

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 10<sup>th</sup> August, 2016

The House met at 2.30 p.m.

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

### PRAYERS

### PETITION

#### READMISSION OF FIVE STUDENTS TO MERU UNIVERSITY

**Hon. Kang'ata:** Thank you, Hon. Speaker.

I, the undersigned, on behalf of 20 students of Meru University, draw the attention of the House to the following:-

THAT, in the recent past, a number of public universities have experienced cases of students' unrest due to unresolved grievances;

THAT, in June 2014, students of Meru University raised grievances such as lack of water and increased hostel fees among others through the Dean of Students' Office and the administration declined to address their grievances;

THAT, the Students' Council, unable to handle pressure from the students, called for a peaceful demonstration to compel the Meru University administration to address the issues;

THAT, the University was closed indefinitely following the demonstrations which led to destruction of property;

THAT, in February, 2015, the University recalled students to resume classes, however, five students namely Robinson Kihara, Stanley Nderitu, Samuel Muiro, Mike Mudasia and John Miano did not receive any communication to that effect;

THAT, the five students were asked to report back to Meru University on 26<sup>th</sup> July, 2015, following which they were suspended indefinitely by the University administration;

THAT, the five students proceeded to seek redress in the Meru High Court and were granted orders for re-admission to the University;

THAT, the said students have not been re-admitted, despite the court order;

THAT, the matter is not pending in any court of law; and;

THAT, efforts to resolve the matter have been futile.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Education, Research and Technology intervenes in this matter to ensure re-admission of the five students and make any other order or direction that it deems fit in the circumstances of the case.

Your petitioners will forever pray.

**Hon. Speaker:** Hon. Kang'ata, did you say that the matter was before court?

**Hon. Kang'ata:** Yes, the matter was before court but when we decided to bring it before Parliament, they withdrew it from court. So, the matter is properly seized by this House.

**Hon. Speaker:** Surely, why withdraw a matter from court and bring it here? Parliament might also be in the process of considering taking the dispute back to court.

**Hon. Kang'ata:** Hon. Speaker, there were reasons. One, that Parliament, in terms of time tends to handle matters in a faster manner. Two, we also took into account the rule of the House of *sub judice* that we cannot have parallel matters pending before the Judiciary and Parliament. Therefore, we advised them to come here. Three, we feel that when the matter is before us, it is a matter that involves other issues which can be ventilated well by the Departmental Committee on Education, Research and Technology and this House.

**Hon. Speaker:** Well, I think we may be charting some extremely dangerous courses. However, let me hear comments from members.

Let us have Hon. Olago Aluoch.

**Hon. Aluoch:** Thank you, Hon. Speaker. I am glad that you seem to realise that if this Petition was to go the way it is going, we could be setting a very dangerous precedent. I agree with that. However, I sympathise with my colleague and learned brother, Hon. Irungu Kang'ata. If the matter was in court and has been withdrawn, it would have been prudent to bring the Petition together with a notice of court withdrawal of that suit so that as Members of this Honourable House look at that Petition, we are sure about what we are doing. Indeed, this path that we are taking on this particular Petition could be dangerous, in my view.

**Hon. Speaker:** Let us hear the Member for Endebess.

**Hon. (Dr.) Pukose:** Thank you, Hon. Speaker. I want to support the Petition by Hon. Kang'ata. For some of us who have gone through universities, you will realise the challenges that some of our colleagues go through. They end up losing many years of their lives and somebody's life gets ruined completely. We hope that the Departmental Committee on Education, Research and Technology will give this Petition priority and if it is possible resolve it amicably so that we can have those students go back to the university. This is because the University Senate also has powers to reinstate those students. If an appeal can help solve the issue, then it would save us many problems.

**Hon. Speaker:** The Member for Makueni, you have the Floor.

**Hon. Maanzo:** Thank you, Hon. Speaker. As much as I empathise with the students and my learned friend, Hon. Irungu Kang'ata, there are very many university matters which are coming to the Departmental Committee on Education, Research and Technology. For this particular case, if the matter was already in court and pleadings were ongoing, I agree with our learned Senior, Hon. Aluoch, that it would be proper for this House to ascertain that the matter was withdrawn.

In my opinion, unless a withdrawal proof is tabled in this House, this matter is still alive in court. If one goes with a certificate of urgency, it could be easier for the courts to sort out the matter. This is because the Departmental Committee on Education, Research and Technology has many matters in relation to it. If you look at the answers being sought, you will find that this appeal should be made to the University Tribunal. I think the court is the right place to entertain this matter.

Thank you, Hon. Speaker.

**Hon. Speaker:** Yes, the Member for Baringo North.

**Hon. Cheptumo:** Thank you, Hon. Speaker. The issue raised in the Petition is, indeed, very sensitive and it touches on the lives of our young people. However, when my colleague,

Hon. Kang'ata said that the proceedings of court were suspended to enable him or the petitioners to present the Petition in the House, then that is a bit worrying. If the withdrawal of the suit was actually done by the petitioners without appearing to have been instigated by my colleague here, it could have been fair. Where we assist the public in withdrawing a suit in court so that the Petition is brought to the House, it is a bit worrying because we appear to be interfering with the court processes and that is an area that we need to be very careful.

Hon. Speaker, if it is true that my colleague, in the process of assisting, advised the petitioners to stop the court process then it would be a bit interesting but if it was withdrawn on the motion of the petitioners, without necessarily being advised by my colleague, I think it will still be in order.

The issue of strikes in universities is a very big challenge in our country. Apart from that fear that we are likely to be moving in the wrong direction, I think the Petition is, indeed, very valid and in future, as Members of the House, we should be able to guide our citizens in a manner that is not going to be seen that we are also pushing them to move in a certain direction.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Ugunja, you have the Floor.

**Hon. Wandayi:** Thank you, Hon. Speaker. I want to fully support the Petition by my colleague, Hon. Irungu Kang'ata. I have gone through this experience personally in the past in this House.

Way back in 2013, when a number of students were suspended from Kenyatta University, I brought the issue here through a Question but I was taken round in circles. If what is happening in universities is not addressed urgently, it will lead to anarchy. We have reformed nearly all the sectors in this country but the universities have remained untouched.

Hon. Speaker, we have a situation in universities where the only solution that the administrators or the managers seem to understand when there are disagreements with students is either suspension or expulsion. This is an old mindset that needs to change if we are to have democracy in this country. We have situations where Vice-Chancellors and university managers who regard universities as their personal fiefdoms are a law unto themselves. This House needs to find a mechanism of reining in these administrators. This is because university students are young, agitated and easily excited and need to be handled in a manner that really safeguards their future. Therefore, I fully support this Petition and hope that this House will act expeditiously.

Thank you, Hon. Speaker.

**Hon. Speaker:** It just requires you to make comments because there is nothing to support. It is just comments and clarifications and things like those.

Finally, let us have the Member for Chuka/Igambang'ombe.

**Hon. Njuki:** Thank you, Hon. Speaker. First of all, I would like to note with a lot of appreciation that the Member who has brought this issue was actually a victim in the past. Those who know the history of Hon. Kang'ata know that he was expelled from the University of Nairobi because of a strike. He became a councillor. He was recalled to the University of Nairobi and today he is a very useful member of the society. So, it does not mean that all those people who were expelled are extremists. Sometimes the problem is teenagehood.

**Hon. Speaker:** Hon. Muthomi Njuki, you may be disclosing too much about the Hon. Member's past life without moving a substantive Motion. If you need to discuss his character, because you appear to know a lot more about his character, the rules are that you must bring a substantive Motion. You appear to know a lot of his dark past. Just comment on the Petition.

**Hon. Njuki:** Hon. Speaker, these students need justice. We should not judge them very harshly. If this Committee can enable these students to go back to university, it will salvage many lives. The matter has been withdrawn from court and the three arms of the Government are independent. This House, through this Committee, is capable of doing a better job than the Judiciary.

I support the Petition.

**Hon. Speaker:** The Petition is referred to the Departmental Committee on Education, Research and Technology.

Hon. Members, before we go to the other petition, allow me to recognise the presence of pupils and students from the following institutions:-

- (i) Christopher Kiamba Primary School from Kilome Constituency, Makueni County;
- (ii) Kerer Primary School from Marakwet West Constituency, Elgeyo Marakwet County;
- (iii) Thege Primary School from North Imenti Constituency, Meru County; and,
- (iv) Bungoma DEB Primary School from Kanduyi Constituency, Bungoma County.

They are in the Public Gallery. I am informed that they are ably being represented by Hon. Athanas Misiko Wafula Wamunyinyi.

Let us have Hon. Benard Shinali.

#### REHABILITATION OF KAKAMEGA AIRSTRIP

**Hon. Shinali:** Thank you, Hon. Speaker. I, the undersigned, on behalf of concerned residents of Kakamega County, draw the attention of the House to the following:-

THAT, transport and infrastructure network not only facilitates rapid movement of passengers, goods and services but also accelerates the economy of a country;

THAT, Kakamega Airstrip is a strategic transport installation that facilitates movement of passengers, business people and tourists to Kakamega Forest and other tourists destinations in Kakamega County and its environs;

THAT, in 2010, the Ministry of Transport, Infrastructure, Housing and Urban Development closed the Airstrip and directed the Kenya Airports Authority (KAA) to resurface its pavements so as to improve its quality;

THAT, between February and October, 2011 resurfacing was done, however the work was substandard, which forced the KAA to discontinue operations at the Airstrip;

THAT, an evaluation of the pavements by the Material Testing and Research Department of the Ministry of Transport, Infrastructure, Housing and Urban Development indicated that the pavements had a zero residual life, which required major rehabilitation to restore them to usable state;

THAT, three years later, neither the Ministry nor the KAA has taken measures to rehabilitate this strategic airstrip;

THAT, efforts to have the process expedited by the Ministry of Transport, Infrastructure, Housing and Urban Development have not yielded satisfactory action;

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:-

(i) causes investigations into the quality of the resurfacing works done on the airstrip's pavements in 2011 with a view to ascertain whether the reported pavement failures were occasioned by poor workmanship by the contractor;

(ii) intervenes to ensure that the Ministry rehabilitates and extends the airstrip's pavements to International Civil Aviation Organization (ICAO) standards; and,

(iii) makes any other order(s) deemed fit in the circumstances of the petitioners.

And your humble petitioners will forever pray.

Thank you.

**Hon. Speaker:** The Member for Malava, you have the Floor.

**Hon. Injendi:** Thank you, Hon. Speaker. I wish to comment on this Petition. Indeed, it is demeaning for the whole region of western Kenya to have no airplanes operating. When I joined Parliament in 2013, we had Fly540 which used to operate on the airstrip. At first, they began with a 29 seater aircraft and it reduced to a 16 seater aircraft.

Finally, it terminated services because of the state of the airstrip as pointed out by the Member. When some of us want to travel to western, we have to go to Kisumu and we waste a lot of time to reach our homes. We also can use Eldoret Airport, where we have a challenge of traffic jams on the way. We spend about three to four hours to get to our constituencies. So, as pointed out by the Petitioners, the Committee has to consider this matter so as to facilitate what the Member talked about. Otherwise, I support the petitioners.

**Hon. Speaker:** Yes, Hon. Chis Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Speaker. I rise to comment on this important Petition by Hon. Shinali. Indeed, those of us who come from that region are really suffering. As he clearly mentioned, there are very many tourists who cannot get access to the beautiful Kakamega Forest. As you know, Kakamega Town is the headquarters of the *Mulembe* nation. In this case, Vihiga, Busia, Bungoma and Trans Nzoia counties are affected. This is a very important place and we request the KAA to move with speed so that they can allocate some funds for the purpose of rehabilitating that airstrip.

Tourists and the business community are forced to go to Kisumu or Eldoret. Kenya Airways does not fly to Eldoret. It only flies to Kisumu and any time you want to fly, the number of aircraft is very limited. When we ask the private providers, they say they want the airstrip to be rehabilitated so that they can fly there smoothly. As we talk about the Kakamega Airstrip, the same case applies to the Kitale Airstrip, which is in the same region. We only see small aircraft flying there and because they are small, they do not enjoy the economies of scale.

**Hon. Speaker:** The comments must be limited to the subject matter. The Kitale Airstrip is not in this Petition.

**Hon. Wakhungu:** Thank you, Hon. Speaker. We request the relevant Committee to move with speed so that a good resolution can be made.

**Hon. A.B. Duale:** Hon. Speaker, Rio---

**Hon. Wakhungu:** Hon. Speaker, I am not in Rio; I am here. Hon. Duale knows that I am here.

Thank you. I support.

**Hon. Speaker:** Hon. Amina Abdalla, you have the Floor.

**Hon. (Ms.) Abadalla:** Thank you, Hon. Speaker. I wish to comment on this very important Petition by Hon. Shinali. The Departmental Committee on Environmental and Natural Resources was in Kakamega last Friday. We had to fly to Kisumu and then drive to Kakamega. Those of us who used the airstrip to overfly the Kakamega Forest can tell you that it requires a

plane. We used a small Cessna plane. We had to go round so that it could fly out because that airstrip is very short. In fact, the tourism sector is highly affected by lack of a reliable airstrip in that region. There are very beautiful retreat sights in Kakamega Forest, which is the only rain forest in Kenya. The repair of that airstrip will go a long way to help that region get commercial planes to land in Kakamega. I look forward to the report from the Committee on this very important airstrip.

**Hon. Speaker:** Let us now have the Member for Kanduyi. Do not talk about Kanduyi airstrip.

**Hon. Wamunyinyi:** Thank you very much, Hon. Speaker. Bungoma Airstrip is also in western region, but the Petition by Hon. Shinali brings out a very important issue. The airstrips were established strategically in parts of Kenya. Kakamega Airstrip was well thought out to facilitate communication within the country. There is no functional airstrip in western Kenya today except Kisumu Airport. The airstrips in Kakamega, Bungoma and Busia are not functional. Some fellows had attempted to grab the land meant for Bungoma Airstrip. I had to step in to make sure that the land was not stolen. I support the Petition and appeal to the relevant committee to move with speed and come up with recommendations which will ensure that the airstrip in Kakamega becomes functional again. In fact, it should be upgraded to an airport. With those few remarks, I support the Petition.

**Hon. Speaker:** Hon. Kathuri Murungi, you have the Floor.

**Hon. Murungi:** Thank you, Hon. Speaker. I also want to comment on this important Petition by Hon. Shinali. Tourism in western Kenya is very important. As we try to improve tourism in this country, this is an area which should not be ignored. Kakamega Forest is another example of an equatorial rain forest which can be found in the Congo Basin. Therefore, when this airstrip is completed, that region will have an improved tourism industry. As this Committee summons the Cabinet Secretary (CS) and his team, it is important for the Ministry to give an update of the airstrips in this country. Almost every constituency has an airstrip, but they are on public land that is underutilised. They include an airstrip in my constituency.

I am happy because the Petition was brought to the House. I was in a meeting with my community, and they were saying that they gave 300 acres of land to the KAA, but the land has been lying idle since Independence. So, they want the KAA to either develop it or revert it to the community, and then they can utilise it to do other important things. Therefore, it is good that this Petition has come. I would like to know when the CS in charge of this ministry will come to answer this Petition so that I can attend that session.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us now have the Member for Matayos.

**Hon. Odanga:** Thank you, Hon. Speaker. I rise to make comments on the Petition by Hon. Shinali. There is no country which can develop without good infrastructure. Therefore, this airstrip needs repair, rehabilitation and improvement like yesterday. The other day I saw the CS in charge of the Ministry of Transport, Infrastructure, Housing and Urban Development saying that currently we have 50 airstrips in this country, and yet we have 47 counties. This Ministry needs to spell out exactly how these airstrips are spread across the country. We also need to see that each county has an airstrip that is functioning. For example, Busia County has had an airstrip which has not functioned for many years and yet this is a county which is on the border. We must have an airstrip that is functioning for security reasons. Kakamega needs this facility because this is where we have a forest that needs to be protected and attracts tourists. It is also

the headquarters for the Luhya community. In fact, this airstrip should be upgraded. Other airstrips also need to be functional.

Thank you, Hon. Speaker. I support the Petition.

**Hon. Speaker:** Hon. Members, we must bring a close to this airstrip business. Hon. Kangogo, do not tell us about another airstrip in Iten.

**Hon. Bowen:** Thank you, Hon. Speaker for giving me this opportunity to add my voice to the Petition by Hon. Shinali. It is a very important Petition, especially at this time when we have very many airlines. There is introduction of low cost airlines across the country. It is good because the people of western Kenya will benefit from those low cost airlines. Given that the roads are not good, those facilities will help them.

There is also need to expand those airstrips because some are very risky. There is need to expand them so that there is proper take-off and landing. For example, the airstrips in Kakamega and Kitale need to be expanded. I used Kitale Airstrip once. It is small and not well maintained. With the new dispensation of devolution, we want the KAA to establish airstrips across the counties to facilitate transport of tourists visiting the various parts of the country.

With those many remarks, Hon. Speaker, I support the Petition.

**Hon. Dawood:** Thank you, Hon. Speaker. I wish to support this Petition as well.

**Hon. Speaker:** That is a hijack, Hon. Dawood. Anyway, proceed. We need to finish with the gentleman in whose constituency the airstrip is.

**Hon. Dawood:** Thank you, Hon. Speaker. I wish to support this Petition by Hon. Shinali. It is not only western Kenya which does not have airstrips. Even some parts of eastern Kenya do not have airstrips. We have many private airstrips, like in Nanyuki and other places. I want to join my colleague from South Imenti in saying that when the CS in charge of the Ministry comes to Parliament to respond to the Petition, I want to be there because we need an airstrip in Meru County. We also need the airstrip which is in Isiolo to start working because it is a resort town. For the last one year, we have been told that the airport will open, but nothing has been happening. We need Isiolo Airport to open as soon as possible, so that we can make use of it.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Shinyalu, you have the Floor.

**Hon. Anami:** Thank you, Hon. Speaker. I am very pleased to comment on this Petition. I thank all the Members who have supported it. The Kakamega Airstrip is in Shinyalu Constituency. The neighbourhood of Kakamega Airstrip gave out their land for the expansion of that airstrip in 2010. Some of them have not settled. There are others who cannot carry out any development because they foresee the expansion that was announced to them. They cannot carry out any infrastructural development that is sustainable. The rehabilitation of that airstrip will enable those people to decide whether they are affected or not. You can imagine about 2,000 families cannot build a permanent house because they are always waiting for the airstrip to be expanded into their homes. The faster this is done, the better for them so that they can undertake their developments.

Patients always have to be transported by road to Kisumu, Eldoret or Kitale to be transported by the Flying Doctors. I would like to support the need for expeditious expansion and reopening of this airstrip so that services can be provided to the residents.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well. I had given an indication that the Member for Mumias East has something to say about the airstrip and he will be the last.

**Hon. Washiali:** Thank you, Hon. Speaker. I want to add my voice in supporting this Petition by my brother, Hon. Shinali because I know we will have an opportunity to contribute at the Committee level.

Since the skirmishes we had in 2007/2008 elections, air transport has become a very popular option. That is when some of us realized that air travel can be an option. That is why many times those of us coming from western Kenya and Nyanza have been using the Kisumu Airport. It has become very popular such that today being Wednesday, if you ask for a space on any flight coming from Kisumu on Sunday, you will not get one.

This Petition goes along way so that we can improve the airport of Kakamega and provide an opportunity for other people coming from the upper western to use it as an exit point. This airport was closed for repairs otherwise Fly540 was operating from there. There must be an issue with the contractor who is repairing this airport. I am asking the KAA to make a follow-up so that it can function properly so that people from the upper side of western can use air transport.

Thank you, Hon. Speaker.

**Hon. Speaker:** Before I conclude, Hon. Ochieng is walking in. Well, he will contribute to something else. I wanted to confirm if you are the one because I saw Hon. (Eng) Gumbo and you walking in. I am wondering how your card is in and yet you are out there. There have been sufficient comments on this one and you will comment on others.

You are doing very well every morning; you have found a different forum for educating Kenyans on many other issues happening in the House. Well, I want you to spend a lot more of that here because it is useful to the House.

The Petition is referred to the Departmental Committee on Transport, Public Works and Housing.

Next Order! Let us have the Chair, Departmental Committee on Justice and Legal Affairs.

### PAPERS LAID

**Hon. Chepkong'a:** Hon. Speaker, I beg to lay the following Papers on the Table:-

The Reports of the Departmental Committee on Justice and Legal Affairs on its consideration of the Bribery Bill, 2016 and the Public Appointments (County Assemblies Approval) Bill (Senate Bill No.20 of 2014).

**Hon. Speaker:** The Vice-Chair, Departmental Committee on Agriculture, Livestock and Cooperatives, you have the Floor.

**Hon. Mbiuki:** Hon. Speaker, I beg to lay the following Paper on the Table:-

The Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on its consideration of the Senate Amendments to the Fisheries Management and Development Bill, 2014.

**Hon. Speaker:** Is it 2014 or 2015.

**Hon. Mbiuki:** Hon. Speaker, it is 2015.

**Hon. Speaker:** Yes, it is 2015.

Let us move on to the next Order!

The Vice-Chair, Departmental Committee on Energy, Communication and Information, Hon. Kiptanui, you have the Floor.



## STATEMENTS

STATUS REPORT ON BUSINESS PENDING BEFORE THE ENERGY,  
COMMUNICATION AND INFORMATION COMMITTEE

**Hon. Kiptanui:** Thank you, Hon. Speaker. I take this opportunity, on behalf, of the Committee on Energy, Communication and Information to present a status report on the businesses pending before the Committee as at today, 10<sup>th</sup> August, 2016.

On petitions, I am happy to inform the House that the Committee has no petitions pending before it. The Committee has so far dealt with all the petitions that were referred to it by your office.

The last one was the Petition by the former employees of Telkom (K) regarding its failure to pay retrenchment dues to the 997 former employees. The Committee, having noted that the issues petitioned were before a court of law, declared the matter *sub judice* pursuant to Standing Order No.89. However, soon after the Committee was informed, through a letter, that the matter which the Committee was petitioned had been fully settled.

The Committee was also petitioned to investigate payments of royalties and the crisis facing the music industry in Kenya. The Committee, on its own volition, opened an inquiry on the matter and tabled its Report on 2<sup>nd</sup> August, 2016. In the Report, the Committee made recommendations that were far reaching with regard to the sector that supports a number of our youthful population. Such recommendations included amending the Copyright Act through the Office of the Attorney-General and the Kenya Copyright Board. At the convenience of the House this Report should be scheduled for debate.

On Bills, may I also inform the House that the Committee has, so far, considered and tabled a Report on the Senate Amendments to the Energy Bill, 2015; the Petroleum (Exploration, Development and Production) Bill, 2015, which was considered by the Committee of the whole House yesterday afternoon and the Access to Information Bill, 2015. These Bills having been concluded by the Senate were referred back to the National Assembly for concurrence and, therefore, referred to the Committee for consideration. The Bills are also meant to implement the Constitution and, therefore, have a deadline of 27<sup>th</sup> August, 2016.

Hon. Speaker, without anticipating debate, should the House adopt the position of the Committee, then the Energy and Petroleum Bill will proceed for mediation. I, therefore, indulge your office to prioritise the said Bills in order to meet the deadline.

The Committee this morning also tabled the Report on the Senate Amendments to the Access to Information Bill, 2015 which should be considered for the Committee of the whole House at the convenience of the House. In this Bill, the Committee has totally agreed with the Senate Amendments.

The Committee is currently considering the Information Communication Technology Practitioners Bill, 2016, a Private Member's Bill by Hon. Aden Duale, E.G.H., the Member of Parliament and the Leader of the Majority Party. The Committee is currently considering submissions from the public and stakeholders in the ICT sector in this Bill.

The Committee has experienced challenges of very divergent views from the stakeholders and players in the industry. The Committee does not have sufficient information to make a firm and proper decision on the Bill which should have been reported to this House. Hence, we are requesting for more time for public participation and stakeholder involvement.

Hon. Speaker, I, therefore, request your leave to allow the Committee more time to consider the Bill further with the stakeholders and report to this House. This will allow the Committee sufficient time to conduct both public participation and stakeholder consultations on the said Bill.

Any other business or activity that the Committee may consider on its own motion from time to time pursuant to its mandate will be reported as and when it is necessary and appropriate. This is because the Committee will soon have a sitting to plan activities for the 2016/2017 Financial Year and review its achievements for the last financial year in line with its work plan for the 2015/2016 Financial Year.

Thank you.

**Hon. Speaker:** Very well. It looks like your Committee has done very well. Let us have the Chair, Departmental Committee on Environment and Natural Resources.

STATUS REPORT ON BUSINESS PENDING BEFORE THE  
COMMITTEE ON ENVIRONMENT AND NATURAL RESOURCES

**Hon. (Ms.) Abdalla:** Thank you, Hon. Speaker. I will speak on the business pending before the Committee as of 10<sup>th</sup> August, 2016. There are six petitions.

The Petition by Hon. Abdullahi Diriye, MP, on behalf of the residents of Ewaso Nyiro North catchment area is with regard to the management of River Ewaso Nyiro by the Water Resource Management Authority. We have concluded the report and it is awaiting adoption.

The Petition by Hon. Ahmed Ibrahim Abass, MP, on behalf of the residents of Ijara Constituency is with regard to irregular gazettement of Boni-Ijara Forest. The Committee undertook a field visit from 28<sup>th</sup> to 30<sup>th</sup> July, 2016 and the report is being considered by the Committee.

The Petition by Hon. Silverse Anami, MP, on behalf of the residents of Kakamega County is on deforestation of Kakamega Rain Forest. The Committee undertook a field visit last Friday and the report is being concluded.

The Petition by Hon. Francis Mwangangi, MP, on behalf of the residents of Yatta Constituency is with regard to pollution in River Athi. The Committee had scheduled to visit the area this Friday but the area Member of Parliament has requested a postponement.

The Petition by Hon. Sara Korere, MP, is with regard to human-wildlife conflict in Laikipia North Sub-county. A field visit is scheduled between 2<sup>nd</sup> and 4<sup>th</sup> September, 2016.

The Petition by Hon. Andrew Mwadime, MP, on behalf of the residents of Mwatate Constituency is with regard to illegal grazing in Tsavo West National Park and human-wildlife conflict. This Petition is under consideration and the Committee intends to schedule a meeting with the Petitioner.

On Bills, the Hydrologists Bill, 2016 is under consideration by the committee while the following Bills were referred to the Mediation Committee on 3<sup>rd</sup> August, 2016. The Committee scheduled to have its first sitting on Thursday, 11<sup>th</sup> August, 2016 to consider the Forest Conservation and Management Bill, 2015 and the Natural Resources (Classes of Transactions Subject to Ratification) Bill, National Assembly Bill No.54 of 2015.

I am happy to report that this House passed the mediated version of the Water Bill this morning. That is all the business that is before us.

**Hon. Speaker:** Very well. Like I said earlier on in my Communication, whenever the House is apprised by various Chairpersons of Committees, if there are Members who may have

businesses that may be pending before those Committees, they are at liberty to seek clarifications. If there is none, we should proceed.

Let us move on to the next Order.

## PROCEDURAL MOTION

### RESOLUTION TO HOLD SITTINGS ON SPECIFIED THURSDAY MORNINGS

**Hon. Nyenze:** Hon. Speaker, I beg to move the following Procedural Motion:-

THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold Morning Sittings on Thursdays commencing from 9.30 a.m. to 1.00 p.m. for purposes of considering urgent Business before the House, as follows:-

- (i) Thursday, 18th August, 2016; and,
- (ii) Thursday, 25th August, 2016.

As Members may be aware, this House extended time for consideration of five constitutional Bills by one year to 27th August, 2016, which is two weeks away. We have managed to conclude 10 of these constitutional Bills while seven are pending consideration after being referred back to this House by the Senate.

It is, therefore, imperative that the House goes an extra mile to conclude these Bills before the deadline. These Bills are:-

1. The Energy Bill, 2015 which is scheduled for consideration today;
2. The Protection of Traditional Knowledge and Cultural Expression Bill, 2015;
3. The Fiscal Bill, 2015;
4. The Forest Conservation and Management Bill, 2015;
5. The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015; and,
6. The Access to Information Bill, 2015.

Hon. Speaker, it is also important for the House to consider the Finance Bill, 2016 which should be concluded on or before 28th September, 2016. The House is scheduled to go for a long recess starting 2nd September, 2016 to October 3rd 2016. Therefore, we ought to finalise the consideration of the Bills before proceeding for the recess.

The House Business Committee is envisaged to also schedule Senate Bills, committee reports and several Private Members' Bills for debate. Following the business line up, I propose morning sittings for Thursday of 18th and 25th August, 2016 so as to complete the business schedules.

I beg to move.

**Hon. Speaker:** Hon. Wamalwa, are you seconding?

**Hon. Wakhungu:** Yes, Hon. Speaker. I rise to second. This is a very important Procedural Motion and as the Mover has clearly put it, we have a shortage of time to expedite the work we have at hand. When it comes to morning sittings, we have a problem of raising quorum. So, if we pass this resolution, my humble request to members is to try and wake up a bit early so that you can be here on time to conclude whatever is required before proceeding for the long recess.

I second.

Thank you.

*(Question proposed)*

**Hon. Members:** Put the Question!

**Hon. Speaker:** Very well. It seems to be the desire of the House.

*(Question put and agreed to)*

The Member for Sirisia is the only one saying “Nay” and he appears to be very serious.

## MOTION

### THE ENERGY BILL

**Hon. Washiali:** Hon. Speaker, on behalf of the Leader of the Majority Party, I beg to move the following Motion:-

THAT, the Senate Amendments to the Energy Bill (National Assembly Bill No.50 of 2015) be now considered.

I agree with the Senate amendments to Clauses 2, 53, 57(e)(ii) and (iii) and Clause 249 of the Bill. However, I disagree with the Senate amendments to Clause 57(e)(ii) because it is not clear which organisation is representing the largest number of persons carrying out operations in the energy sector.

Clause 2 of the Bill refers to the local community as a ward or wards in which the energy resource is exploited. The effect of the amendment is to change the definition of “local community” to mean people living in a sub-county. According to Section 48 of the County Governments Act, a sub-county is equated to a constituency. There is also need to relate the definition of the word “customer” as suggested by the Senate because there exists two definitions; the “consumer” and “customer” which refer to the same persons.

On Clause 53, the effect of the amendment is to rename “Nuclear Power Energy and Petroleum Agency” to “Nuclear Power and Energy Agency”. However, there is need for consequential amendments in other clauses where the words “Nuclear Power Energy and Petroleum Agency” appear as the First Schedule, Second Schedule, Third Schedule and Fourth Schedule to the Bill.

On Clause 249, the effect of the amendment is to set a minimum general fine of Kshs100,000 instead of the fine being the maximum in sentencing for contravention of any of the provisions of the Act.

Therefore, I beg to move and request the Vice-Chair of the Departmental Committee on Energy, Communication and Information to second.

**Hon. Speaker:** Hon. Kiptanui.

**Hon. Kiptanui:** Hon. Speaker, the Committee considered the Senate amendments in its sitting held on Tuesday, 2<sup>nd</sup> August, 2016 to the Energy Bill, 2015. The Committee’s decision to accept and/or reject the amendments is based on the constitutional requirements and the provisions of the National Assembly Standing Orders.

The Committee agreed with all the amendments proposed by the Senate except one on Clause 57(e)(i). We shall be giving reasons why we rejected this amendment.

I beg to second.

*(Question proposed)*

**Hon. Speaker:** Hon. Members, before we get many of you to contribute, allow me to recognise the presence of pupils from Kabasis Primary School, Baringo Central Constituency, Baringo County; Kapkochur Primary School, Marakwet West Constituency, Elgeyo Marakwet County; Maitha Primary School, Tigania West Constituency, Meru County; Little Angels Primary School, Isiolo North Constituency, Isiolo County and Harambee Gardens, Likoni Constituency, Mombasa County. They are welcome to observe proceedings in the National Assembly.

Hon. Members, before we embark on debate, it is fair to appreciate the Report of the Committee and what both the Mover and Seconder have said that they have agreed with all the amendments proposed by the Senate except one. The Vice-Chair has explained that they will be explaining that when the House goes into the Committee of the whole House. So, comments should be limited to areas that have been addressed by the Senate.

Hon. Galgalo, you have the Floor.

**Hon. (Ms.) T.G. Ali:** Thank you, Hon. Speaker. I rise to support the amendments on the Energy Bill, National Assembly Bill No.50 of 2015. The importance of energy in this country is numerous. Energy is what we all require. Many of the counties are in need of serious support.

Therefore, I rise to support the amendments made by the Senate.

**Hon. Speaker:** Hon. Benson Makali Mulu, you have the Floor.

**Hon. Mulu:** Thank you, Hon. Speaker. I also want to support consideration of the amendments by the Senate. I appreciate the fact that out of the four amendments, the Committee is in agreement with three. If you look at the three amendments the Committee is in agreement with, you will find that they are amendments to give the Bill more clarity. The one on definition of “local community” is important because even if you look at the other Bill we were discussing on petroleum, you will find that there was definition of “local community”. It is important that when it comes to issues of mining that the term “local community” is properly defined. We have realised that at times communities suffer in situations where people who do not belong to those communities move to areas where mining is likely to take place and take advantage of the fact that minerals are there and start claiming to be local community. So, this clarity on how to define “local community” is very important. It is going to help this Bill in assisting Kenyans.

If you look at the four clauses, you will find that they have disagreed only on one clause. As the Chair said, they will explain to this House why they were not able to agree with the Senate on this amendment. It means that generally, we are not going to have many issues discussed at the level of mediation. Once the Mediation Committee is formed, if the only clause which has disagreement is agreed to, then this important Bill is going to be approved by this House and it will become an Act of Parliament.

This Bill is also important because it is one of the constitutional Bills. The conclusion of this Bill and the other one on petroleum will go a long way in assisting this House to meet the constitutional requirements in terms of approving these constitutional Bills.

With those remarks, I support the consideration of the Senate amendments.

Thank you.

**Hon. Speaker:** I need to get an indication from Members, because there are several of you who have put your cards in. I want to know whether you want to contribute to the consideration of the Senate amendments to the Energy Bill.

Hon. Sakwa Bunyasi, you have the Floor.

**Hon. Bunyasi:** Hon. Speaker, I had wanted to speak to the previous Motion not this one.

**Hon. Speaker:** Let us have Hon. David Ochieng.

**Hon. Ochieng:** Thank you very much, Hon. Speaker. I agree with the proposed amendments by the Senate. I agree with the fact that in these Bills, the input of the Senate is important because they are supposed to take care of the interests of what they call “local community”. They are also supposed to look at the interest of the counties. I agree with them when they say that we should expand the definition of “local community” from wards to sub-counties. There are some sub-counties that are homogenous and there could be only one energy resource in the whole area. Expanding that into a ward allows a bigger population to benefit from the energy resources that may be situated in their area. I agree with the Senate on that matter.

We have not heard from the Committee but I would largely agree with the fact that we needed to further define Clause 57. Previously, the Bill we passed talked about four other persons not from the public sector. We needed to go further because the energy sector is definite. We needed to go further and delineate who would represent these four non-public officials. The appointment authority may decide to appoint people from areas that do not have relevance to the energy sector. It is important that even if the Committee disagrees with the Senate to set aside board positions for those who represent that sector in the private sector---

I do not even know how we passed Clause 249. Nowadays, Kshs100,000 is such a small amount in this country. Probably, we just missed it. That clause provides that if you default then the magistrate has no choice but to fine you less than Kshs100,000. The Kshs100,000 especially in the energy sector in this country is a small amount. That is why I agree with them although it is not what we do when drafting legal instruments. They propose that we say “not less than” instead of saying “not exceeding”. I agree with them absolutely because Kshs100,000 as fine is too small. We should take that up and pass what they have proposed.

It would be interesting to know, like you have said, what the Committee will recommend under Clause 57. So that we do not push this further, I request the Committee not to be so inflexible in considering Clause 57 so that we close this matter. We do not have to go back to the Senate and create another committee for mediation on a matter that we can agree on. I do not see anything materially wrong with what the Senate proposes under Clause 57.

**Hon. Speaker:** Let us have the Member for Kiharu.

**Hon. Kang’ata:** Thank you, Hon. Speaker. I draw your attention to one of the clauses that I find problematic. That is Clause 57 of the Senate amendments. It says:-

THAT, Clause 57 of the Bill be amended by deleting paragraph (e) and substituting therefor the following new paragraph –

(e) not more than four other members nominated as follows and appointed by the Cabinet Secretary –

- (i) two persons nominated by the organisation representing the largest number of persons carrying out operations in the energy sector;
- (ii) one person nominated by the Kenya Private Sector Alliance; and
- (iii) one person from an institution of higher education.

I have a problem with part (e)(i) which talks about two persons nominated by the organisation representing the largest number of persons carrying out operations in the energy sector. It has failed to denote which organisations. Therefore, this one is left to interpretation. Which organisation is being referred to? The criteria or the threshold that has been set by the

proposed law is that the organisation with the largest number of persons carrying out operations in the energy sector will nominate two persons. It means that they are not looking at largeness in terms of capital but in terms of numbers. That can as well refer to pump attendants or any other person who may not have real stake in the energy sector. The best case scenario would have been to state a threshold from the point of view of capital instead of persons.

Another problem I have with this clause is the issue concerning the term “operations”. There are several operations in the energy sector. They include transportation operations - people who carry fuel from Mombasa to Nairobi. You may have those people who install pumps. This sector is quite amorphous and is not regulated. It is not like engineers, doctors or lawyers who have one strong, known organisation that represents them. Taking into account that this is such a vast sector, this may be a subjective test. The best case scenario would have been for the Senate to clearly denote which organisation they are referring to as opposed to leaving it this way, otherwise, it may not be clear to people who may be nominated under this clause.

Another aspect that I personally support is the Senate amendment to Clause 2 where they propose to delete the definition of the words “local community” and coming up with a new definition which reads: “local community” means a people living in a sub-county within which an energy resource under this Act is situated and are affected by the exploitation of that energy resource.” This is a better definition, particularly taking into account the term “sub-county”. I say so because sub-counties are crucial. They are better units of localising development as opposed to a ward or county. I say so taking into account my constituency which happens to be the largest in Murang’a. We have two sub-counties. Whenever I see laws mentioning counties, it becomes problematic for those of us who have two sub-counties in one constituency. This is a fairer method because it takes into account some constituencies which have more than one sub-county.

With those few remarks, I support the Senate amendments save for the Senate amendment to Clause 57(e)(1).

**Hon. Speaker:** Let us have Hon. Rachel Nyamai.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Speaker. I rise to agree with the Senate amendments to the various clauses that have been mentioned. The amendment to Clause 2 of the Bill makes it better by making it more inclusive. As opposed to focusing on the ward, it gives an opportunity to focus on the sub-county which means that it is more inclusive.

I also agree with the amendment to Clause 53. The effect of this amendment is to rename the “Nuclear Power Energy and Petroleum Agency” to the “Nuclear Power and Energy Agency”. This makes the Bill better. However, there is need to further amend the Bill to ensure that the same words are changed in other clauses where they have been used to ensure that there is consistence.

I also agree with the Senate amendment to Clause 249 in which it seeks to set a minimum general fine of Kshs100,000 instead of a fine being the maximum. This makes it much better than it was before.

I disagree with the Senate amendment to Clause 54(e)(1) because it is not clear which of the organisations that will be represented has the largest number of persons carrying out operations in the energy sector. This Bill will improve the energy sector and it is much better after the Senate amendments.

**Hon. Speaker:** Let us have the Member for Muhoroni.

**Hon. Oyoo:** Thank you, Hon. Speaker. I rise to support the Senate amendments. The initial Act was not working in tandem with the aspirations of the devolved governments because there are some constituencies that were being left out in the parameters of the envisaged Bill. As

much as energy is a national aspect, there are areas where it encroaches on and we have counties extending their hands because it is a much needed aspect. The Senate has done well by introducing the aspect of devolved governments.

I have also seen the relevance of the interpretations by the Senate to make sure that the Nuclear Power Energy and Petroleum Agency becomes the Nuclear Power and Energy Agency.

**Hon. Speaker:** There being no other interest, I call upon the Mover to reply.

**Hon. Washiali:** Hon. Speaker, I listened to the comments by Hon. (Ms.) Tiyah Galgalo and other Members, and I have been sharing them with the Chairman who is seated next to me and we will consider their comments.

I beg to reply.

*(Several pupils walked into the Speaker's Gallery  
when the Speaker was on his feet)*

**Hon. Speaker:** The staff are advised to inform strangers about our rules when they walk into this place.

*(Question put and agreed to)*

**Hon. Speaker:** Before we move to the next Order, allow me to recognize pupils from Nyeri Primary School from Nyeri Town Constituency, Nyeri County and Gome Primary School from Changanwe Constituency, Mombasa County. You are welcome to observe the proceedings in the National Assembly.

Next Order!

## 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]*

#### CONSIDERATION OF THE SENATE AMENDMENTS TO THE ENERGY BILL

##### Clause 2

##### Senate Amendment

THAT, Clause 2 of the Bill be amended by –  
(a) deleting the definition of the term “customer”;



(b) deleting the definition of the word “local community” and substituting therefor the following new definition –

“local community” means a people living in a sub-county within which an energy resource under this Act is situated and are affected by the exploitation of that energy resource;

**Hon. Kiptanui:** Hon. Temporary Deputy Chairman, we agree with the Senate amendment to Clause 2. The term “customer” has been deleted as there exists two other definitions that have the same meaning.

Under (b), the definition of “local community” has been substituted to mean people living in a sub-county within which an energy resource under this Act is situated and are affected by the exploitation of that energy resource.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kiptanui, you will only be indicating that you are supporting as a Committee. You will only give details on the one that you have issues with since these are Senate amendments.

*(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)*

*(Senate Amendment to Clause 2 agreed to)*

Clause 53

Senate Amendment

THAT, Clause 53 of the Bill be amended in Sub-clause (1) by deleting the words “Energy and Petroleum” appearing immediately after the words “Nuclear Power” and substituting therefor the words “and Energy”.

**Hon. Kiptanui:** This amendment seeks to rename the Nuclear Power Energy and Petroleum Agency to “Nuclear Power and Energy Agency.”

*(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)*

*(Senate Amendment to Clause 53 agreed to)*

Clause 57

*Senate Amendment*

THAT, Clause 57 of the Bill be amended by deleting paragraph (e) and substituting therefor the following new paragraph –

(e) not more than four other members nominated as follows and appointed by the Cabinet Secretary –

- (i) two persons nominated by the organisation representing the largest number of persons carrying out operations in the energy sector;
- (ii) one person nominated by the Kenya Private Sector Alliance; and,
- (iii) one person from an institution of higher education.

**Hon. Kiptanui:** Hon. Temporary Deputy Chairman, we disagreed with the amendment by the Senate. We have an issue with 57(e)(i) where the Senate is recommending “two persons to be nominated by the organisation representing the largest number of persons carrying out operations in the energy sector.” As much as the amendments on (ii) and (iii) are very important, it will be difficult to implement Clause 57(e)(i) because it is ambiguous and will be impossible for the Cabinet Secretary to implement it. We reject this amendment. We should possibly move to mediation on this clause.

**The Temporary Deputy Chairman (Hon. Cheboi):** You can now move the rejection.

**Hon. Kiptanui:** I move that the Senate amendment to Clause 57(e)(i) be rejected.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman (Hon. Cheboi):** Hon. S. S. Ahmed, do you want to speak to this?

**Hon. S.S. Ahmed:** No. I wish to speak to the Bribery Bill.

**The Temporary Deputy Chairman (Hon. Cheboi):** Hon. Members, if you wish to speak to this one, please place your card in the intervention slot. Let us have Hon. (Ms.) R.K. Nyamai.

**Hon. (Ms.) R.K. Nyamai:** Thank you, Hon. Temporary Deputy Chairman. This amendment is a bit ambiguous because it says that two persons shall be nominated by the organisation representing the largest number of persons. Which organisation will this be? It is a vague amendment. I want to agree with the Committee that this amendment is not clear. It does not tell which organisation it is going to be. Is it a company or, what kind of an institution is it? It is likely to be discriminative.

**The Temporary Deputy Chairman (Hon. Cheboi):** Okay. Let us have Hon. Ochieng.

**Hon. Ochieng:** Hon. Temporary Deputy Chairman, I managed to agree with the Departmental Committee on Energy, Communication and Information but I want to disagree with them on this. We have passed laws in this Assembly where we will couch the terms of the law in broad terms taking into account any change that may happen in these kinds of organisations. When we talk of the Central Organisation of Trade Unions (COTU) we hardly say “COTU”. We say “a body with the largest number of workers”. We have done that before. So, failure to name this institution, I do not think is incurable. We have done that with several other institutions in other laws we have made where we know the names and memberships of those bodies may change. As long as they represent the largest numbers in the sectors concerned, we have allowed this in many laws. This is not the first law we are allowing an organisation with such names. We never talk about the Kenya National Union of Teachers (KNUT).

This is what I wanted to support the Senate on. I request the Committee to accept these Senate amendments.

**The Temporary Deputy Chairman** (Hon. Cheboi): It is much better when you reject the position of the Committee because it is amendment done by the Committee. We are dealing with the amendment by Hon. Kiptanui to that proposal of the Senate.

**Hon. Ochieng:** I reject the amendment proposed to the Senate amendments by the Committee.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. Let us have the Member for Likuyani and then we can put the Question.

**Hon. (Dr.) Kibunguchy:** Thank you, Hon. Temporary Deputy Chairman.

I will agree with the Committee on this and reject the Senate's proposal, but not very much in e(i) but e(ii). You remember very well that we had rejected this Kenya Private Sector Alliance (KEPSA) when we were dealing with the Petroleum Bill yesterday. We said it is a body that is amorphous. It is not very clearly defined in law. Because of that, I reject the Senate's amendments.

**The Temporary Deputy Chairman** (Hon. Cheboi): Members, before I put the question, it is important we are clear about how we are going to vote. If you vote "Ayes", you obviously will be voting with the Committee in rejecting the Senate proposal or position. If you vote "Nay", it means you want the position of the Senate to remain. I hope Members are clear on this one. If you vote "Ayes", you will be supporting the position of the Committee and, therefore, rejecting the Senate proposal. If you vote "Nay", you will be asking the House to accept the Senate proposal.

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

*(Senate Amendment to Clause 57 negatived)*

*Clause 249*

*Senate Amendment*

THAT, Clause 249 of the Bill be amended by deleting the words "not exceeding" appearing immediately after the words "liable to a fine" and substituting therefor the words "not less than".

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Kiptanui, if you agree with their position, just do that and then we proceed.

**Hon. Kiptanui:** Yes. This amendment by the Senate is on general penalty. As a Committee, we are in agreement with their proposal to Clause 249 of the Bill. The justification is that this amendment seeks to set the minimum instead of the maximum penalty for general penalties.

We 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)*

*(Senate Amendment to Clause 249 agreed to)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Now, let us have the Mover to move reporting. Hon. Washiali.

**Hon. Washiali:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Senate Amendments to the Energy Bill (National Assembly Bill No. 50 of 2015) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, let us have the Vice-Chairperson to report to the House.

**Hon. Kiptanui:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Energy Bill (National Assembly Bill No. 50 of 2015) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Let us have the Mover to move agreement with the Report. That is Hon. Washiali.

**Hon. Washiali:** Thank you, Hon. Temporary Deputy Speaker. I beg to move that the House doth agree with the Committee in the said Report. I request Hon. Jackson Kiptanui to second the Motion for agreement with the Report of the Committee of the whole House.

Thank you, Hon. Temporary Deputy Speaker.

**Hon. Kiptanui:** I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. I could give a chance to two Members. Let us see Hon. Kang'ata or Hon. Shakeel Shabbir.

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Speaker, once again, I am waiting for the Bribery Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Hon. Ochieng.

**Hon. Ochieng:** Hon. Temporary Deputy Speaker, I want to thank the Chairman of the Departmental Committee on Energy, Communication and Information for this. Because what we are dealing with is something very small and yet the Bill is something that has waited for so

long, I wish we could just do what we need to do to make this Bill pass fast. Now that we have disagreed with the Senate, I hope our procedures will be followed quickly and fast enough to be able to pass this Bill before we go for recess next week.

I second and hope this can be done in a very fast manner.

**The Temporary Deputy Speaker** (Hon. Cheboi): Well. Did you say you are seconding? No. You are not, of course.

**Hon. Ochieng:** I am not seconding. I am just supporting.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, I see there is no interest by Members on this one. I will not put the Question. That will be done at a later date because we have just run short of the required numbers.

*(Putting of the Question deferred)*

Next Order.

## BILL

### *Second Reading*

#### THE BRIBERY BILL

*(Hon. A. B. Duale on 9.8.2016)*

*(Resumption of Debate interrupted on 9.8.2016)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Well. Who was on the Floor? We know Hon. Leader of the Majority Party was on the Floor. We will take that he had concluded unless there is specific brief. He is absent. Okay. We will proceed to somebody to second. Is that Hon. Washiali or Hon. Shabbir who is going to second? Hon. Shabbir, will you second?

**Hon. S.S. Ahmed:** I wish to second this Bill as the Chair of the African Parliamentarians' Network Against Corruption (APNAC).

**The Temporary Deputy Speaker** (Hon. Cheboi): Proceed.

**Hon. S.S. Ahmed:** Hon. Temporary Deputy Speaker, as I said, APNEC Kenya represents all the Members of Parliament. We have a number of members, including you, who have been very active. This Bill is long overdue. We wish to thank the Leader of the Majority Party for bringing it to the House.

Hon. Temporary Deputy Speaker, before I deal with the Bill, I would like to tell you that other countries, including Fiji, where APNEC Kenya was asked to present, have been helped by such Bills in their anti-corruption campaign. This Bill will go a long way in putting us on the world map in the fight against corruption at the parliamentary level. The Bribery Bill now demands citizen participation in the fight against corruption. We have said "no" to corruption many times, but we do not do anything about it. The Bribery Bill now compels a person who is aware of a bribery incident to take action. However, failure to report such incident and prevent bribery is not a liability offence and the prosecution will not need to prove any such intention of not doing anything.

**An hon. Member:---** *(Off-record)*

**Hon. S.S. Ahmed:** It is not prostitution. I mean “prosecution”. I am sorry, somebody’s mind is elsewhere. It is not in the House. Maybe, it is in Brazil or somewhere I do not know. I very clearly meant “prosecution.”

The Bill extends the fight against corruption to the private sector by criminalising bribery in that sector. Hitherto, corruption and bribery issues were restricted to the public sector. It also creates a legal obligation for every person who becomes aware of the act of bribery to report the matter to the Ethics and Anti-Corruption Commission (EACC). We feel that, that is a good thing but we might want to extend that not only to be EACC, but the police and other bodies.

The African Parliamentarians’ Network Against Corruption together with its partners like Transparency International (TI) and others, have been engaged with this Bill for the last six or eight months. We have presented our views to the Attorney-General. I am very pleased to note that many of the views that we presented have now been incorporated in the Bill that has been presented. As such, I see no reason for me to go back and say the issues we presented because they are now covered in the Bill.

I also acknowledge the President of this country. He has on numerous occasions clearly stated that he has no time for corruption and people who are thieves. He has stated this on public television. He has taken corruption to the right place. Corruption is theft. Just the other day, I heard the President use that word “thieves”. This is the mood of the country. We have had enough of corruption. These guys are thieves. Let us call them by the name they are meant to be called by – “thieves”. We have no time for thieves in this country. Their 40 days are coming up. I support the effort that the Government is putting. I must admit that our President has tried to do the best he can, but it appears the President is now becoming more of a whistle-blower like anybody else. He is in the Executive and they are not implementing what he wishes us to implement. We feel that some of the Non-Governmental Organisations (NGO) and the NGO Board, which have been fighting against corruption, must take a stronger action. The President has brought the private sector on board and given them notice that they are going to be just as liable as givers and receivers. That is a great thing. We need to blacklist the private entities that have been accused of corruption and bribery. Hitherto, this used to be the cost of doing business. No longer is the cost of corruption going to be the cost of doing business.

There is a whistle blowing site that has been established. There are such international sites where we can put the names of people who have been involved in corruption, either the private sector or the public sector. There is a clause now requiring all private businesses to put together some sort of a standard on ethical business. We have standards for accounting and other things. There is going to be a requirement by the relevant institutes that the companies will make a declaration that they have in place procedures that will ensure ethical business practises. If those practises are not adhered to, the accounts and annual statements can be disqualified. That is a great move. I plead with our accounting bodies to adopt that particular clause. The Bribery Bill covers that.

The Bribery Bill also ropes in foreign public officials. Any person who bribes a foreign official and has an intention to influence a public official is guilty of an offence. As we all know, we have had a number of foreign companies doing some very big business here. I thank them for that. Some of them have been flouting these ethics. They have been bribing, in different ways, the public officials and making them not to do their job. How do they do that? That is another form of corruption that we have discussed at different levels, where they gave commissions abroad. They gave commissions money in foreign currency. So, they say there is no corruption which has taken place in this country. If a foreign company wants a big contract, they go and talk

to the public officials who are the decision-makers and give them a big cheque in a foreign country. This is where the Panama Bill has come in. Now we shall be able to prosecute them in this country. That is a great move. Public entities should have in place procedures for prevention of bribery. This is a very important clause. I am very grateful that it has been done.

The other issue I want to discuss is that of facilitation. What is facilitation? Is it an advantage given or cash? The Bribery Bill has covered this, but I think that will come in the regulations. We hope and pray that this Bribery Bill will be extensively discussed by us and improved by my colleagues.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let me give you 30 seconds to confirm what you are doing.

**Hon. S.S. Ahmed:** Thank you, Hon. Temporary Deputy Speaker. I have great pleasure in seconding the Bribery Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): It is good for it to go on record.

Hon. Members, before I propose the Question, I want to recognise pupils from Kabarnet Town Primary School from Baringo Central Constituency, Baringo County, who are seated in the Speaker's Gallery. Feel welcome to follow the proceedings of the House.

*(Question proposed)*

I will start with Member for Kiharu.

**Hon. Kang'ata:** Thank you, Hon. Temporary Deputy Speaker. This proposed Bill has three important aspects. The first aspect is transnational bribery. The second aspect regards bribery within the private sector, and the third aspect is the re-balancing between the giver and taker of bribe.

Let me start with transnational bribery. We are in a globalised society where you have huge transactions conducted by private citizens and states within and outside our boundaries. In fact, our boundaries are collapsing. Therefore, we need to have a law that captures the notion of bribery that takes place across our country. I am a Member of the Departmental Committee on Justice and Legal Affairs. We discussed this Bill and ensured that we captured corruption that may cut across boundaries. Therefore, this is one of the key benefits of this new Bill.

The second issue concerns bribery in the private sector. We are in a liberalised private sector oriented society. If we continue having situations where our laws only target the State, we will not be modern people. We will not be taking into consideration the current realities of life. Why do I say so? Take, for instance, the media sector. We all know the percentage being controlled by the public broadcaster. Safaricom Limited is the leading corporation in this country in the ICT sector and other platforms in that sector.

That story goes on in most of the other sectors. Therefore, we need a law that will target corruption in the private sector. This is a very good law because it captures corruption involving private sector corporations which are so huge that they have acquired a character of public companies, their ownerships notwithstanding. Those corporations are privately owned but they have taken a character of a public company by virtue of the number of employees and the impact they have on the society. An example is Safaricom Company. This Bill has brought in that new dimension, which is very progressive.

The third aspect is the balance between the bribe-giver and the bribe-taker. We need to relook at our anti-corruption laws. For a very long time, the main target has been the person taking the bribe, which is good because, at least, you have a complainant and you protect

whistle-blowers. There are instances where the real culprit is the giver of the bribery. This new law proposes to bring a balance so that even the person giving the bribe can be held culpable. The issue of corruption in this country is so crucial.

The other day, we were discussing the rise of a very funny President in Phillipines. The President of Phillipines is called Mr. Duterte. He was elected the other day on a very funny platform. He told the people to elect him so that he can kill all the criminals in that country within the next six months. He was elected. He is now leading groups of people in fighting criminals. I wish one day we will elect a president who will have pledged to shoot dead all corrupt people in the country. I will be the first person to thank him. I would vote for such a person so that he can kill all the corrupt people in our society. That is because the cancer of corruption is so huge.

I once brought an amendment to this House and proposed that any person who is involved in grand corruption should face capital punishment. I do not know whether I should take advantage of this Bill to propose an amendment that will capture that reality. In our statutes, capital offences tend to be offences that have shock effect, for example; if you murder someone. It is good that we still have that notion but corruption has the same effect. When you take a sum of Kshs1 billion from the public coffers and misuse it, the effect is the same. That money can be used to buy medicines or build roads, but you have taken it for personal gain. Corruption can have worse consequences compared to the capital offences contained in the Penal Code. Therefore, I urge Members to give this proposed law more teeth. The penalty clauses in this law should be enhanced. We should provide for capital punishment.

When we were discussing that proposal in this House last time, some Members felt that the death penalty was too harsh. Assuming that the same notion prevails here, we can talk of capital punishment in terms of life imprisonment. We have seen societies which have taken a strong position on the issue of corruption. China has a very strong anti-corruption zeal. A few years ago, China was a back quarter society, but it is now one of the richest countries in the world. Another example is Singapore. So, I urge hon. Members to have a President Duterte moment in this House by taking a strong action not only on matters of law and order, but also on matters of corruption. This Bill may be what the gods have decreed for Kenya so that we can become a better society. I urge hon. Members to amend the law, particularly in the areas of the penalties, and ensure that we firm up our penalties.

With those few remarks, I support the Bill, but I will propose amendments to it.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Nyikal was extremely elated with some of your proposals. Let us hear from his own mouth what he has on this Bill.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Speaker, thank you for giving me the opportunity to contribute to this Bill.

The impact of corruption is huge. The impact is in public services like our schools and health services. I am also convinced that the burning of dormitories and schools is related to the effect of corruption, as far as cheating in exams is concerned.

Imagine a building that has been constructed after a public official has received a bribe. He clears its construction to substandard levels or with substandard material and then the building collapses and kills people. Is that a lesser sin than shooting one person dead? You can imagine an official who is supposed to purchase drugs knowingly purchasing sub-standard drugs and across the country people are treated and consume them. What happens? Those people die. Is that not murder? I can tell you about 30 to 40 years ago, Government schools and health



facilities were better than private facilities. I am convinced that the impact of corruption has made those services deteriorate.

I know it will be hard for some people to believe that between 1976 and 1978, patients were being transferred from the Aga Khan University Hospital to Kenyatta National Hospital (KNH) because it was better. By 1979, the maternity in KNH was better than the one in Nairobi Hospital, if not the same. What has happened?

These are issues we need to discuss; we are retarding development by the rampant corruption and bribery in this county. Therefore, this Bill has come at the right time. Inclusion of the private sector specifically in law is important. It has been the assumption in public that only public officials are corrupt, but it takes two to tango. If there is no giver, there will be no taker. In my view, it is the givers who fuel the fire of corruption. I have been in public service and I have seen innocent officers trained by the private sector to compete for contracts.

This Bill has come at the right time and taken the right direction. Clause 5 creates an offence of giving. I think that is one of the extremely important clauses. Blacklisting of companies is something we should look at and it is not enough. Therefore, this Bill creates the right environment by letting people know that the private sector is also a player in the corruption problem as the public sector.

This Bill empowers the EACC. We know it has been bedeviled by lots of problems and it has relatively little powers. I have seen this will empower EACC and make it deliver better. I am happy that this Bill comes at a time when we are discussing the Bill on Proceeds of Crime and Money Laundering. The two are intricately connected. What fuels corruption and bribery is the enjoyment of the same. When people involve themselves in corruption and get huge sums and launder them either locally or outside the country, they are kings. We see them in *Harambees*. They are kings of the people. Even churches invite them and I can assure you they are given the front seats.

We must have a situation where people do not enjoy those proceeds. This is coming at the right time. In terms of sanctions, what is important is what sanctions we give to people who commit an offence. These sanctions are the ones which will determine whether we are effective in the fight against corruption and bribery. I think we have been very lenient. As I said earlier, one person who plans a murder and kills another with one bullet or *panga* is actually subject to capital punishment. Another person organizes massive corruption at a scale which kills millions of people, for example through purchase of sub-standard drugs. Also, if a building collapses, hundreds of people will die. In my mind, I think it is not fair that the person who committed murder is killed and the one who kills many people goes scot-free.

There is evidence in the East Asian countries that have developed. They have capital punishment for corruption at certain levels. I agree with the Hon. Member for Kiharu that we must look through this and find a system of dealing with the level of corruption that is affecting people in a massive scale. Those people need to be eliminated. I have no doubt in my mind that even God will agree that we need to do something about situations like that.

I support and will definitely look through this to find where we can include more serious sanctions to discourage this practice. I know it is not possible to eliminate corruption, but let us discourage it. The worst bit is that people who are corrupt should not be seen as our heroes. I am sure we will need to find a way of assets recovery; so that those acquired through corruption are returned to the State and the culprits are left penniless. I am excited and MPs should take this seriously and move it not in a way of giving tokens of punishment and semblance of seriousness, so that we can deal with corruption.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Lempurkel, the Member for Laikipia North.

**Hon. Lempurkel:** Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this important Bill. Bribery and corruption have been the order of the day in this country. The people who are involved in those practices in the country are like heroes. Today, people who have money from corruption are moving freely while innocent Kenyans are in prisons.

Bribery is just another hand of corruption. To give a very good example, my constituents are almost 80 per cent illiterate. When they are arrested by the police, they are given cash bails amounting to Kshs10,000 or 50,000 and are not taken to court. They are told to report to the police station and after a week or three, they are told there is no case to answer. But already, they have given money to the police. As Members of Parliament, it is our responsibility to save our people and Parliament must be a role model. There is bribery in schools when they are having national examinations, and the national Government and county governments, especially with regard to contracts.

We said that the 30 per cent of the contracts should go to the youth, but you find that with good documents and a company, you still have to give a bribe to win that contract. We are in a corrupt world. We need to save this country. I know it is very difficult to end bribery or corruption. As Members of Parliament, we must clearly support this Bill. But we need amendments because bribery should be a capital offence so that we can try to reduce corruption. Corruption and bribery start from State officers, including Members of Parliament. So, how can we be role models when we agree that corruption and bribery starts with us? It is time we changed our mentality and put institutions in place so that those who engage in corruption are announced publicly. We should stand and say: "Shame on you". We should recover the property and bring culprits to book. Otherwise, we will just be passing Bills. We must come up with a mechanism to see that those who are involved in bribery are taken to court and prosecuted.

I urge this honourable House to save our country. This is our country and this is the reality. Let us treat this bribery and corruption like a disease so that we can get medicine for it. I urge you all to support this Bill so that we can get the Kenya we want and for our young brothers, sisters and school children to understand that we are serious. We need to fight corruption right from the top to the bottom.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): As I give the next Member the Floor to contribute, allow me to recognise, in the Speaker's Gallery, pupils from Migori Primary School, Suna West Constituency, Migori County and Temple Road Primary School, Nyeri Town Constituency, Nyeri County. In the Public Gallery, Poywek Primary School, Ainamoi Constituency, Kericho County; Seguton Primary School, Eldama Ravine Constituency, Baringo County and Nyamira Primary School from Kiminini Constituency of Trans Nzoia County. They are here to follow the proceedings of the House.

I will give this opportunity to the Member for Mwingi East, Hon. Kitungi.

**Hon. Kitungi:** Thank you, Hon. Temporary Deputy Speaker. I am the Member for Mwingi West, not Mwingi East.

This Bill is very important. It has come at the right time because this country is affected by bribery. Development has been affected by bribery. If you look at counties nowadays, before you get any contract, you must bribe your way out. You must buy that contract. This has become

a problem. When you bribe, nobody will supervise the work you are doing because you have already bribed your way out and so, at the end of the day, we have shoddy development projects.

Much has been said about bribery. It is the right time to eliminate bribery, especially for those who are giving and receiving. The punishment is in this Bill and we hope in future, it will be taken care of. The punishment for those engaging in bribery should be very severe so that we can, at least, reduce it.

I have seen many roadblocks on the way but their purpose is to receive bribes. There are very few incidents where vehicles have been found carrying funny things, but they find their way out through bribery. So, this Bill will make sure that such practices are eliminated.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Member for Molo.

**Hon. Macharia:** Thank you, Hon. Temporary Deputy Speaker. This is a very fantastic Bill. I thank the Leader of the Majority Party for the effort in bringing it. It is in public perception that corrupt people are only those working for the Government. As a result, corruption and bribery has thrived in private entities.

Personally, I have never worked for the Government. This is my first Government job. I have worked all my life in the private sector. Thousands of Kenyans watching or listening to debate on this Bill today are happy because they know the kind of wars they have gone through in trying to secure promotions, employment or even bank loans. This comes handy in trying to help Kenyans working in the private sector or dealing with private corporations to counter bribery.

Part II of this Bill clearly describes what general offences are. Clause 5 of this Bill describes that a person commits an offence by giving and also by receiving. It is commonly perceived in bribery or corruption circles that the person who is receiving a bribe is the one who has committed an offence. It is important that this Bill is now in agreement with the Anti-Corruption Act that even those who give bribes are also liable to corruption. This is not only in the private sector but also in the public sector. Therefore, when Kenyans are arrested at the road and they keep telling police officers “*wacha tuongee mkubwa*”, they should also know that they are getting involved in a criminal offence. It is important because when it comes to the private sector, Kenyans will understand that giving is also wrong.

Part III of this Bill has given measures that a company or private entity has to put in place to counter bribery. Most private corporations, some of them international in nature, do not have mechanisms to handle bribery. Once this Bill becomes law, it will ensure that those corporations have put together those kinds of requirements.

Clause 10 of this Bill clearly criminalises failure by a corporation or private entity to put measures to counter bribery. Therefore, when this Bill becomes law, we will have all private entities, preferably partnership and small businesses, putting into play requirements that are detailed down in Clause 10 and failure to which they would be liable for a criminal offence.

Clause 13 also criminalises facilitation of bribery. In this case, the Bill is very clear because it has detailed properly that the company or the business is going to be liable if one or several of the directors of that company are involved in bribery. So, the company will be held liable.

Hon. Temporary Deputy Speaker, Clause 15 is also clear on extra territorial bribery such that even if we have a company with headquarters in Kenya and has branches in countries in East Africa or in the world and are involved in bribery and have not complied with this Act, the penalties that are clearly detailed in this Bill are going to take effect.

It is important because the Bill also in Clause 21 has clearly provided for witness protection for whistle-blowers. Whenever most bribery cases are brought to a court of law, it is difficult most of the time for people to come and witness because some are easily threatened and some of them opt out. Clause 21 details properly how whistle-blowers will be protected. Protection of whistle-blowers is key in fighting bribery.

As I support, I am confident that when this Bill becomes law, it will consolidate the efforts that have been on-going through the Ethics and Anti-Corruption Act to ensure that bribery in Kenya is fought and honest dealings without bribes can find their place in the practice of business - the practice of Government business or practice of private business.

I support. Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): We will have Hon. Sunjeev Birdi.

**Hon. (Ms.) Sunjeev:** Thank you very much, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to one of the most significant Bills that this Parliament will have passed. I would like to start by saying that I am a Member of APNEC Kenya. It is a parliamentary committee that is spearheading parliamentarians who are against corruption.

This Bill is long overdue. A point to be noted is that this Bill is seriously being supported by the Kenya Private Sector Alliance which heads the private sector. So, it is important to note that there is goodwill both from the Government and from the private sector. That is the good side. What we have to note is that we have had to go an extra mile to curb corruption, especially in the private sector. It is deemed that if somebody wants to get something done, he has to “warm somebody’s pockets”. So, fingers are pointed at the people who give bribes, in this case, the private sector.

When we talk about the private sector, we also include multi-national companies. We want to ascertain that people in the top-most leadership of those multi-nationals or the private sector are held liable. We are trying to say that the king is equally liable as the servant. This is a very important thing. You cannot just expect the king to give orders and the servant not to listen. Everybody is going to sing the same song. While everybody is singing the same song, we expect equal responsibility as far as giving or taking a bribe is concerned. That is why I applaud the section of the Bill which says that there is duty of reporting bribery within 24 hours. We are saying that people should report cases of bribery as soon as possible.

Clause 10(2) of the Bill says that it shall be mandatory for a private entity to prove that it has put in place adequate procedures designed to prevent bribery. There is a very thin line between bribery and stealing. That is why you find that these two terms have been used so often this afternoon in Parliament but, you will find that the stark difference is that when a person is called corrupt, the person will have a smile on his face. He will not feel so bad but when he is called a thief, he will feel that something is wrong and he will actually be demeaned in society. This general tendency in society where people feel that it is okay to be called corrupt should be laid plainly and simply and everybody should know that being corrupt is actually not a good thing. It is a serious and grave crime.

This Bill is long overdue. I would like to complete by giving a historical quote: “It is to be regretted that the rich and powerful too often bear the acts of Government to their own selfish purposes”. It is very sad to say that it is only the rich who are corrupt. It is unfortunate that it has always been deemed that way. I hope and pray that this Bill brings to light the perpetrators involved in skinning our country and doing terrible things that have been going on so far.

With those many remarks, let me say that when this Bill first came into being, I was one of the most excited people because I thought it was high time that these issues were addressed. I feel that if taking a bribe is a crime, giving a bribe is equally sinful and a crime.

Thank you. I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Member for Bondo.

**Hon. Ogolla:** Thank you, Hon. Temporary Deputy Speaker. One thing that is very certain is that the Government is one single big consumer of services and goods in our country. Many more times, when we talk about issues of corruption and bribery, we have always tended to look at Government as either from inside, outbound or inside itself, only to an extent that we forget that the main suppliers of goods and largely the services the Government gives out are from the private sector.

Similarly, if you look at the portfolio of Government in the GDP of the country, you realise that it is less than a third; meaning that over two-thirds is basically in the private hands or private persons in this country. So, when we talk about volumes of bribery and volumes of corruption in the country, if it is 100 per cent, then definitely over 70 per cent is contributed to by either individuals or private persons in their capacities either as they deal with the Government or in their capacities as they deal among themselves to an extent that this Bill really brings out something that has not been clearly looked at; the private person, the private hand in the whole scenario of corruption in the country.

I support this Bill largely based on two things. First, it has extended focus to the private persons in terms of the processes that we look at when dealing with issues of corruption. The second one is the element of reporting. Looking at both the issue of focus on the private persons or entities and that of reporting, we have realized over a period of time that reporting cases of crime or being a witness in this country has been very expensive. In as much as the Bill still talks about the witness protection programme or protection of whistle-blowers, the process of administering that is still fairly cumbersome and expensive such that it has been too expensive for one to be a witness in this country even in terms of ordinary cases in court. You sometimes have to appear on your own and bear the cost of being a witness. You have to do all manner of things plus expend your time and resources. Many people are constantly not able to be witnesses even when crimes are committed in their own sight. This is an important area that we still need to look at to see what it is. Is the issue just being a witness or are there also costs that are attendant to you being a witness in terms of resource and time? Could we talk about some elements of compensation? Could we talk about facilitation for whistle-blowers; not just protecting them against the people they are reporting about, but also protecting them in terms of the cost and time? That is how you encourage individuals to report incidents of corruption.

Like I mentioned earlier, there are people who deal with the Government such as service providers and contractors. You normally hear talk about the Government constructing a road, but it is actually the private contractors who have constructed the road. The Government contracts out the service. The quality of the works and material are never looked at in terms of the time span of the construction of the road. Roads, sometimes, look very beautiful on the face of it. However, we have never come up with clear standards that if a road is done to this kind of level, it should last for 15 or 20 years. Nobody adheres to this. By the end of the day, the Government has facilitated an environment where some of those private contractors have thrived with regard to issues of bribery and corruption. As we discuss this Bill, it is important that we look at these areas much more appropriately.

We glorify the good life and how people live their lives without looking at how someone generates all those good things. We have been talking about conducting a lifestyle audit of those people. Nairobi is full of paper-pushers at the county headquarters. People who wake up only to push-paper from 10 O'clock and by midday they are done. They are the guys who use up quite a bit of resources that are in the hands of the government, both at the national level and the county level. This is a timely Bill and we need to support it.

The other important thing is the role of the Ethics and Anti-Corruption Commission (EACC). Regardless of the way it has metamorphosed over a period of time, there is not a single period that this Commission has ever worked for two years without controversies. That is why I have a problem with the Bill. This Bill has placed the EACC in front of everything else in terms of reporting cases of corruption. You have to report to that Commission. The Commission is largely based in Nairobi. It is not anywhere else. The cases of corruption and incidents of bribery taking place outside Nairobi are massive. Saying that this Commission is the institution that we have to report to when there are issues that are related to bribery is something that needs to be looked at. We need additional agencies, either existing ones or decentralising agencies that exist so that people are able to access them. When you connect that with the cost of being a witness, it has been fairly inhibiting. My problem with this Bill is that the nature of the EACC and the way it has operated over a period of time cannot match the object of this Bill.

We know how the issues of corruption and bribery have permeated to every level. Sometimes, I have joked at one moment that even our own workers at the constituency engage in all manner of things. These are things that happen largely due to what you could call workman's bribery. We have been talking about workman's compensation in terms of issues to do with incidents of damage or when one gets injured, but there are things that are happening behind us that you could call workman's bribery. There are people who do not want to see your back. The issue of bribery has really permeated our community and society. This law, like some of us have said, need to look at the issues of penalties.

What is happening in Tanzania is sometimes very interesting. Penalties have been made cheaper, but they are paid cumulatively. The Government gets a lot of money, but the people being fined realise that it is very expensive in the long run. In Tanzania, if your car is defective or, maybe, because you do not have a fire extinguisher, you pay the Government the equivalent of Kshs2,000 on the spot. You are given a week to rectify the problem. The following week, if that is not done, you still continue paying Kshs2,000 for that one single thing. The Government ends up generating a lot of money. On the other hand, it has been made cheaper in terms of how individuals can take care and make sure that some of those things are fixed.

I beg to support the Bill. There are areas that need to be strengthened. Such issues like bribery should be looked into seriously in the country.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have the Member for Mukurweini.

**Hon. Kabando wa Kabando:** Thank you, Hon. Temporary Deputy Speaker. I rise to contribute. While one may be compelled not to directly oppose new legislation that is meant to address general issues of public service, governance and so on and so forth, it is good to observe that in the true content of this Bill, I do not see anything spectacularly unique, refreshing or different which will cause any immediate or distant difference in the way matters to do with corruption, stealing or whatever definition you would call bribing or being bribed are being dealt with. Nevertheless, it is good to note that every time we preach afresh or give another motivational speech to audiences that have been spoken to many times before and even in old

age when they have lived over decades and have received the same specimen or formula for their lives, it is revival and to renew things that make them be remembered. Therefore, it is not always that everything being said and done is different or new. The fact that it is being repeated can be very tiring.

In this country, we have very many laws in place and it is good to wonder whether the plethora of these laws will make significant difference or whether it will be another citation. This is for academic exercise or rather a debate that will make us feel appeased.

We have the anti-corruption laws, Public Officer Ethics Act, the Proceeds of Crime and Anti-Money Laundering Act and Counter-Trafficking in Persons Act. As we approach the sunset of the 11<sup>th</sup> Parliament, we need to ask about specific achievements that have been made. Is it us who are legislating slowly or is it the organisations that are supposed to implement? My submission in this contribution is that it is a question of implementation, methodology and our culture. It is true that people are being examined every day in primary schools and universities and people are promoted and ranked every day in their jobs, others are demoted and others lose their jobs. It is a fact that we do not have a single deterrence in terms of punishment for bribery. It is true that the private sector takes 80 per cent of the money from corruption. I laud the President for inviting the private sector to help us address national problems because the Government must have good partnerships with them in order to have inclusive participation.

We have the Public Officer Ethics Act that was introduced by the celebrated National Rainbow Coalition (NARC), then nascent, on the fall of the Kenya African National Unity (KANU) oligarchy in 2002. There was a lot of enthusiasm and spirit in the Mwai Kibaki administration. The public was arresting officers on the road and marshalling them to police stations. Officers in charge of police stations were receiving them and reports recorded. There was rebirth and excitement in the country. The Public Officer Ethics Act, though passed in 2003, is moribund. It has not been effected. There is a Chinese saying that goes: "A fish starts rotting from the head". That being the case, Parliament, the Executive and the Judiciary should lead the way. I do not think it is unfair to say that Judiciary has been a serious impediment in the efforts to fight corruption. There are people serving the national Government and the county governments who can short-circuit their way into the corridors of power in the Judiciary and suspend hearings and cases against them. These people continue showcasing their ill-gotten wealth and they are seeking affluence around here.

This Bill is okay, but it is another citation. If you are a Christian and believe in the holy scripture and supplicate to your Almighty and you go to church, and do the opposite from Monday through to Saturday, even if you go to church the following Sunday, you will still be the same character and the spirit of evil will still be embedded in you.

I recently submitted a comprehensive memorandum to the Joint Select Committee on IEBC matters and I suggested improvement of the electoral laws in areas of ethics. For instance, we have said that seven months before elections, we should not do public collections and *Harambees* because we do not want people who are aspirants or incumbents to misuse public officers or start stealing from the public sector, or compelling people who are doing business to give them money for campaigns.

Cap. 106, Section 5 or 6 of the Public Collections Act talks about the punishment that is meted to individuals who are caught. It talks about penalties of Kshs2,500 and Kshs5,000, but that is subservient or low compared to the Public Officer Ethics Act and the Anti-Corruption Act which creates the Ethics and Anti-Corruption Commission (EACC). I would like anybody interested in the improvement of ethics, governance and end of corruption and, therefore, issues

of bribery, to support this without hesitation, but necessarily with an addition that the call is on us as the national Government, the National Assembly, the Senate, the Judiciary and the Executive to carry a system that will allow us to punish duly. I know people do not want to talk about the chickengate or Anglo-Leasing. When some of us raised issues of Anglo-Leasing some years back, we were bastardised and insulted everywhere.

I am happy to see the Vice-Chairman of the Departmental Committee on Finance, Planning and Trade here, but the only question that has not been answered in this Parliament is the question I asked nearly four years ago about the Kroll Report that was commissioned by the NARC administration under Mwai Kibaki in 2003, that talked about nearly Kshs1trillion that was stolen during the KANU totalitarian regime. This has been documented and the National Treasury public coffers were used to commission Kroll Associates, a United Kingdom (UK) based firm, to investigate on the money in banks, deposits on land and other estates bought through corruption.

Parliament has been frustrated and the CS has, for four years, refused to answer that question. It is only last week that he said that it will be taken to the Attorney-General's (AGs) Chamber. We need to bell the cat and walk the talk.

May God bless Kenya. Let us live the spirit.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. (Ms.) Zuleikha Juma.

**Hon. (Ms.) Juma:** Asante sana, Mhe. Naibu Spika wa Muda kwa kunipa nafasi hii kuchangia Mswada wa kusitisha hongo. Tunapopitisha sheria hapa Bungeni, tunaomba kuwa viungo vya Serikali vinavyohusika vitahakikisha kuwa sheria hizi zinafuatwa. Serikali inafaa kufanya kazi yake hususan vitengo vya polisi na usalama na kile kinachokabiliana na ufitadi kuhakikisha kuwa sheria hizi zinafuatwa. Sheria hizi zikifuatwa, ufitadi utaisha. Mwananchi wa kawaida hawezi pata huduma za afya, ambazo ni haki yake, ilhali analipa ushuru. Kule hospitalini, inabidi mtu atoe hongo ili aweze kuona daktari. Ni jambo la kusikitisha sana. Tatizo haliko hapo peke yake lakini liko katika sehemu tofauti tofauti mpaka barabarani kuhusu polisi. Wananchi walioamua kuingia katika sekta ya usafiri wanapata shida sana. Wanalazimishwa kutoa hongo na polisi na wakati mwingine wanasingiziwe makosa ambayo si ya ukweli. Hili ni jambo ambalo linaozesha nchi yetu. Nchi ya Kenya inaweza kuwa kati ya zile nchi ambazo zimeendelea sana. Mwenyezi Mungu ametubariki na amani na Wakenya wengi wenye akili za kukuza uchumi. Uozo wetu mkubwa wenye kutudhuru zaidi ni ufitadi.

Kandarasi katika Serikali Kuu na serikali za kaunti hazipeanwi inavyotakikana kisheria. Ni mpaka watu watoe hongo ndio kandarasi zao ziangaliwe na wakubali kugawanya senti na maafisa wa Serikali.

Mhe. Naibu Spika wa Muda, utashangaa kuwa ni shida kwa wananchi kupata vitambulisho. Mtu akifika pale, kitambulisho hakipatikani lakini akitoa shilingi elfu moja, kwa mfano, kitambulisho chake kinapatikana. Saa hii, Wakenya wengi bado hawajasajiliwa kuwa wapiga kura. Tunataka Wakenya wengi wasajiliwe kupiga kura. Uozo huu unatoka juu kwenye viongozi mpaka kwa wafanyikazi wa chini katika nyanja za Serikali. Ningetaka kuilaumu Serikali zaidi kuliko sekta za kibinafsi kwa sababu sekta ya kibinafsi ni lazima ipitie kwa Serikali ili ifanye kazi zake.

Maswala ya hongo yanawasumbua wananchi sana kwa sababu utaona kuna kampuni ambazo zinachukua ardhi ya wananchi kiharamu. Kule Kwale ninakotoka, kuna shule moja katika Wadi ya Kasemeni ambayo ardhi yake inataka kuchukuliwa na kampuni fulani. Mara nyingi utaona ufitadi umeingia mahali kama hapo na sheria haikufuata mkondo wake vizuri.



Pia, katika sekta ya siasa, utaona kuwa wananchi wamezoea kupewa hongo katika maswala ya kuwachagua viongozi. Jambo hili limewafanya Wakenya kuenda njia mbaya kwa sababu mara nyingi, wananchi huenda wakamchagua mtu atakayewapatia pesa zaidi, atakayewanunulia nguo au chakula ili wamukubali kama kiongozi. Mara nyingi, mtu atatumia pesa nyingi na akiingia katika uongozi atatafuta njia za kuregesha zile pesa zake. Kando na kuwachagua viongozi wabaya kwa sababu ya hongo, kuna shida ya kuwa wananchi wetu, kwa sababu ya kutegemea sana kupewa hongo na wanasiasa, wanapunguza nafasi yao ya kujibunia njia tofauti tofauti za kujiimarisha kisiasa. Mara nyingi utamsikia mtu ako na shida fulani na njia pekee ambayo ataweza kupata msaada ni kupitia kwa mwanasiasa badala ya yeye mwenyewe kubuni suluhisho. Hii inatokea kwa kuzoea pesa. Hii ni mila ambayo imekuwa kwa nchi yetu kwa miaka mingi na itachukua muda kuiondoa.

Kama nilivyozungumza awali, vitengo vya usalama kama polisi na shirika la kupigana na ufisadi wakichukulia kazi yao kama inavyotakikana, haya mambo yataisha nchini yetu na tutasonga mbele.

Kwa hayo machache, shukrani kwa kunipa muda huu wa kuchangia.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Let us have Hon. Ributhi.

**Hon. Gaichuhie:** Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to this Bill.

From the outset, I support the Bill. As Hon. Kabando said, I want to say that it is good we continue supporting legislation that is going to help us fight corruption. We already have a lot of pieces of legislation to fight corruption. The only thing I am happy about is that there is inclusion of the private sector.

However, I do not think there was anything that barred the private sector from reporting bribery cases. What we need in this country is not pieces of legislation, but the goodwill to fight corruption. We have all the agencies that are supposed to be fighting corruption, but we have very many references where cases have been reported. Even 10 years ago people were caught red-handed, but investigations are still pending. We have seen people who have been caught receiving bribes, taken to court the following day and then given a cash bail of Kshs10,000 when they were receiving a bribe of Kshs1 million. Then, it takes almost five years before the case is concluded. We never know if the cases are concluded or they are bribed out. We have instances where even the former Chief Justice has said he was unable to continue running the courts because of the corruption that is deep entrenched in our courts.

We need to have laws that will give time limits on how long it takes to investigate a case and how it is concluded and the period it is concluded. When we see fines that say a maximum of Kshs10 million and then giving a judge the discretion of even giving a fine of Kshs10,000, it is not proper. We should set the minimum limits when one is caught on corruption or even bribery charges. If our institutions work, we have enough pieces of legislation.

About the reporting of bribery, it has always been open. We are allowed to report corruption. We do not need a law that tells us that we must report corruption. It is a moral duty to report corruption. We need to have corruption fought from the top. If the top is willing, things will move. It is when the President came into this House and cited cases of corruption that we saw wheels rolling. People were suspended and some even lost their jobs. After that, things continued as usual. Cases have been reported. Cases are going on in court which are clear, yet it will take another age for them to be concluded.

What we need to do and we should bring amendments to this Bill is to include the time limit when reporting is done. The Bill provides that you should report within 24 hours if you

suspect. We also need to say how long the case should take once you report, so that we can know how long it will take to take the suspects to court. We should say it is not only the small people who will be taken to court. When you post a police officer on our roads, they will tell you it is a chain. They have to take bribes which they have to transmit to their heads. We saw the clean-up in the National Police Service where they were saying people were found with a lot of money. The only thing they did is just to suspend the police officers. We have not seen any, even a single one, being taken to court. If somebody has been suspended or dismissed because of corruption, I think the next course of action would have been to take them to court.

As we continue legislating, we need to have strict timelines, the goodwill of everybody to fight corruption and ask the private sector to support this. The Government does not do business alone. They do business with the private sector. If the private sector is keen to fight corruption, we shall have won the war on corruption.

Otherwise, I support the Bill and ask everybody to take a step forward and come out clearly. We have all the laws. We have even the Witness Protection Act, which we need to look at because it is also very hard to get witnesses protected. If witnesses are protected, more people will report bribery cases. Also, it takes two to tangle. We should also allow people to report bribery, if they bribe, because at times you are forced to bribe. If you are forced to bribe, it is good to say, "yes, I bribed so and so because he forced me to bribe." We should protect that person. He should not be treated just like a criminal, but as a witness.

With those very few remarks, I thank you and ask that we be serious on the war against corruption.

**The Temporary Deputy Speaker** (Hon. Cheboi): I give the Floor to Hon. Keraa.

**Hon. (Ms.) Keraa:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to also contribute to this important Bill about bribery.

Bribery and corruption have paralysed this country very much. When you go to hospitals, you do not get free services. You must give something to get services quickly. When you are on the road, sometimes you overspeed and you have to give something to the police to be let free. I support this Bill very much. Measures should be put in place to prevent bribery. This Bill provides for the giver to be penalised, although sometimes, one is forced to do so. For example, you may be looking for a passport and there is no way out, but to give something. We have to put it here that if you are forced to bribe, then you have to report this to the authorities, so that they know that you were forced to do so.

We have many forms of bribery one being in employment. For example, in our counties, there are very many job opportunities, but you cannot get them for free. Most people in the counties have sold their land to secure jobs in the county. This is a problem which we need to solve and prevent.

I support this Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have Hon. Kibunguchy.

**Hon. (Dr.) Kibunguchy:** Thank you, Hon. Temporary Deputy Speaker. I also stand to support this Bill on bribery. I will start off from what the President said recently. When he was talking to contractors who are building roads, he said it is ridiculous for a kilometre of tarmac to cost Kshs120 million. When you translate this to many things, that is why it is very expensive to do business in this country. One area that we all know and have gone through is the area of contracts. That is where most of the bribes are given.

I will give you another example. Since I was voted in in 2013, I have done a number of bridges in my constituency using the NGCDF. As of now, we are looking at a figure of about 15

bridges. The most expensive that I have done is going to cost us Kshs5 million. Recently, one of the bridges that were built during the colonial days collapsed and I asked the people from the Ministry concerned with public works to come and give us an estimate of how much it will cost. We were given a cost of Kshs31 million yet it is a small bridge. I looked at it and I almost cried because the difference between the bridges we are constructing, which are of good quality, and what the Ministry is going to do, is almost 10 times the cost of what we are spending. That is really why the Government loses a lot of money in this country.

I know many Members have gone through this. Most Government entities tend to hide whatever they are doing in terms of bribery when it comes to question of auditors. When auditors go to audit whatever work has been done, they give them a clean bill of health, but behind the scenes they have been bribed. When *Wananchi* go to the ground, they cannot see what the money has done in terms of physical facilities.

In my constituency, I have always insisted that auditors should not only audit on paper, but they should look at the books and the procurement processes. They must also go to the ground and see the actual facility that has been done, so that they are satisfied that the amount of money that has gone into a particular facility is equivalent to the amount of money they have seen. That is the best auditing and I would like to encourage that as we go forward, we go that way.

Many Members have alluded to the fact that in this country, we have two things that, in my view, fuel corruption and bribery. One, we have a mentality of instant coffee. We want to become rich instantly. It is like you wake up in the morning, boil water, put it in a cup and drop coffee in it and you start drinking it. Everybody wants to get rich quickly. People who have just graduated from universities want to get rich quickly. They want to drive a Prado like Dr. Kibunguchy. They want to drive big cars and live in big houses without knowing that you took many years to get to where you have reached.

Unfortunately, in this country, people tend to worship people that have wealth, who can flout their wealth, move around and contribute big money in *harambees*. That is one area that fuels bribery and corruption. As many have said, we have passed many anti-corruption laws like the Public Officer Ethics Act. In my view, this country is ripe to get what I would call a benevolent dictator, somebody who can crack the whip and do something tangible. I think all these laws and cases which drag on forever will never get this country anywhere. We need a benevolent dictator. Like Hon. Kang'ata said, there is a President in Philippines who said that he was going to crash the drug lords and he is doing it. We need a President like that of Tanzania, President Magufuli, who after some time, is going to shape Tanzania to a country that many will admire.

This country needs somebody who is strong and who can come down. Kenyans of goodwill give him the goodwill to do that work, so that we can make it extremely expensive to be involved in corruption and bribery. That must be actualised. Otherwise, we will pass laws, say that we need to deal with the giver and the taker, but get nowhere. Those are excellent words, but we must translate them into action and get a leader who can demonstrate and do that.

We need to have a leader who can fight corruption. Our Presidents stay in office for two terms. In the first term, the President is very busy making sure that he pleases everybody, so that he can be voted in again. I do not know whether that eventually sorts us out. In the second term, we have a lame duck President. Everybody's attention moves to other people who are supposed to succeed him. I am sure, if we get a President who can stamp his authority and get things moving, regardless of whether he will be stepping on the toes of the people who supported him

most, Kenyans of goodwill will give him a second term. If somebody passes a word to the President of Kenya, that would be my message to him. Let him come out, work and step on people's toes, even if they are very close to him, and Kenyans will vote him back in 2017.

As a country, we cannot keep on crying about cartels. As the former Chief Justice said, this is a country of bandit economy. We need the Head of State to sort out this country.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Members, I hope you can move fast because we are beginning to repeat ourselves. Let us not go against our Standing Orders.

I will give opportunity to Hon. Kimaru.

**Hon. Kimaru:** Thank you very much, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to one of the most important Bills that the 11<sup>th</sup> Parliament is going to pass, namely, the Bribery Bill. Bribery is synonymous to corruption because it leads to corruption. As mentioned by other speakers before me, for bribery and corruption to take place, there must be a giver and taker. There has been a general belief that most corruption, and by extension bribery, takes place in the public sector. However, those who have been driving the forces of corruption are in the private sector. These are the people who induce and facilitate corruption in this country.

Corruption has caused untold suffering in various sectors of our economy including the manufacturing sector. Kenyans consume low quality products because of corruption. Certain ingredients that should be put in a final product are not added because people want to reduce the cost of production and increase their profit margins. For example, in the pharmaceutical industry, certain components of certain medicines are not added because of corruption. The consumer does not get full quality of the final product.

There is also bribery in the education sector. Lecturers are not very keen on looking at examination scripts. So, we end up with pseudo academicians. This has very serious effects on education. There is also a problem in the transport sector. Some of the accidents that happen on our roads every day happen because traffic police officers do not enforce compliance to traffic rules. In the long run, you find that big vehicles are overloaded and *matatus* carry excess passengers. The result is suffering and deaths on our roads.

We want to say "no" to corruption. The 9<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Parliaments have passed many laws, but what is lacking in this country is enforcement. The corruption menace, which has turned out to be a cancer of some sort, has taken this country to ransom. Countries which were at one point at the same level of economic growth with Kenya in terms of GDP and per capita income, have since overtaken us because of corruption.

Previously, we passed laws which provided for blacklisting of companies which engage in corruption. We now need to go beyond such remedies. We need to look at the directors of companies because companies do not engage in corruption, but directors do.

We need to introduce a raft of amendments to this Bill in order to catch the aspirations and expectations of Kenyans. Kenyans who are watching us deliberating this Bill are saying that this is a very important Bill. It should shed light on the operations of NGOs, certain lawyers and insurance companies, who engage in corruption. The CS, in whose docket this Bill is domiciled, should enforce the law to ensure that NGOs, lawyers, insurance companies and casinos make full disclosures of their financial statements. There are sagas in the Ethics and Anti-Corruption Commission (EACC). Does it mean that we cannot fight the corruption menace because the head of the EACC is embroiled in serious corruption issues? We want to ask the various Government agencies involved in the fight against corruption like the Office of Director of Public

Prosecutions, the Director of Criminal Investigation (CID) Department and the EACC, which needs to be rebranded, to pull up their socks and ensure that we fight corruption. Unless we fight corruption, this country will not move anywhere. We miss the fight against corruption because of lack of implementation.

Even students in school do not want to work hard. They want to be given examination leakages, so that they can get clean “As”. They are admitted in university to pursue Medicine courses, but because they do not have what it takes to pursue such courses, they do so for the first year and then in second year, they opt to do Mathematics, where they also fail because of the same reasons. They cannot move forward.

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Hon. Kimaru! What is it, Hon. Gikaria?

**Hon. Kimaru:** Hon. Temporary Deputy Speaker, Hon. Gikaria has come in late. He is trying to catch up with the proceedings in Parliament. We fail in the implementation of laws that have been passed by this House to fight corruption. We are calling upon the various Government agencies including the EACC, the DPP and the Director, CID, to implement most of the provisions that Parliament passes.

With those few remarks, I support the Bill. I ask Hon. Members to endorse it.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Wanyonyi!

**Hon. Wetangula:** Thank you, Hon. Temporary Deputy Speaker. I want to add my voice to this Bill. The problem we have in this country is our mindset. Unless we change it, even if we legislate on bribery, nothing will work. The pieces of legislation that have passed by this House are sufficient to address issues of bribery and corruption, but our moral fabric is rotten. We have changed the way we look at things. Some crimes are not even defined in this Bill, for example, what happens in kind. Somebody walks in an office knowing very well the laid down guidelines in terms of any application, but they want to use other means to achieve what they want.

This is a mindset. I travelled to Tokyo, Japan, and while leaving at the airport, the person who had been assisting me, I tried to appreciate him with something small, but he refused. He said he was just doing his work. When will we reach that stage where employees deliver without asking or expecting anything from the person they are serving? This is what is killing us.

The other thing which is affecting this country is the level of implementation of laws. We have so many good laws that are just gathering dust in our shelves and not being used. We also lack political good will. Until we reach a stage, as Hon. Kibunguchy said, where the President will take this menace by the horns, we will not annihilate this cancer that is bleeding our country.

When the media adversely mentioned the President of South Korea in a corruption deal, the man committed suicide. That shows how seriously people take corruption in other jurisdictions. We must look at it that the giver and the taker are equally guilty of the bribery crime. Previously, we have been dealing with the public sector alone, but now we have extended to the private sector.

I still insist that no matter how much penalty we put and how much we try to criminalise bribery, until we change our mindsets, there are many things which go under the table and nobody reports. Most of these things happen in privacy and it is very rare for people to come out and speak about them. Many of the things defined in this Bill will only work if we implemented the existing laws like the Anti-Corruption Act and the Public Officer Ethics Act.

We are moving in a direction whereby we are trying to legislate on everything. Next time we shall be legislating on our moral fabrics in our bedrooms. We do not need to do that. We only need to change our mindset. The Government and the private sector will need to invest in

educating people on morals and ethics and these should be subjects in schools. If we start from the lowest level, then we can start getting some results.

Also, the buck stops at the top. The President must take corruption by the horns. If we want to fight corruption, it must start at the top and show some good will. We have seen corruption even in our own political parties and many other sectors. We must work on this and stop bending backwards to accommodate some of these crime busters. I support and insist that until we change our mindsets, we are doing something which will not help us at all.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Ochieng.

**Hon. Ochieng:** Thank you, Hon. Temporary Deputy Speaker. I support this very important Bill. Corruption and bribery in Kenya is now a way of life. In fact, if we were to do statistics, I think all of us seated here today, will be found to have encouraged it one way or the other. The small sums of money you give to the police officer whom you like so much for doing his job well and you feel you must appreciate him, is bribery. We do this every day and it is killing our country.

A gentleman called Teh Cheang Wan was a Minister in Singapore. In 1986, he was mentioned in a scandal and he was found dead the following day. In Kenya, if they mention your name in corruption, you want to become a hero, a governor, Member of Parliament or President. Sometimes, people say they want to be involved in a scandal, so that they can run for a seat because it adds value in Kenya for one to be corrupt. When I become the President, I will not allow these kinds of things. I will not allow people to steal and hold us to ransom. If it is a judge or Minister, I will send them to Mombasa and before they get to the airport, I will kill you.

We cannot allow people who steal from us to be taken to courts because they are even buying the courts. If you know a corrupt person at the highest level, that person should die, so that we live with a few who are clean and are willing to work hard and earn an honest living. The moment we take people to court, they are granted bail and then, three to five years down the line, the issue is forgotten. Recently, a person was accused of misappropriating so much money and within two weeks, she was running for governor. People even think she can make it to be a governor. It cannot work that way.

We will solve this problem if we take radical measures. We cannot stop corruption if we are going to be discussing with corrupt people how to deal with them in courts. A few heads must roll for us to handle the scourge of corruption. Otherwise, we have seen airport contracts of Kshs52 billion being cancelled. If you dig beneath it, you find that there is corruption. Somebody is holding the Government to ransom. You cannot allow people to hold this country to ransom just because they want to do business.

Like Hon. Wanyonyi has said, you cannot hope, pray over it and talk to people to stop corruption. It cannot happen that way. People will only stop corruption the day they see it does not pay. But if it happens every day, this will not work. We must inculcate values like patience. If you are applying for an identity card, passport or any Government document, you must have the patience to wait until it is given to you normally. But because you want to move faster and want it like yesterday, you are willing to go to the next level to pay money so that you can get it.

We must be transparent people and learn to work and move together as a country. Why move faster on your own, hoping that once you amass so much wealth and become the richest person, this country will grow? It cannot grow that way. The country only grows if all of us work hard, transparently and everyone is given a fair shot of the opportunities that we have. If that does not happen, I fear that even the laws that we are passing will not yield much. We are in a

country that is being run by cartels, has lost its soul and is just running on auto pilot when it comes to transparency.

I want to end my contribution by saying that the laws that we pass are the ones promoting corruption. We have passed so many laws and I have this feeling that if we have hundreds of laws on corruption, then it will listen to us. We think that when corruption sees the many laws that we have passed, it will stop itself. It cannot stop itself. We need instantaneous action. If someone is caught red-handed driving on the wrong side of the road or with money in his bags, what are we investigating? Why do you not sentence that person? We will need to sign charters with the police, judges, magistrates and even the President. The President must show us how many people he has ensured are jailed in his Government in the fight against corruption. Otherwise, we cannot just be talking. All of us are guilty and we must change our ways. All Kenyans must change their ways. They must understand that the country is moving in the wrong direction and it is all of us who must fight corruption.

I support and hope that this Bill will go a long way in ensuring that we weed out corruption in the country.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this Bill. Even as I contribute, I want to echo the words of my good friend, Member for Westlands, Hon. Ferdinand Wanyonyi, on how we intend to govern ourselves as a country. I have said it on the Floor of this House and I want to say it again, that sometimes having many laws in the country does not necessarily mean how well the country is governed. In more ways than one, it is only a demonstration of perversity of nobility. This Bill, in my view, is utopic in so many ways.

I have a problem even with the title of the Bill because it is in more ways than one nothing more than a portrayal of extreme forms of perversity of nobility amongst us as Kenyans. The Bill calls itself “The Bribery Bill, 2016.” Are we making a Bill to encourage bribery or are we making a Bill to discourage bribery? In my own sense, I thought we should be talking about anti-bribery Bill and not Bribery Bill, 2016.

I have looked at the highlights of this Bill. If you look at the overall objectives of the Bill, the first objective is to extend the fight against corruption to the private sector especially by criminalising bribery in the private sector. My sense, and again I echo the words of my good friend, Hon. Timothy Wanyonyi, we already have enough laws to deal with the problem of bribery and corruption in Kenya. In fact, what is lacking in our country and what has been lacking for a long time, is not the absence of laws, but the will to apply those laws.

In this Bill, one of the objectives is to create a legal obligation for every person who becomes aware of an act of bribery to report the matter to the EACC. I am not a lawyer, but I just wonder how effectively you can force someone to be a witness. That is a question that this Bill should answer. In fact, I have just been going through the Bill of Rights. I would have to be convinced that that provision will not be in conflict with certain provisions of the Bill of Rights in our Constitution.

Clause 4 relates to the application of the Act. It provides that the Act shall apply to public entities, public officers and private entities. The clause contains a provision which empowers the CS by notice in the Gazette to limit or extend the application of the Act. What are we saying? Are we saying that in matters corruption or bribery, the CS in this instance sits at a high pedestal that he would not be a perpetrator of bribery and corruption?

This morning, we had an amendment to the Public Benefits Organisations Act. The reason we had that amendment brought by my good friend, the Member for Ndiwa, Hon.

Aghostinho Neto, was because the CS has been reluctant to give effect to the instruments that will operationalise that Bill. Yet again, you are putting a CS, a person who is not elected by anybody, an appointee of the President nevertheless, to be the one to decide the parts of the Act to put in the Gazette. That is a dangerous provision. If you look at Clause 10, you are saying that you criminalise failure by private entities to prevent bribery. What if that failure is inadvertent? What if that failure is not intentional? Such provisions tend to portray utopic ambitions which are not applicable in real life.

Clause 12 provides for the publication of guidelines and procedures again by the CS. How then do we delink subjectivity and discretion from the actions of the CS? If you give the CS all these powers for publication, guidance and procedures, are we not unwittingly making the CS to be participant in writing of this law?

Part IV of this Bill contains provisions on offences. Clause 14 places an obligation on every person to report to the EACC any incident of bribery they witness or become aware of. It creates the offence of failure to do so. Again, can you force someone to be a witness if they do not want to be one?

Clause 15 of this Bill deals with extraterritorial applications. This, in my view, is a very interesting provision. I happened to have gone to the Netherlands one day and everyone knows that the consumption of *marijuana* is allowed there. What if this this provision is not an offence in that territory? There are some countries which allow consumption of *marijuana*. There are some states in the USA that allow it. How will we deal with you if you commit that offence?

I am also aware that in some countries, what you call a bribe is called commission. In fact, if you go, for example, to a city like Washington DC, you have all these people who you call lobbyists. They will help you get a job. Once you get it, you put up a mark-up. The only difference is that they pay a tax on that mark-up. In Kenya, that does not apply and would that be considered bribery?

When you look at Clause 22, again, the CS makes regulations in consultation with the EACC for better carrying out of the provisions of this Act. Again, are we suggesting that the CS would himself be incorruptible? Are we suggesting that the CS would himself be immune to bribery? It is the same lacuna that we find ourselves in. Remember when we did the Public Audit Act, we asked ourselves how the CS for National Treasury, who is a major auditee, can be the one making regulation to govern the Public Audit Act. Is this not a contradiction that the CS in charge is incorruptible?

On the statement on delegated legislative powers, we delegate legislative powers to the CS. We also talk of the Bill not concerning county governments. How can that be? How can this Bill not concern county governments? We know that if there is anything which has been effectively devolved in Kenya, it is the pervasive, shameless, heartless corruption in the counties where some governors, who were virtually on the verge of bankruptcy, now live like mini-presidents in the counties from money taken from the people of Kenya.

I want to conclude by saying this and I have said it before, that I believe that if Kenyans were to embrace merely the provisions of the preamble of our Constitution, this country will not need all these many laws we keep making all the time. The preamble talks about acknowledging the supremacy of God the Almighty, honouring the heroes who fought for our Independence, proud of our ethnic diversity - that does not mean that you disregard somebody from another community - and respectful of our environment. How often do we destroy the environment? By merely embracing the preamble of our Constitution, we will not need the plethora of Bills which go merely to show that, as a country, we have serious perversity of nobility among us.



I reluctantly support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us have Hon. Njogu Barua.

**Hon. Barua:** Thank you, Hon. Temporary Deputy Speaker, for this opportunity to contribute to this Bill which is referred to as the Bribery Bill, 2016. As the previous speaker has said, the title does not sound appropriate because a Bribery Bill compared to an Anti-Bribery Bill is an issue that might be considered. We may be required to make an amendment during the Committee of the whole House.

This is a very important Bill at this particular time in the development of our nation. The fight against corruption in this country has not failed because we do not have adequate laws. In fact, we have more than enough laws to fight corruption and bribery.

The only new thing that has encouraged me is the mention of the private sector. We have to get concerned about this area when we talk about corruption. It takes two to tango. For the private sector to commit an act of corruption, they must collude with somebody in the public sector. The biggest business for the private sector is the public sector. What the private sector makes from its business is what they call profit. I do not think they mind having a big profit as possible. My opinion is that corruption in the private sector is encouraged by officers in public service who leak information on the tendering requirements hence we end up getting bloated costs for goods and services. In so doing, our country loses a lot of money.

A new terminology has come to light today in terms of having a line of professionals called “tenderpreneurs”. Their work is to deal with tenders, to manipulate tenders and engage in corruption with people who offer tenders, so that they can make a lot of money. That is why we have the “chickengate”, “Triton” and all these names on corruption. We need to put the private sector to task, so that we can get as much disclosures as possible. Even if the private sector is doing business with the public sector, which is public money, we must be assured as tax-payers that the profit they make from offering services to the Government is within the acceptable limit.

The other issue I would like to comment on is about the obligation under this Act for every person who becomes aware about a corruption deal to report it to the EACC. This sounds very noble, but as we can see, in this country, we have developed very perfectly a culture of destroying institutions. Right now, the EACC is a shell of its own image. We do not have capacity to handle all these corruption cases in the event that all of us, as citizens, comply. For us to effectively fight corruption, we must ensure that institutions are protected and the people serving in those institutions have a sense of job security and feel that they are not going to be hounded out of office any time somebody gets unhappy with what is going on, whether they are right or wrong.

We have just witnessed the IEBC commissioners being pushed out of office because of concerns and demonstrations. Instead of people getting to a round table, we resorted to violence hence reasoning was thrown out of the window.

We also have to encourage tolerance to one another, so that we can discuss and get the best of this country. The three responsibilities of the National Assembly and the county assemblies are representation, oversight and legislation. This House cannot go without taking a share of blame. If the National Assembly, the Senate and county assemblies were to do their jobs properly and not become agents of the Executive either at the county or at the national level, we may not require this type of law because we will tackle corruption and deal with it. Right now counties have, through the Constitution, effectively devolved corruption. The MCAs, who oversee governors, have neither capacity nor the will. I call upon the National Assembly and the county assemblies, apart from making laws, to play our oversight role properly and not get

compromised by the Executive. If we do that, we shall fight corruption in the way it is supposed to be fought.

I can see some Members want to contribute and are hurrying me up. I would like to say that one of the key ingredients of corruption is a corrupt election process, mainly the nomination process in political parties. If you elect people corruptly, you also expect them not to work against corruption. A corrupt system only generates corrupt leaders. In future, let us all support the Constitution. Let us look at Chapter Six of the Constitution and see how we can make use of it when we decide who is to be our leader at the various levels.

Finally, I am happy the Chairman and the Vice-Chair of the Public Accounts Committee are in the House. Our Order No.13 is talking about adoption of the Report of the PAC. The issue of concern to me is that we are adopting Volume I and Volume II of 2013/2014 yet we are now in 2016/2017. We are approaching the sunset of this Parliament. We are concluding the last year of our term. I am not laying blame on anybody, but just making an observation that the oversight Committees of this House must do our work properly. We have the Public Investments Committee which investigates expenditure by parastatals. Reports have been tabled, but not much has been done in implementation. A time has come for us, as Parliament, to ensure that we do not legislate in vain and whatever we legislate is acted on. By so doing, we shall fight corruption.

I beg to support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Wanjiku Muhia.

**Hon. (Ms.) Muhia:** Thank you, Hon. Temporary Deputy Speaker. I will take a shorter time than my colleague because this is a Bill that every Member wants to contribute to.

I come from a school of thought where I feel we may not succeed by making and attempting to implement all these laws. I am in the school of thought with Hon. Kang'ata that until the day we shall hang somebody and celebrate that the person has been hanged and gone to live with the creator either in hell or heaven, we will not succeed in the fight against corruption. That is the only time we shall succeed in this war against corruption. Corruption has become a societal problem. It has gone a notch higher and spread to our children. They are cheating in examinations because they believe if they do so, they will succeed. Today, young people believe that they can only be rich and make money very easily through corruption.

We have a problem with the EACC. When a corrupt person is summoned by the EACC, he or she is escorted by *boda bodas* and women dancing. It is like we celebrate corruption in this country. We only need one law. May be we should merge all the laws and mete out punishment that befits the crime. When people steal billion of shillings from our public coffers, our roads and hospitals cannot be constructed.

Last year, we engaged in the fight against illicit brew. Most of the alcohol that we poured out was very well labelled and stamped and bore the Kenya Bureau of Standards (KEBS) stamp yet our young men and women were dying from these illicit brews. Corruption will not end soon unless we properly deal with it.

We need to take very serious action to aid institutions of higher learning. We have seen the media sometimes pointing out some institutions which are endangering our lives. You find a school of aviation training students in engineering and aviation. How will they qualify as pilots from such institutions? How have these institutions acquired their licences? I witnessed in one prestigious hospital here in Nairobi a qualified graduate doctor struggling to identify the vein in a baby. These are students who have cheated in examinations and are assumed to have passed

these examinations. There is lack of respect for the rule of law in our country which we need to condemn strongly until the condemnation becomes a reality.

With those few remarks, I support the Bill, but we need to propose very radical amendments during the Committee of the whole House stage. I hope I have left some few minutes for my good colleagues.

**Hon. Koyi:** Thank you, Hon. Temporary Deputy Speaker for also giving me a chance to contribute.

We have passed many laws in this country about bribery and corruption. We have been let down by the EACC. Sometimes we encourage corruption. Most of the rich people in this country are corrupt and most of them are politicians and senior civil servants. I cited one case the other day of a person who is still a civil servant at the National Treasury putting up buildings worth almost Kshs1 billion. You wonder where a civil servant working at the National Treasury can get the money to put up buildings worth Kshs1 billion. You wonder where he got this money from. To stop corruption, we must start with this House. Some of us in this House are corrupt. I cannot say all of us, but some of us are corrupt.

I once wrote a letter to the Chief Executive Officer (CEO) of the EACC to investigate a case in my constituency where a small generator house was built at a cost of Kshs15 million. In my view, that should have been built at a cost of Kshs200,000. Nothing has happened since 2014. What is their work?

There were tanks that were built before I was born in the 50s, but the county government renovated them at a cost of Kshs27 million. I again wrote to the CEO of the EACC to investigate that case, but he has not responded since then. The EACC is not fighting corruption, but misusing public money. They earn salaries and sometimes people bribe them so that they are not investigated. We are wasting public funds by having a body that is not bearing fruits to the public.

I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Gikaria.

**Hon. Gikaria:** Thank you, Hon. Temporary Deputy Speaker. I would also like to thank my colleagues for adhering to the Standing Orders, so that we avoid repetition and allow other Members to contribute.

I would like to thank the President for showing commitment to fight corruption by having all the relevant laws in place. This House has passed so many laws that are supposed to fight corruption, but it calls for goodwill to implement them. If there is no goodwill in fighting corruption, all this will be an exercise in futility and we might not even achieve the intended purpose of implementing these laws. If we do not implement these laws and the CS does not facilitate their operationalisation, it becomes difficult for us to fight corruption.

It has always been said that corruption only happens in public offices, but this law creates a new dimension that the private sector has a responsibility to prevent cases of corruption. The definitions have been given in other laws.

We have to be serious in the fight against bribery. The Bribery Bill says that it is a crime to promise to give a bribe. How does it become a crime yet the actual transaction has not been done? These are issues that we need to look at. The aspect of the EACC being responsible in terms of enforcement of laws is wanting. It has, in itself, lost credibility.

We need to put a lot of emphasis on this. Our vetting process must be above board, so that if we bring a Chairman or a commissioner in the EACC, they must be above board. If my personal assistant, for example, receives a bribe on my behalf, I am an associate and I should be

charged for that offence for purposes of that law. At the same time, we need to be very careful. We have seen this in the *matatu* industry. We have seen the National Transport and Safety Authority (NTSA) taking action against a whole bus.

With those few remarks, I thank you for giving me this opportunity to air my views. I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): It is now the opportunity for the Mover to reply. I cannot see the Mover in the House.

Just to be clear, when we resume debate, it will be the opportunity for the Mover to respond. So, Members will not be contributing any more. That was the last contribution. It is unnecessary to call the next Order at this point in time.

Okay, let us have the next Order.

**The Temporary Deputy Speaker** (Hon. Cheboi): Next Order.

#### THE BETTING, LOTTERIES AND GAMING (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Cheboi): The Mover is also not here. You will have to call the next Order. That one will be deferred.

**Hon. Gikaria:** On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): What is your point of order, Hon. Gikaria?

**Hon. Gikaria:** Hon. Temporary Deputy Speaker, I just needed to understand something. Yesterday, there was a Motion by Hon. Jakoyo Midiwo, which was thrown out regarding betting. Is it the same or this is now a Bill?

**The Temporary Deputy Speaker** (Hon. Cheboi): If I understand it clear, what Hon. Jakoyo Midiwo intended to bring was a Party Sponsored Motion, but that is now water under the bridge. What we will be talking about is the Betting, Lotteries and Gaming (Amendment) Bill. Hon. Jakoyo Midiwo's Motion did not pass.

**Hon. Gikaria:** So, we will now deal with the Bill?

**The Temporary Deputy Speaker** (Hon. Cheboi): We will be dealing with the Bill itself.

*(The Betting, Lotteries and Gaming (Amendment) Bill deferred)*

### MOTION

#### ADOPTION OF THE PUBLIC ACCOUNTS COMMITTEE REPORT FOR 2013/2014

**The Temporary Deputy Speaker** (Hon. Cheboi): For purposes of good order, Hon. Gumbo, I think it will not be good order if you started your Motion because it would create some confusion in terms of giving an opportunity to the Mover to respond to the previous one. Because there is no time, anyway, you can wait for the next sitting. Therefore, you will move the Motion immediately after this particular one is concluded. I think it is much better and it would be tidier rather than for you to be pushed again. That would be better, in my opinion. Unless you want to secure the slot, so that you can be very sure about the fact that you will be in good queue, you have a minute to start.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Speaker for the opportunity to move the Report of the Public Accounts Committee (PAC).

Before I move this Motion, let me respond to the concerns raised by my good friends, the Member for Gichugu, Dr. Njogu Barua. Even before I respond, let me congratulate him for finding time to write his Doctor of Philosophy (PhD) thesis. Some of us have been making that attempt for the last 10 years in vain.

This Report appears to have come late. The reason this Report has come late is because the Report of the Auditor-General (AG), which we were supposed to have received on 31<sup>st</sup> December 2015, came to the House early July last year. We also had a lot of problems in getting Accounting Officers to appear before the Committee as I will explain in this Report. That is why there is an apparent lapse.

**The Temporary Deputy Speaker** (Hon. Cheboi): Okay. Hon. (Eng.) Gumbo, hold it there. You have spent one minute. You will have the balance of 59 minutes because it is already time.

**Hon. (Eng.) Gumbo:** Thank you, Hon. Temporary Deputy Speaker.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Hon. Members! The time being 6.30 p.m., this House stands adjourned until Thursday, 11<sup>th</sup> August 2016 at 2.30 p.m.

The House rose at 6.30 p.m.