therefore Members should consult in very low tones.

Clause 23

THAT, clause 23 of the Bill be amended in the proposed new section 37-

- (a) by deleting the word “three” appearing immediately after the words “shall, within”, in subsection (1), and substituting therefor the word “two”; and
- (b) by deleting the word “six” appearing immediately after the words “Plan every”, in subsection (5), and substituting therefor the word “three”.

(Question of the Senate Amendment proposed)

Hon. (Ms.) Abdalla: The Senate amendment to Clause 23 is basically on reducing time in which the national Government should spend in developing National Environmental Action Plan and consequently, the time it should take in producing a report on the Plan. We are rejecting this reduction because of experience. Even the current law requires that the national Government produces a state of the environment report annually. This has been shown to be unrealistic.

It is too much to collate information from all over Kenya and report on how the environment is performing within one year. To do that plan, we had suggested and it will be a consequential amendment in Clause 25, that we allow a county government to do a five-year plan. They should spend three years to do the plan which will be eligible for implementation for five years and after this first plan, it builds to the national one which needs to be produced in six years. When they reduce it, they do not take into consideration the capacity in the national Government, the issues that are being reported on being issues that take more than the time that they are requesting. Therefore, we are rejecting this amendment based on experience.

We have Members in my Committee who have worked in NEMA and civil society. I am one of the people who were in the beginning asking NEMA to produce an annual statement on the state of the environment. We realized it was impossible. Even the NGO world knows it is impossible. Therefore, for us to come and reduce this time, it is just giving somebody an output that we know is hard to achieve. Therefore, we have to move away from giving deadlines and timelines that are unrealistic. The Senate needs to be advised that this is unrealistic.

The Temporary Deputy Chairman (Hon. Cheboi): Very well, only two more Members will contribute to this, starting with the hon. Member for South Imenti.

Hon. Murungi: Thank you, hon. Temporary Deputy Chairman. I reject this proposal in totality from the Senate. I do not want to doubt the capability of the Committee of the Senate handling environmental issues, but some of the proposals they are bringing forth are very unrealistic. They are indicating that the state of the environment in the counties be published by the CECs in charge of the environment, which they should compile and then the Cabinet Secretary in charge of environment at the national level should be the one responsible to give the state of the environment. I reject this amendment from the Senate.

The Temporary Deputy Chairman (Hon. Cheboi): The Imentis and Igembes are very active today. I had seen hon. Murunga. Do you want to speak to this one? You have removed your card. Do you want to speak to it? Even by a nod I will be able to know if you have an interest in this particular one.

(Question, that the words to be left out)

be left out, put and negatived)

(Clause 23 of Senate Amendment negatived)

Hon. Members, we must concentrate. You can imagine if the proposer of the rejection is actually voting against her own will.

Clause 25

- THAT, clause 25 of the Bill be amended in the proposed new section 40-
- (a) by deleting subsection (1) and substituting therefor the following new subsection-
 - (1) Every County Environment Committee shall within one year of the commencement of this Act and every three years thereafter, prepare a county environment action plan in respect of the county for consideration and adoption by the County Assembly”; and
 - (b) by deleting the word “Cabinet Secretary” appearing immediately after the words “subsection (1) to the”, in subsection (3), and substituting therefor the word “Authority”.

(Question of the Senate Amendment proposed)

Hon. (Ms.) Abdalla: We are rejecting this amendment because it is similar to Clause 23. It is a matter of not appreciating the timelines required for the reports and plans to be produced. We are rejecting and requesting that the House rejects this Senate Amendment because we think that more time is required. A good plan needs more time and a better report can only be produced if you give them a realistic timeline.

The Temporary Deputy Chairman (Hon. Cheboi): Very well, I will give the first shot to the hon. Member for Kanduyi.

Hon. Wamunyinyi: Thank you. Timelines are very important in anything that you want to do. I therefore want to agree with the opposition to this particular amendment.

I beg to oppose.

The Temporary Deputy Chairman (Hon. Cheboi): You are opposing the rejection by the Committee or you are opposing the Senate amendment?

Hon. Wamunyinyi: I am supporting the Committee’s rejection of the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): That is clear. Hon. Murunga.

Hon. Kasuti: Thank you. I would like to support the amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Is your microphone on? Your card keeps getting in and out of the system.

Hon. Kasuti: My microphone is on.

The Temporary Deputy Chairman (Hon. Cheboi): Is it on? Get close to the microphone.

Proceed hon. Murunga.

Hon. Kasuti: I believe timelines are very important. If timelines that are given are not adequate, then we do not achieve what we intend to do. So, I support the amendment that we should have enough time to---

The Temporary Deputy Chairman (Hon. Cheboi): Okay. I will give the Member for Igembe Central.

Hon. Kubai Iringo: Thank you, for this opportunity to contribute to this one. I agree with the rejection by the Committee. I believe that the Committee had sat long enough to come up with three years. They had put their heads together. Therefore, when the Senate reduces it, I do not know if it is for the sake of it or it wants to be seen to have looked at the particular instruments, but I believe the Committee was right to give those timelines because it was well thought out.

I, therefore, support, the Committee.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

*(Question, that the words to be left out
be left out, put and negated)*

(Clause 25 of Senate Amendment negated)

Clause 40

THAT, clause 40 of the Bill be amended in the proposed new section 56A, by deleting the words “the Authority” appearing at the beginning of the proposed new section and substituting therefor the words “the Cabinet Secretary”.

The Temporary Deputy Chairman (Hon. Cheboi): I think there is no amendment to that one. Hon. Amina Abdalla, would you want to say something to it.

(Question of the Senate Amendment proposed)

Hon. (Ms.) Abdalla: Yes. I just want to acknowledge that we do not just oppose amendments from the Senate. I want to acknowledge the good work that the Senate has done on Clause 40. They were able to amend an oversight that we, as a Committee, had on this amendment. I appreciate that the Cabinet Secretary (CS) is the principal person to make and issue regulations. So, I want to congratulate the Senate for this amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay. More accolades will come later. Please let us proceed.

*(Question, that the words to be left out
be left out, put and agreed)*

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

(Clause 12 of Senate Amendment agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): At this juncture we will have the Mover to move reporting. Yes, hon. Abdalla.

Hon. (Ms.) Abdalla: I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Environmental Management and Co-

ordination (Amendment) Bill, (Nation Assembly Bill No. 31 of 2014) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed)

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members we will now proceed to the next one.

THE FAIR ADMINISTRATIVE ACTION BILL

The Temporary Deputy Chairman (Hon. Cheboi): There are a series of proposals from the Committee and I hope the Chair is concentrating. Hon. Chepkong'a, you have amendments to Clause 3.

Clause 3

Hon. Chepkong'a: Thank you, hon. Temporary Deputy Chairman.

I beg to move:-

THAT, the Bill be amended by deleting clause 3 and substituting therefor the following new clause—

3. This Act applies to all state and non-state agencies, including any person—

(a) exercising administrative authority;

(b) performing a judicial or quasi-judicial function under the Constitution or any written

law; or

(c) whose action, omission or decision affects the legal rights or interests of any person

to whom such action, omission or decision relates.

The reason being that we are seeking to expand the application of the clause to include any person affected by an administrative action or decision and to delete sub-clause 2 which limits the application of the right granted by the Constitution under Article 47 without any justification. So, we are seeking that it be amended as proposed in the Order Paper.

The Temporary Deputy Chairman (Hon. Cheboi): What you are proposing is that you want to delete clause 3 and substitute it with what is in the Order Paper.

Hon. Chepkong'a: Correct.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I hope Members are following it and I therefore proceed to give opportunity to any Member. I can see very little interest in this one. Hon. Wamunyinyi, do you want to speak to this one?

Hon. Wamunyinyi: Yes. This proposed amendment is fairly straightforward. I would like to support this amendment and call on my colleagues to do the same so that we can move forward. This Bill is very important to us. If Members push through all these amendments it will save us time and we should make progress to see that we enact good laws. I, therefore, support.

The Temporary Deputy Chairman (Hon. Cheboi): Very well. Hon. Members I see no other interests.

(Question, that the words to be left out be left out, put and agreed to).

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 3 as amended agreed to)

Clause 4

Hon. Chepkong'a: Thank you. I beg to move:-

THAT, the Bill be amended by deleting clause 4 and substituting therefor the following new clause —

Administrative action to be taken expeditiously, efficiently, lawfully e.t.c

4. (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedom of any person, the decision making authority shall give the person affected by the decision—

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

(c) notice of a right to a review or internal appeal against the administrative decision, where applicable;

(d) a statement of reasons pursuant to section 6;

(e) notice of the right to legal representation, where applicable;

(f) notice of the right to cross-examine or where applicable; and

(g) information, materials and evidence to be relied upon in making the decision or taking the administrative action.

(4) The decision making body shall accord the person against whom administrative action is taken an opportunity to—

(a) attend the proceedings, in person or in the company of an expert of his choice;

(b) to be heard;

(c) cross-examine persons who give adverse evidence against him; and
 (d) request for an adjournment of the proceedings, where necessary to ensure a fair hearing.

(5) Nothing in this section, shall have the effect of limiting the right of any person to appear or be represented by a legal representative in judicial or quasi-judicial proceedings.

(6) Where the decision making body is empowered by any written law to follow a procedure which conforms to the principles set out in Article 47 of the Constitution, the decision making body may act in accordance with that different procedure.

What we are seeking to do is to delete the entire Clause and replace with the proposals that are contained in the Order Paper today. The reason being, we are seeking to reflect the provisions of Article 47 of the Constitution that expand the opportunities to be afforded to a person affected by adverse administrative action or decision.

What is contained in the Bill is rather restrictive to persons who are aggrieved and who have been affected by an administrative action. For instance, what we are seeking to amend in the clause is that every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair and that reflects what is contained in Article 47 and it flows. So, what we are seeking to do is merely to expand and reflect what is contained in Article 47.

Thank you.

The Temporary Deputy Chairman (Hon. Cheboi): Very well.

(Question of the amendment proposed)

Let us have Hon. Wamunyinyi.

Hon. Wamunyinyi: Compliance with the Constitution is a fundamental requirement. Article 47 has clearly stated that what we are seeking is to ensure it is complied with. I, therefore, support the proposed amendment.

The Temporary Deputy Chairman (Hon. Cheboi): Okay, seeing that there is no other interest, I will put the Question.

(Question, that the words to be left out be left out, put and agreed to)

(Question, that the words to be inserted in place thereof be inserted, put and agreed to)

(Clause 4 as amended agreed to)

Clause 5

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move;-
 THAT, Clause 5 of the Bill be amended in Sub-Clause (2) by—

(a) deleting the words “the decision of the administrator” appearing immediately after the words “challenge the” in paragraph (a) and substituting therefor the words “any administrative action or decision”;

(b) deleting the words “reviews of the administrator’s decision” appearing immediately after the words “apply for” in paragraph (b) and substituting therefor the words “review of an administrative action or decision”;

Hon. Temporary Deputy Chairman, what we are seeking to do is deleting the word ‘administrator’ and replacing it with ‘person’. That is a more acceptable term; it can be used of a person who possesses some power that he exercises against or in favour of any other person. The word ‘administrator’ is limiting; we prefer the word ‘person’. So, we will be seeking an amendment to Clause 2, but just as a cleaning up exercise, we move that Clause 5 be amended in the manner we have suggested.

The Temporary Deputy Chairman (Hon. Kajwang’): I see no interest in it.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

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

(Clause 5 as amended agreed to)

Clause 6

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 6 of the Bill be amended in Sub-Clause (1) by deleting the words “may, pursuant to Article 35 of the Constitution, or any written law relating to freedom of information, require the administrator to supply him or her” and substituting therefor the words “has a right to be supplied”.

Hon. Temporary Deputy Chairman, we realise that if we make it optional, it will become very difficult for any person who is aggrieved by an administrative action to receive information as he or she may require for purposes of defending themselves. We want to make it mandatory that that information must be supplied to an aggrieved person.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): I will give the first shot to the Member for Rongai, hon. Moi. Have you removed it?

Hon. Moi: Yes, I have the microphone now.

I just want to support the Departmental Committee Chairman because this amendment will remove all the ambiguities. There is no ambiguity. If someone wants to get evidence from whoever is taking the administrative action, then it is clear that the information must be supplied. So, I fully support the Departmental Committee Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Very well! Can we hear the Member for Kaloleni?

Hon. Chea: Thank you, hon. Temporary Deputy Chairman. I believe that the existence of the word ‘may’ in this particular Clause may lead to abuse of discretion by administrators. Therefore, I support the Committee’s position.

The Temporary Deputy Chairman (Hon. Kajwang’): Lastly, we will hear the Member for Kanduyi

Hon. Wamunyinyi: Thank you, hon. Temporary Deputy Chairman. There is very little clarification I want to seek from the Chairman of the Departmental Committee. I support the proposed amendment, but I am also making reference to the earlier amendment to Clause 5, which removed the word ‘administrator’, which is also being referred to in this particular amendment. Can the Departmental Committee Chairman clarify on the reference made to the ‘administrator’ in this particular Clause? Could he say whether it is in contravention or conflict with the previous amendment?

The Temporary Deputy Chairman (Hon. Kajwang’): Do it in brief, hon. Chepkong’a.

Hon. Chepkong’a: Thank you, hon. Temporary Deputy Chair. I hear what my good friend has said. We are seeking to totally delete the words “may, pursuant to Article 35 of the Constitution or any written law”, including the word ‘administrator’ and replacing them with the words “has a right to be supplied”. So, that word is being deleted.

The Temporary Deputy Chairman (Hon. Kajwang’): Very well; there is a deletion there.

*(Question, that the words to be left out
be left out, put and agreed to)*

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

(Clause 6 as amended agreed to)

Clause 7

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting Clause 7.

Hon. Temporary Deputy Chairman what we are seeking to do is the deletion of Clause 7. The Clause is seeking to give power to the Cabinet Secretary to publish a list of reasons specifying any administrative action or group or class of administrative action in respect of which it shall be mandatory to furnish reasons to a person whose rights have adversely been affected. The right to be furnished with reasons is absolute. It cannot be subjected to a Cabinet Secretary. If we subject this legislation to a Cabinet Secretary, they may think that if something is not published it will be excluded until, or unless, they publish it. This right to reasons, in itself, is absolute and we cannot subject it to a Cabinet Secretary. We are, therefore, seeking that Clause be deleted.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kanduyi, you are extremely active this morning.

Hon. Wamunyinyi: Thank you, hon. Temporary Deputy Chairman. This Bill is quite important. I rise to support the proposed amendment; if we do not pass this amendment, we will be tying up any actions that may have to be taken to the goodwill of the Cabinet Secretary, who must publish them. Therefore, in order to remove any ambiguity, I support the amendment.

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 7 deleted)

Clause 8

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 8 of the Bill be amended—

(a) in Sub-clause (1) by deleting the words “in the exercise of the Court’s supervisory jurisdiction under Article 165 (7) of the Constitution” appearing immediately after the words “Court in”;

(b) in Sub-clause (2) by deleting the words “a decision of an administrator” appearing immediately after the words “aggrieved by a” and substituting therefor the words “an administrative action or decision”;

(c) in Sub-clause (3)—

(i) by deleting the word “administrator” appearing in paragraph (a) and substituting therefor the word “person”;

(ii) by inserting the following new sub-paragraph immediately after sub-paragraph (iv) —

(v) denied the person to whom the administrative action relates reasonable opportunity to state his or her case or be heard.

(iii) by deleting the words “or took into account irrelevant considerations to the prejudice of the applicant’s rights” appearing immediately after the word “considerations” in paragraph (g);

(iv) by inserting a new paragraphs immediately after paragraph (m) as follows—

(n) the administrative action is unreasonable;

(o) the administrative action is not proportionate to the interests or rights affected;

(p) the administrative action violates the legitimate expectations of the person to whom it relates;

(q) the administrative action is unfair; or

(r) the administrative action is taken or made in abuse of power.

Hon. Temporary Deputy Chairman, the reason as to why we are doing this is that the words as planted in this particular clause are completely superfluous. You do not need to support the Constitution because it stands on its own. So, we do not need to repeat what is already contained in the Constitution.

By deleting Sub-clause 2, we are seeking to remove the word ‘administrator’. As you know, we proposed an amendment on Sub-clause (2).

The other one is that we are seeking to remove the word “administrator” as you know we made reference to a proposed amendment to Subclause (2), and we are seeking to delete that.

The other one we are seeking to amend is in Sub-clause (3). Due to deletion of “administrator” as proposed in Clause 2, we are seeking to delete that and to substitute therefor the word “person” instead of “administrator”.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

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

(Clause 8 as amended agreed to)

Clause 9

Hon. Chepkonga: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 9 of the Bill be amended—

(a) In sub-clause (1) by deleting the words “pursuant to section 8” appearing immediately after the word “review”;

b) In sub-clause (2) by deleting the words “or tribunal” appearing immediately after the word “Court”;

(c) By deleting sub-clause (3) and substituting therefor the following new sub-clauses—

(4) Where the relief sought is an order to quash any judgment, order, conviction or other proceeding, the date when the grounds of the application first arose shall be taken to be the date of judgment, order, conviction or proceeding.

(5) A person aggrieved by an order made in the exercise of the judicial review jurisdiction of the High Court may appeal to the Court of Appeal.”

What we are seeking to amend is fairly straight forward. In Sub-clause (1), the words “pursuant to Section 8” are superfluous and redundant after the word “review”. The second thing that we are seeking to amend in Sub-clause (2) is deleting the words “or tribunal” appearing immediately after the word “court”. The reason we are removing “or tribunal” is that judicial review can only be undertaken by courts. Tribunals are quasi-judicial bodies and they cannot, therefore, handle judicial review. That is also a preserve of the High Court, Court of Appeal and the Supreme Court by the Constitution. So, this power cannot be given to quasi-judicial bodies.

(Question of the amendment proposed)

*Question, that the words to be left out
be left out, put and agreed to)*

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 10 of the Bill be amended by—

(a) deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1) An application for judicial review shall be made by notice of motion to the High Court, and shall be heard and determined without undue regard to procedural technicalities.

(b) deleting sub-clause (3).

What we are seeking to do is to delete Sub-clause (1) in Clause 10 and substituting therefor the words that are contained in the Order Paper which reads as follows:

“An application for judicial review shall be made by notice of motion to the High Court, and shall be heard and determined without undue regard to procedural technicalities”

The courts have always been very technical in the manner in which they address issues that are brought within the purview of judicial review applications. What we want to do is to remove the possibility of courts dismissing judicial review applications by using technicalities. So, we are saying that those applications that are brought before court should not necessarily be dismissed because they are procedurally incompetent. We want to emphasize focus by the courts on the substance of the application and not procedural technicalities.

(Question of the amendment proposed)

Hon. (Ms.) Kanyua: I want to support the amendment on the undue regard to technicalities in matters of judicial review. Administrative action is subject to judicial review by courts. We have to let our courts practise judicial review. There was reason why the Bill strengthens the judicial review procedural. However, as we strengthen the judicial review procedure in courts, removing the regard to technicality is welcome, because it is what defeats most judicial review actions that we have seen. I really want to support that we have judicial review, but without undue regard to procedural technicalities, so that people who want to challenge administrative action are able to do that in court.

Hon. Chea: In as much as this particular clause takes care of the issue of technicalities, I also tend to believe it introduces some element of certainty in the manner in which applications are supposed to be filed.

I support.

*(Question, that the words to be left out
be left out, put and agreed to)*

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

(Clause 10 as amended agreed to)

Clause 11

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 11 of the Bill be amended—

(a) in sub clause (1)—

(i) by deleting the words “pursuant to 8(1)” appearing immediately after the word “review”;

(ii) by deleting the words “excess of its jurisdiction or from engaging in an activity beyond the scope of its powers” appearing immediately after the words “acting in” in paragraph (c) and substituting therefor the words “a particular manner”;

(b) in sub-clause (2) by inserting the words “and other monetary compensation” immediately after the word “costs” appearing in paragraph (d)

What we are seeking to amend is Sub clause 1 of Clause 11. We are seeking to delete the words “pursuant to section 8(1)”. That reference is redundant and superfluous. It does not make sense because if you read it says, “in proceedings for judicial review pursuant to Section 8(1).” That is completely unnecessary. We are seeking to delete that so that the sentence reads as follows: “In proceedings for judicial review, the court may grant, without restricting the power of the court to a particular section.”

Secondly, we are seeking to delete the words some words in Paragraph © of Clause 11(1). We propose to delete the words, “excess of this jurisdiction or from engaging in an activity beyond the scope of its power” and replacing them with the words, “a particular manner”. We are seeking to expand the power of the court to compel administrative authority to refrain from acting in any manner depending on the circumstance of each case. The current provision only provides for two scenarios where the court can exercise this power. That is why we are saying it is rather limiting.

The other proposal we are making in Clause 11(2) is to insert the following words: “and other monetary compensation” immediately after the word “costs”. We are seeking to expand the range of orders that accrue to persons seeking judicial review to include an order for compensation as provided in Article 23 of the Constitution. This is a fundamental change in our own judicial precedence. Previously, if you went in by way of judicial review to seek declaratory orders of your rights, once the court declared that your rights were infringed, it would not compensate you. It would tell you to file an ordinary

civil case. However, what we are seeking here is that once a court declares your rights have been infringed, it should be able to compensate you monetarily. You do not need to go and file another case. This has been a problem, particularly in cases touching on Government. It can be declared, maybe three or four years later, that actually Government breached your rights. Under the Government Proceedings Act, you have only one year within which to file your suit. After four years, although your rights were infringed, you will not be able to go back to court. That means you have then lost although your rights were infringed. What this particular amendment is seeking to do is ensure that you are compensated once it has been declared that your rights were infringed.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Cheboi): I see the Member for Nyeri, hon. Kanyua.

Hon. (Ms.) Kanyua: Thank you, hon. Temporary Deputy Chairman. I support the amendments by the Chairman of the Departmental Committee on Justice and Legal Affairs Committee. On the sub-clause (1) we are bringing clarity to the law by removing unnecessary words which the Committee did not find were adding value to the text of the clause, and allowing judicial review to be done by the court without pursuing any other clauses that have been referred to in the Bill.

On the second part, I want to support the addition of monetary compensation. Sometimes Governmental actions that infringe on your right require compensation that is monetary. It is important we enable our courts to go into assessment, quantum and to make sure that where a loss is monetary, monetary compensation is given in addition to the declaratory orders that the judges can make. The National Assembly today is on the right track by making monetary compensation part of the awards and orders that judges can give in judicial review proceedings.

Thank you.

*(Question, that the words to be left out
be left out, put and agreed to)*

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

(Clause 11 as amended agreed to)

Clause 12

The Temporary Deputy Chairman (Hon. Cheboi): For clarity this is a deletion proposed by hon. Chepkong'a.

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting Clause 12;

The reason for this is that provisions on judicial review are substantive. It is not necessary for the Cabinet Secretary to make any other regulations. Any regulations that can be made will be made by the courts under the rule-making power that is granted to the courts. So, it is unnecessary for the Cabinet Secretary to make any regulations with regard to a substantive provision that provided for judicial review.

Thank you.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 12 deleted)

Clause 13

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, the Bill be amended by deleting Clause 13.

We are seeking to delete the exclusion of persons who claim to be acting in good faith when carrying out their duties, or performing their functions. Actions done in good faith are questions of fact, which can be proved by any party adducing evidence in a court depending on the circumstances of each case. So, you do not need to legislate that. You cannot legislate for a factual position. You just need to go to court and produce facts that you are acting in good faith. We do not need exclusions to be provided for by law. It is a matter that you can canvass in court, but not legislate for it here.

Thank you.

(Question of the amendment proposed)

*(Question, that the words to be left out
be left out, put and agreed to)*

(Clause 13 deleted)

(Clause 14 agreed to)

New Clause

Hon. Chepkong'a: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 14—

Repeal of sections 8 and 9 of

Cap. 26 15. Section 8 and 9 of the Law Reform Act, Cap. 26 are hereby repealed.

The reason for this is that Sections 8 and 9 of the Law Reform Act provide for the available remedies of judicial review, and the rules of court to be made in that respect.

These matters are now exhaustively contained in this Fair Administrative Action Bill. So, it is no longer necessary for two sections to be in the Law Reform Act; in the absence of a substantive law on administrative actions, they were necessary in the Law Reform Act.

Thank you.

(Question of the new clause proposed)

(New clause read the First Time)

(Question, that the new clause be read a Second Time, proposed)

(Question, that the new clause be read a Second Time, put and agreed to)

(The new clause was read a Second Time)

(Question, that the new clause be added to the Bill, put and agreed to)

Clause 2

(Loud consultations)

The Temporary Deputy Chairman (Hon. Cheboi): Order, Members! The decibels are getting high. Order, Members! Order, hon. Vice-Chair!

Hon. Chepkong'a: She is caucusing with other hon. Members there.

Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 2 of the Bill be amended—

- a) by deleting the definition of the term “administrative action” and substituting therefor the following new definition—

“administrative action” includes-

(a) the powers, functions and duties exercised by authorities or quasi-judicial tribunals; or

(b) any act, omission or decision of any person, body or authority that affects the legal rights or interests of any person to whom such action relates;

(b) by deleting the definition of the term “administrator”;

(c) in the definition of the term “decision” by deleting the words “of an administrative nature” appearing immediately after the word “decision”;

(d) by deleting the definition of the expression “disciplined forces”;

(e) in the definition of the expression “empowering provision” by deleting the word “was” appearing immediately after the word “action” and substituting therefor the words “is taken or”;

(f) by deleting the definition of the term “tribunal” and substituting therefor the following new definition—

“tribunal” means a tribunal established under any written law.”;

We are seeking to amend the word administrative action by deleting it and substituting thereof the new definition on what administrative action is, or is interpreted to be, which shall include the powers, functions and duties exercised by authorities. We are seeking to expand the scope of the definition. What was contained in the administrative action was rather limiting, and so we are expanding that term.

The second thing we seek to do is to delete the term administrator. The Committee prefers the use of the words “decision making authorities or person” instead of the word administrator. It makes a lot of sense.

(Question of the amendment proposed)

*(Question, that the words to be left
be left out, put and agreed to)*

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

(Clause 2 as amended agreed to)

(Clause 1 agreed to)

(Title agreed to)

The Temporary Deputy Chairman (Hon. Cheboi): Can the Mover report?

Hon. Chepkong’a: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Fair Administrative Action Bill 2015 and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu) in the Chair]*

REPORTS, CONSIDERATION OF REPORTS AND THIRD READING

CONSIDERATION OF SENATE AMENDMENTS TO THE ENVIRONMENTAL
MANAGEMENT AND CO-ORDINATION (AMENDMENT) BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Senate amendments to the Environmental Management and Co-ordination (Amendment) Bill (National Assembly Bill No. 31 of 2014) and approved the same with amendments.

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request the Member for Thika Town to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. (Ms.) A. W. Ng'ang'a: Hon. Temporary Deputy Speaker, I stand to second. The reason is that we need to protect our Constitution and stick to it. We should also stick to the roles and responsibilities given in the Constitution without overstepping our boundaries.

NEMA is a national body performing at the national level in accordance with the Act and the Fourth Schedule of the Constitution. There is no policy, or legal justification, for a representative of the Council of Governors to sit on the Authority.

I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, only those amendments that have been rejected will be taken back to the Committee.

As I told you, we have three Reports. Hon. Members, we are on the second one. Those who were not in, we did three Bills in the Committee of the whole House. I call upon the Chairperson to report to the House.

CONSIDERATION OF SENATE AMENDMENTS TO
PUBLIC SERVICE (VALUES AND PRINCIPLES) BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Senate amendments to the Public Service (Values and Principles) Bill (National Assembly Bill No. 29 of 2014) and approved the same without amendments.

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request hon. Chepkong'a to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, let us have the third Report.

THE FAIR ADMINISTRATIVE ACTION BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015) and approved the same with amendments.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I request hon. Bii to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Bii: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, I now call upon the Mover of the Bill to move the Third Reading of the Fair Administrative Action Bill (National Assembly Bill No. 10 of 2015).

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the Fair Administrative Action Bill be read the Third Time.

This is a very important Bill. As you know, we have not had a Bill to deal substantively with judicial review. We have been using the Law Reform Act. We now have a substantive Bill to deal with this aspect.

Secondly, this is a Bill that touches on the counties. So, it is expected that once it is passed by the National Assembly, it will be forwarded to the Senate. These are matters that will also touch on administrative actions and governance of county assemblies.

Hon. Temporary Deputy Speaker, I beg to move.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Do you have a Seconder? Do you want to second, hon. Bii?

Hon. Bii: Hon. Temporary Deputy Speaker, I second.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Order Members!

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Before I put the Question, let us not keep on saying "put the Question". Let me have two people to contribute. I can see two. Yes, hon. Pukose. Hon. Member for North Imenti. Is he in? He has gone.

Now that I have no requests for contributing, I will put the Question. I can confirm that we have the requisite quorum in the House for purposes of making a decision.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Next Order.

MOTION

ADOPTION OF SPECIAL PIC REPORT ON TELKOM KENYA

THAT, this House adopts the Special Report of the Public Investments Committee on the Recapitalization and Balance Sheet Restructuring of Telkom Kenya Limited, laid on the Table of the House on Tuesday, April 29, 2014.

(Hon. Keynan on 24.3.2015)

(Resumption of Debate interrupted on 21.4.2015)

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, those who want to contribute, please press your intervention buttons and I will be able to see you.

Who was last on the Floor? Is Johana Kipyegon in the House we give him the first priority? He had a balance of four minutes.

Hon. Members, I cannot see a request, are we saying we are satisfied with our contributions this far?

(Hon. Kang'ata spoke off the record)

You do not have a card? Can you use the Dispatch Box?

(Hon. Kang'ata walked to the Dispatch Box)

Hon. Kang'ata: Thank you, hon. Temporary Deputy Speaker. I am a Member of the Public Investments Committee (PIC). I confirm that, indeed, our Committee did a very good job. We adhered to Article 50 of the Constitution. It gives us some duty to ensure that before we pass any judgment against any person, we hear that person first. We called several witnesses and we heard them. Therefore, this Report has been interrogated in a scientific and legal manner. We went through various documents which were presented to us and it was upon the materials that were presented before us that we were able to come up with this conclusion.

Hon. Temporary Deputy Speaker, when you look at Telkom Kenya, we all know this is one of the oldest parastatals in this country. We also appreciate that the parastatal is a company that is involved in the communications sector, which is involved in the security sector in this country. We are aware of the changes in the global and national arena where, as a result of emergence of new technology, there has been stiff

competition. Telkom Kenya is supposed to change to ensure it does not die off. Taking that into consideration, and also taking into account that it does not serve any country's interests for the ownership of Telkom Kenya to be whittled down, we, therefore, came up with recommendations which are contained in the Report that is before this House. I would urge all Members who are here today to support the proposals contained therein. They are objective.

I take this opportunity to thank our Chairman for the very good work that he has been doing in PIC. We have only two watchdog committees as per the Standing Orders of this House. I am proud that it is the only watchdog committee that never had any form of controversy at any one moment. It is led very well and I would urge other committees to emulate the good work that PIC has been doing.

I urge members to support the very good work that the Committee has done, and also take into account that the proposals contained in the Report are bipartisan. This is not an issue of the Coalition for Reforms and Democracy (CORD); it is not an issue of Jubilee Coalition. The membership of PIC is comprised of Members from both sides of this House. The Report that we have brought before this House is a consensual Report.

Thank you; I urge Members to support the Report.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Well spoken. The Hon. Member of Narok South, Hon. Korei ole Lemein.

Hon. ole Lemein: Thank you, Hon. Temporary Deputy Speaker, I am also a Member of PIC. We have taken a lot of time in ensuring that Kenyans get value for money. When you look at Telkom Kenya, it has pieces of land all over the country even in the very remote areas. When you look at what was actually done, it was unfair to the people of Kenya. The recommendations that PIC has put down are going to be of immense help to the telecommunications industry and to the people of Kenya.

Hon. Temporary Deputy Speaker, it was clear that there was clarity in the market valuation of Telkom Kenya. At the privatisation stage, that was not clear. I want to tell this House that the recommendations made by PIC are immense, and are going to assist this particular organisation in the future.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): The Hon. Member for North Imenti, Abdul Dawood.

Hon. Dawood: I am sorry, hon. Temporary Deputy Speaker. I was consulting the Chairman of PIC. I wish to support this Report on Telkom Kenya. I believe what the Committee has recommended is very good; it is with regard to how Telkom Kenya was privatised. Privatisation has gone wrong in this country because France Telecom has taken undue advantage of the shareholding of Telkom Kenya, and the shareholding of the Government in Telkom Kenya has been reduced over the years. It is surprising that the Government has to pay a lot of money to restructure the company, yet most of the things that should have been done could have been done easily.

Hon. Temporary Deputy Speaker, the Government needs to come up with ways on how it is going to get back its shareholding without injecting any more funds into Telkom Kenya, because that is not the solution. We could be injecting funds into Telkom Kenya every year when the Government of Kenya is reducing its shareholding. Where the problem is with Telkom Kenya is the people who are running it from France

Telecom. They are not the right people. They are giving themselves so much leeway in doing things to the disadvantage of Telkom Kenya. I agree with the report of the Committee and I believe it will be implemented.

People who have done wrong things should be investigated and taken to court. Despite the Ethics and Anti-Corruption Commission (EACC) being in turmoil, we can still get things done.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. hon. Member for Kibwest West, Patrick Musimba.

Hon. Musimba: Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to speak to this Motion. At the outset, I want to support the Committee in its work and what they have done. I reiterate the special position that the telecommunications sector is in, in terms of driving us to become a middle income State.

Telkom Kenya has, indeed, been a legacy for this nation; it cross-cuts very many facets, and supports a lot of livelihoods by creating jobs. What occurred recently at Telkom Kenya was pure fraud. That is why I agree with the Committee that urgent steps have to be taken; this Report must be taken to the EACC and the Committee on Implementation should follow up on the same.

In the past one year, we have seen the continuous offloading of assets. I know many Members have alluded to land; as recently as a month ago, there was an announcement that they were going to retire their Code Division Multiple Access (CDMA) network. For those who do not understand what it is, this is the bridge towards 4G, which is for high speed broadband. It has actually been switched off. That was what was keeping it together, because Telkom enjoys a fixed line monopoly and it was its answer towards the vandalism of cables which has been rampant in Kenya.

Many institutions in Government and homes depend on this landline system. If the retirement of the CDMA and the fixed line network are allowed to collapse, then we will face a very bleak future in terms of connectivity. This is because we know the Global System for Mobile (GSM) communications network, as it is with most operators, does not meet the standard of quality parameters set by the Communications Authority (CA). It would greatly affect our economy, which is trading upwards at over US\$100 billion. Investigations and execution have to be done very urgently.

We will have to recall the House to fix a specific time span in following through with this Report. Vision 2030 has three pillars, namely political, social and economic, and they heavily depend on telecommunications as a major facilitator of growth and, indeed, in meeting our expectations towards expanding jobs.

When you talk about matters like business process outsourcing (BPO), you are looking at the same. Our initiative in the establishment of Konza City will heavily depend on the stability of our telecommunications industry and ability to attract foreign investments.

Considering the manner in which this particular privatization took place, we must spare no effort to get to the bottom of it, and reinstate consumer and investor confidence in Kenya as a country of laws. We must invoke Cap. 486 of the laws of Kenya to fix individual responsibility of directors of State-owned corporations, and hold them liable individually and jointly for losses that have been occasioned in form of depreciation of

shares, which loss the Chairperson put in the region of Kshs66 billion; this ought to be used as a major example. In line with the President's State of the Nation Address we must go for those who are corrupt, take urgent measures against them, and interrogate the role the Privatization Commission, the Investments Office at Treasury and other individuals played in safeguarding Kenya property.

You talk about the asset registry missing, but the asset registries of these corporations are well known; at the time of splitting in 1999 of the defunct Kenya Posts and Telecommunications Corporation (KPTC) into three entities, namely the Postal Corporation of Kenya, Telkom Kenya and the Communications Commission of Kenya (CCK), the assets were divided ably. So, it is very easy to go back to that particular point and pinpoint what assets were in place and what is there as of today.

As I earlier stated, the telecommunications sector is massive. Kenya leads globally in monumental e-transactions. Every country around the world benchmarks with Kenya. That is why we cannot allow a company as significant as Telkom Kenya to go down. We must take all steps necessary, including enlisting the assistant of the criminal Investigations Department (CID) and everybody else. Once we get into a situation of an oligopoly between these firms, we will not be helping anybody. We are simply sending this country to its death bed.

Hon. Temporary Deputy Speaker, I cannot speak enough on this, but I just want to say that the Committee on Implementation must take urgent steps to address this.

I thank you for the opportunity to contribute. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Yes, hon. Member for Karachuonyo, hon. James Rege.

Hon. (Eng.) Rege: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to support the Committee's exemplary work. Hon. Keynan was a Member of my Committee when I was chairing the Energy and Information Communication Technology (ICT) Committee of the Tenth Parliament. I know him as a thorough researcher. He has come up with an excellent report on this privatization. I am one of those who opposed the privatization of Telkom when it was being undertaken, because of many things. First, people did not get rid of what I call the "spaghetti network" in Eastleigh, which carries all of the E1 networks that bring in carriers from overseas that infringe on Kenya's monetary gain in international networks. Telkom Kenya inherited even the remote area CDMA network which we put in place to assist rural areas. It inherited it for free; it did not pay for it because the Government continued to pay for it. It was millions of dollars which were provided, but Telkom Kenya did not make it usable by the public at large and eventually it died. On many occasions, I personally advised Telkom Kenya to make sure that the CDMA worked, and also that they should get into data network to assist them come up in competition with Safaricom.

If safaricom is not given competition, things will not work well in this country. It is Telkom Kenya that we thought would give competition to the network. It is always healthy to have competition in this sector of communications. Orange inherited the country's satellite communication network at Longonot, Kericho and what have you. They have not made good use of it. In fact, this week, I advised the ICT Authority to take over the communication network for the Government to make sure that the Kenyan

Government has an authority that oversees the communication incoming through the undersea cable, and also through the satellite for the country to realise proper security monitoring in this country.

Hon. Temporary Deputy Speaker, so Telkom Kenya in essence, was poorly privatised. I agree with the Committee that something needs to be done. Several times the National Treasury has pumped in a lot of money to resurrect Telkom Kenya, which is actually Orange. However, they have failed to do a good job of ensuring that Telkom's infrastructure in the country benefits Kenyans. I, therefore, support the Committee's document and recommendations. I am very happy that there is not much opposition to this paper. From here on, I believe something must be done immediately, that is to say the Implementation Committee should take over this issue as soon as possible.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. I am sure the Chair is listening.

Hon. Members, we are debating the Special Report of Public Investments Committee (PIC) presented to this House on Tuesday, 29th April, 2014.

Member for Gichugu, Hon. Njogu Barua.

Hon. Barua: Thank you, Temporary Deputy Speaker, for this opportunity to contribute to this very important Report. At the outset, I would like to say that as Member of the Committee, I support the Report, the findings and recommendations.

First, I would like to regret that this is one of the pioneer privatisation initiatives which has completely failed, and does not serve as a good example for privatising the other parastatals we have in Kenya. In the year 2007 that is, 8 years ago there was an effort by the Kenyan Government recapitalise and restructure Telkom Kenya, with the intention of increasing its value to Kenyans and improve Kenyans' wellbeing.

I would like to say that the failure of this initiative meant that Telkom Kenya was not in a position, and still is not in a position, to pose effective competition to private initiatives in this country. That failure is the reason why communication charges in Kenya are still very high compared to elsewhere on this continent. Although the privatisation initiative was awarded to the highest bidder, what followed at implementation of the process was actually suspect, and I would not be wrong to say that it had a lot of irregularities that need to be investigated.

France Telecom of South Africa was awarded the bid at US\$390 million. What followed was that the same France Telcom entered into agreements and partnerships with other private enterprises, whose existence even the Committee itself could not authenticate. It means that this process as, it is up to, now is riddled with some ghost companies; the either do not exist, or their owners are not coming out for ulterior motives.

The other point I want to put across in support of the Report is that, although France Telcom took 51 per cent of the shares of Telkom Kenya, Government shares kept on being diluted from 49 per cent to 40 per cent and from 40 per cent to 30 per cent. What is interesting is that the first dilution of 9 per cent was at a cost of Kshs33 billion. What is more surprising is that the other dilution of 10 per cent, which is more than 9 per cent, was at a cost of Kshs4.9 billion. So, the people in charge of that process need to explain to this Government how you can sell 9 per cent shares at Kshs33 billion and at the same time sell 10 per cent shares at Kshs4.9 billion. This means there were

irregularities and consistencies. I would like to say there is also some form of corruption in it.

Hon. Temporary Deputy Speaker, where we are right now, Telkom Kenya's Government shares is 30 per cent. This is not a very interesting affair. It is not an affair that should be supported by this House. A company like Telkom Kenya, which has a big security implication, is in the hands of foreigners.

I would like to support the findings of the Committee, and say that those responsible for the dilution of Government shares must be made to account. Those who misappropriated Government funds, and by extension public funds, or funds kept in their trust on behalf of the Kenyan population, should be made to account and made to return part of that money.

The other recommendation I would like to support is for the EACC, although I know it is in turmoil now--- The reconstituted EACC should come in quickly and ensure that those culpable are made to account for their misdeeds. As we learned from the Presidential Address to this House--- The President drew a line in issues of corruption. This House, which I am a Member of, should also draw a line. A time has come for us to say that we must pursue every initiative we engage ourselves in to fruition or conclusion. I want to emphasize that as a Member of that Committee, we would like to ask the Committee on Implementation to work extra time and ensure that the reasons behind this bogged process are exposed to the public, and the lost money recovered.

This country, at the moment, is in the process of harmonizing parastatals. In the harmonisation process, I am sure that there will be some privatisation. If privatisation and recapitalization of Telkom Kenya was successful, it would have served as a very good example of how to privatise institutions in Kenya. Right now, it is not an example of how to do bad privatisation leave alone a good privatization, because it has failed. I would like to recommend that the people who have been entrusted with recapitalisation should be of high moral standing, people who cannot be corrupted and people who can be trusted with the community's resources. The way this process was done, I want to repeat, was wrong.

Hon. Temporary Deputy Speaker, I want to stop there by again supporting the initiative and this Report of the PIC, and emphasizing that as Members of this Committee, we will be very comfortable if we get the outcome of the investigation by the EACC on the culprits in this process.

Hon. Temporary Deputy Speaker, I support.

The Temporary Deputy Speaker (Hon.) (Ms.) Mbalu: Thank you. Hon. Members, Let us also recognise that we have Madam Speaker and not Mr. Speaker.

Yes, hon. (Ms.) Emanikor

Hon. (Ms.) Emanikor: Hon. Temporary Deputy Speaker, I rise to support the Public Investments Committee (PIC) Report. I want to congratulate Hon. Keynan and his Committee for the good work. While I laud privatisation for its competitiveness and innovativeness which result from the incentive of profit making, cost effectiveness, efficiency and even reduced public taxation, it is shocking that the privatisation process of Telkom Kenya has failed and resulted in the revelation of a fraud process characterised by insolvency, mysterious players and even conflicts of interest. The genesis of corruption in this country is conflict of interest. It is a shame that some players could actually be amongst us and they are still not known. The non-involvement of key

Government players, namely the Attorney-General, and Communication Authority of Kenya (CAK) was also another big mistake. There is also the reduction in public share holding from 49 per cent to 30 per cent, hence even losing eligibility for public audit which is a concern, particularly when we are talking of issues of corruption. Another issue is the commitment of public funds and the loss of over Kshs2.5billion. There is need to know who Alcazar Capital is. We would like to know the extent of Orange's participation and other mysterious players.

We all know that communication is very important in investment, security and governance. This is exhibited by the recent appointment of Mr. Nzioka Waita as a strategist in the Communications Unit of the Presidency. That shows the importance of communication in governance and economic growth, which Kenya aspires to achieve. Communication is very important, now that we are talking of fighting terrorism. In emergency preparedness and disaster reduction we need communication. Telkom Kenya was going to be a big player in all the things that we aspire to do as a country. In designing technology, policies and protocols that are needed for communication, Telkom Kenya would have been a big agency and public player in helping Kenya meets its goals.

I wish to support.

Hon. Gaichuhie: Thank you hon. Temporary Deputy Speaker for giving me a chance to contribute to this Motion. Right from the outset, I support the Report of the PIC. We have realized that a very important company like Telkom Kenya can be privatised. It is, however, unfortunate that instead of that company improving, it has continued to go down. Telecommunications, as the previous speaker has said, is a very important component in the Government. So, when Telkom Kenya was privatised, due diligence was not followed. They never involved CAK, the Privatisation Commission of Kenya and even the Attorney-General, which was contrary to the Law. Before any privatisation is done, there are legal procedures to be followed. As per the Report, those three major organs were not involved, meaning that the process left a lot to be desired.

When I look at the time this recapitalisation and privatisation was done, I am forced to believe that something sinister might have happened. This was done just a few weeks to elections. Normally during that period, people want to do things hastily because they think that they will be moving out of Government. It is very unfortunate to see that Telkom Kenya, a very important company, is owned by companies which we do not know their directors. An example is Al Cazar. It is a major shareholder, yet we do not know its owners and even the physical location of the company; there is something that needs to be investigated.

The Ethics and Anti-Corruption Commission (EACC) should move very fast and make sure that everything that was done at that time is brought to light. If there is anybody who needs to be prosecuted, it is the right time for us to do so, so that we can have a company that is respected and well run. The fact is that the Government has had its shareholding reduced from 49 per cent to 30 per cent at a very low price, yet the assets of that company are quite enormous; this tells us that there was something that was not done in the right way. We need to have the EACC move very fast and investigate this. I hope that the National Treasury, which is charged with the responsibility of protecting all the assets of the Government, will co-operate, so that we can know why these things happened.

Seeing at the way Telkom Kenya was privatised will make us not agree to privatise Government assets unless we are assured that when we privatise such entities, they will be run efficiently. The main aim of privatisation is to have entities run efficiently in the interests of Kenyans.

With those remarks, I beg to support the proposed investigation of the sale of Telkom Kenya Limited.

Hon. Anami: Thank you, Hon. Temporary Deputy Speaker, for giving me the chance to speak to this Report.

I support the Report of the Public Investments Committee on the privatisation/recapitalisation of Telkom Kenya. As I speak, Telkom Kenya purports to provide integrated telecommunication services to many facilities, locally and internationally.

From the outset, this is a facility that is spread across the country, and that has attracted the interests of everyone. This is because of its assets regime and interaction with the Kenyan human resource. We cannot take anything that is happening around Telkom Kenya for granted. We have made attempts to privatise or not privatise because all this has been happening at the same time; we have had many Kenyans who are deployed there losing their interests and even jobs through retrenchment. We have to take an interest in this entity. The investment regime it has is huge. In the interests of the citizens of this country, it is important that a special investigation be launched into the transactions that are happening between Telkom Kenya and other investors. Why should we have investors coming in and out, and withdrawing from any negotiations they initiate with Telkom Kenya along the way? This has been happening over and over again. I support the recommendation that investigations should be launched into all the activities of Telkom Kenya in order for us to understand what Kenyans are getting and losing in it.

I am particularly concerned because several former employees of Telkom Kenya from my constituency have asked this institution to pay them their dues. All Kenyans are also concerned about the same. It should be investigated.

On recapitalisation, let us also find out what impact this will have on other existing entities like Safaricom. Is somebody trying to kill the Kenyan initiatives in the interests of foreign initiatives? This should be investigated.

With those remarks, I support this Report. I would like to urge that we move on. We should not deliberate on this matter for too long. We think that there is something being hidden. Let us not over-deliberate on it. Let us adopt this Report and ask for its implementation with the urgency that it deserves.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Hon. Benson Mutura, Member for Makadara Constituency.

Hon. Kangara: Thank you, Hon. Temporary Deputy Speaker. I want to support the input of the Committee. They have done a very detailed and comprehensive Report. They have even given the way forward. I thank them.

It is a pity that with this Report, the ongoing investigations, which have taken several years--- Even in the Ethics and Anti-Corruption Commission (EACC) list that was tabled here by the President, nothing has been mentioned about this institution. The

allegations are so grave. It was outright theft. By now there should be people answering for these things.

It is high time that the Government checked on this issue of privatisation. Looking at the requirements in tenders, you find that the bid documents are projected in such a way that only foreign companies can bid for tenders. Take this case of Telkom Kenya and that of the Kenya Railways Corporation (KRC). These are two privatisations attempts that have gone haywire. We have to have the courage and confidence to address these issues. These documents should be prepared in such a way that even local companies can bid for the tenders.

On the issue of employees, Kenyans have suffered. When most of these entities change hands, employees' pensions and benefits are not even captured in the transactions. Even the way they normally change the directorship and bring in foreign entities is suspect. Kenyan employees are especially vulnerable. Some of them have diligently worked for those institutions for years, hoping that when their days to retire come, they would live decent and comfortable lives. When the change of ownership is effected, they realise that nothing has been mentioned about their welfare. They have nowhere to go for redress. The contracts were done in such a way that the employees were not catered for.

We have the Insolvency Bill which will be coming very soon. Hopefully, the input of employees, who are also key partners in privatisation, will be considered. They should not be taken as if they are third parties. They should be key stakeholders in whatever we do. Compare this case with the KRC, which was also privatised. A lot of my people are members of the Kenya Railway Staff Benefits Scheme (KRSBS). They are really miserable. They have nowhere to go. They wasted all their time working for the corporation. However, by a stroke of a pen, things changed. They were not considered. They were even considered redundant, which was worse. They left the institution with nothing at all.

On the issue of property, it is known in this country that most people who are now liquid and moving around, are associated in one way or another with the assets of KRC and Telkom Kenya. It is a known fact. We need to be serious.

When we employ foreigners, most times we do not even check their records. We say that foreigners inject money into this country, but nobody verifies whether they really do that. I hope that this time round, we will do something. The Government should be concerned. When these people are taken to court on issues of employees--- I think we should have a percentage of the assets of these corporations, so that we ensure that our workers are treated with dignity.

I wish to support.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Member for Gatundu North.

Hon. Njenga: Thank you, hon. Temporary Deputy Speaker. I stand to support the Report of PIC. Privatization in this country has really failed us. The reason it has failed is the teaming up and raiding culture in our country. Anytime there is a Government project in this country, people team up, organize, and strategize in order to raid the country. Telkom Kenya is a very good case study. We should not put this Report in the archives; rather, we should use this case for future protection of our strategic assets. Due diligence should be done and the procurement process should be made public. In fact,

similar reports should be presented in open fora. Once they are presented, they should be approved by this Parliament and then become public information.

In the past, Government information was secured in order to enable people to raid our Government. I look at the so called Alcazar Capital, the role it played and how it exited. I think there is still room for action because Kenya is a partner with so many other countries in and outside Africa. Kenya has the capacity to follow up such people. We even work with the Interpol. Such people should be followed and, if possible, recovery measures taken against them.

It should also be established how many and which Kenyans were involved, because this is what is happening in this country. Foreigners will come, hide in our pockets, raid this country and disappear. Therefore, it is a high time organizations which do such things were followed in a bid to recover our assets. All the he assets of Telkom Kenya are known. The inventory and other registers exist. It is high time such registers were made public. We need to work backwards in order to establish the true value of the assets then, and establish their present value today. Any value that was lost should be recovered from whoever was involved. In fact, the Government should actually do a valuation of all the assets that are in Telkom Kenya, and plan even to turn around the organization injecting into it additional capital, so that we regain our stake.

This should be done with other assets, because this Parliament represents people and their assets. We should come up with a national asset register. Today we are lucky because we can include that under (e), and say that any property that is owned by the Government should be known by its value, history and location. We should know under whose custody it is, and who can authorize adding of value to it, or disposal of it. Such a person should be in position to indemnify our country, should a loss arise. This is because we are losing every asset owned by the Government, including cars, land and buildings.

Assets like cars, land and buildings are abused by the Government. If this Parliament can come up with a law and regulation, through these we amend our Public Finance Management(PFM) Act and have provisions that we can to safeguard our assets.

The payments that were made need to be reviewed, because this was the time when we were paying people who did not exist and dummy companies that were formed to siphon out out money. I think we should come up with a strategic paper that outlines how we are going to protect national assets and maintain them.

Finally, it is high time the Government of Kenya, the National Assembly, the Senate and all the stakeholders empowered internal audit systems. This is because this country is only known to cry over the past; we recover nothing and do nothing. However, if we had a strong internal audit system and an audit team that is allowed to expose everything that is not right to the Auditor-General and other investigating authorities, we would, probably, prevent the errors that are occurring in this country; we live to regret once they have occurred, yet generations will continue to pay for them.

I thank you for giving me this opportunity and I support the Public Investment Committee (PIC) recommendations.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Thank you. Very well spoken. Let us have Hon. Manson Nyamweya. I can see you are in other businesses, but you are in for this one. Hon. Member for South Mugirango.

Hon. Nyamweya: Thank you, for giving me a chance to support this Motion. From the outset, I support what the PIC have done. It is a superb job. They have raised very critical issues. If we all remember, Telkom Kenya was a Government by itself. The number of employees working in that parastatal was big. A telecommunications company only invests in equipment, after which maintenance is minimal and you earn your revenue.

Unfortunately, for some unexplained reasons, this company has been going down day by day. What pains me is that it is the Cabinet which approved the process of privatisation. They approved this in 2007 when we were headed to an election. They knew what was happening. The Ministry of Finance then and the Investment Secretary knew what was happening. They knew they did not have money and time left for them to do due diligence. They knew there was no time to involve the Auditor-General and the Communications Secretary. They knew asset evaluation had not been done, but they went ahead and privatised it. One question you ask is: What interest did those who did this have? This is because no procedure was followed. The people who were doing this are well educated. They know what it means when they do certain things; we are now talking about it. It has come to the PIC, yet these people still have their jobs. Some of them are in the Cabinet. Some are politicians, who have lost their parliamentary seats. They are not here.

I support this Report but it is really bad for this country when a Cabinet meets, then the Permanent Secretary does not provide funds for capitalisation. What is it that we are saying here? I am reading page 79, if you want to look at it. It is very specific. The Cabinet met and approved the reduction of Government holding, which was done on 22nd November 2012; it went down from 49 per cent to 40 per cent, and for it the Government of Kenya (GOK) was to have the sum of Ksh4.9 billion. That was a Cabinet decision. It is noted that only Ksh2.5 billion of the required Ksh4.9 billion, as shown by the current Government in the Printed Estimates, has been disbursed. The question here is: If the Cabinet made a decision, how come the Cabinet Secretary for National Treasury is not able to implement it, yet the same Cabinet Secretary sits in the Cabinet? He knows that that is the position of the Government.

Estimates are provided but the funds are not disbursed. I do not know who takes the blame. Is it not the Cabinet Secretary for National Treasury? We are clearly having an irresponsible Government. What are they doing to get the funds? Was it deliberate? Was it something planned? You cannot understand it because the highest organ we have in the Government is the Cabinet. The Cabinet has given a direction but when it comes to the Budget-making process, we are told that the Government did not have money, or that it did not provide the Ksh4.9 billion. They only provided Ksh2.4 billion. In effect, the Government itself allowed this process to go on. If indeed the Cabinet Secretary was wrong, why is he in office?

This is not the only parastatal where people have looted. The Kenya Railways Corporation is another example. All these bodies have been used to enrich people. Even with regard to the assets, including plots and houses, which Telkom Kenya had--- If

somebody was serious, he would have said: "Let us sell part of the land to raise some funds, so that we can contribute." If somebody was serious, and if they really wanted to save Telkom Kenya, that is what they would have done. But they did not want to save the corporation. They wanted to loot it; finalise everything, bring it to its knees, give it to foreigners and have only one or two individuals benefiting from resources which are supposed to benefit all Kenyans.

The assets of Telkom Kenya are scattered all over in the county. Telkom Kenya had houses for its staff in every county. They also had offices. Why should one be preparing papers, requesting for money from the National Treasury when the corporation's assets are all over the country? If only somebody was able to think better! There is a deliberate effort by the officers concerned to loot the parastatal.

With regard to the recommendations that the Committee has come up with, the Committee has done a good job. I appreciate the effort they have put in to prepare this Report and other previous reports. I hope somebody will work on this one. I hope that it will not just be put into some cabinet. The Committee has spent time and money to come up with this Report.

With those few remarks, I beg to support the Special Report by PIC

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Very well Spoken. I have two minutes for the Member for Igembe Central, hon. Cyprian Iringo. I will give a minute or two to the Member for Igembe Central, Hon. Cyprian Iringo.

Hon. Kubai Iringo: Thank you, hon. Temporary deputy Speaker for giving me this opportunity to contribute to this Motion. At the outset, I strongly support the Committee's decisions and findings. This is not a matter of pushing something and accepting it just like that. We need to have a strong framework to see that this decision is implemented in the correct manner, because in Kenya today, we have a lot of problems resulting from corruption. We need to discourage people who want to go that direction for the purpose of benefitting themselves, thereby hurting the country.

Telkom Kenya was one of the biggest corporations in Kenya. It has been run down because of corruption, poor management and nepotism. I believe that if we allow it to go without properly vetting those people who have to do the privatisation, then we might have a very big problem. We need to know how to go about it. We need, for instance, to know what assets are there, and who is running the corporation at present. It is likely that whatever is remaining there now might go down the drain. I strongly believe that what the Committee recommended should be effected. We have lost a lot through vandalism. Wires have been stolen. A lot of equipment was stolen; even offices were stormed into.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Hon. Cyprian Iringo! You will have eight minutes in the next sitting.

Hon. Members, I must appreciate that you still have interest in this matter. So, you will have time to contribute. We have Hon. Florence Kajuju, Member for Meru, Hon. Robert Mbui and Hon. Benjamin among others, who have shown interest in this matter. This is a House of rules and procedures.

The time is 1.00 p.m, the House stands adjourned until today, 23rd April, 2015 at 2.30 p.m.

The House rose at 1.00 p.m.