

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 11<sup>th</sup> October 2018

The House met at 2.30 p.m.

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

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM PARLIAMENT OF UGANDA

**Hon. Speaker:** Hon. Members, I wish to recognise in the Speaker's Gallery, a delegation from the Parliament of Uganda. The delegation is led by Hon. Robert Ssentamu Kyagulanyi and is accompanied by:

1. Hillary Musemeta;
2. Andrew Karamagi;
3. Roy Ssemboga; and
4. David Lewis.

The delegation is in the country following an invitation by the Member for Embakasi East Constituency, Hon. Owino Paul Ongili, MP, on a benchmarking exercise aimed at transferring knowledge and mutual capacity building in accountable democracy and good governance.

On my own behalf and that of the House, I welcome them to observe the proceedings in the National Assembly and wish them fruitful engagements while here.

*(Applause)*

Let us move to the next Order.

### PETITION

**Hon. Speaker:** Hon. Members, as we deal with this issue, I wish to draw the attention of the House to the fact that today we are commemorating the International Day of the Girl Child. I wish to recognise members of the group who are seated in the Speaker's Gallery.

*(Applause)*

In the meantime, I want to know from the Serjeant-at-Arms who the strangers in the House are.

Can the Serjeant-at-Arms draw the Bars?

*(The Bars were drawn)*

Hon. Members, as you can see, there are strangers at the Bar of the House. The strangers appear to be fairly young. I order that the Serjeant-at-Arms, having drawn the Bar, immediately allows Ms. Mary Georgiah Onyango, who is representing the strangers, to speak.

Proceed, Ms. Mary Georgiah Onyango, to introduce yourself.

**Ms. Mary Georgiah Onyango:** Hon. Speaker of the National Assembly and Hon. Members of the National Assembly, good afternoon.

**Hon. Members:** Good afternoon.

**Ms. Mary Georgiah Onyango:** My name is Mary Georgiah Onyango. I am 17 years old from Nairobi County, specifically Soweto area of Embakasi and a Form Three student at St. Thaddaeus High School.

Today, together with my colleagues from eight other schools, we are visiting the National Assembly as ambassadors of the girl-child. We are humbled and grateful to you, Hon. Speaker, for granting us this rare and unprecedented opportunity to appear at the Bar of the National Assembly to present a Petition that is very dear to us.

Today, being 11<sup>th</sup> October 2018, the entire world is marking the International Day of the Girl-Child. It is for this reason that we are deeply humbled for this opportunity availed by the National Assembly to raise the national profile of this annual event. As your children, we are also thrilled by the fact that Hon. Members of this House have accepted to partner with us on this journey.

Hon. Speaker we, therefore, beseech you to kindly accept to present this Petition to the House, preferably at this moment while we are still at the Bar of the House.

*(Applause)*

**Hon. Speaker:** Very well, Hon. Members. That is a fair request coming from our youth. I, therefore, direct the Serjeant-at-Arms to receive the Petition and hand it over to the Clerk.

*(Applause)*

#### REVIEW OF CHILDREN ACT, 2003

**Hon. Speaker:** Very well, Hon. Members. I have perused this Petition and found it in order and in compliance with our rules. I will proceed to read it in terms of Standing Order No.225(2)(b) requiring as usual the Speaker to read to the House a petition other than those presented by Members. This one is by Mary Georgiah Onyango, a student at St. Thaddaeus High School on behalf of the girl-child of Kenya.

Hon. Members, cognisant that the International Day of the Girl- Child is celebrated today, 11<sup>th</sup> October 2018, I have chosen to convey this Petition immediately while the petitioners await by the Bar of the House, which I hereby do.

The petitioners observe that the 2030 Agenda for Sustainable Development Goals (SDGs) requires all partner states to commit to ensuring that no girl-child is left behind or unable to achieve her potential. Further, the petitioners note that cases of gender-based violence have

been on the rise in the country and that they ordinarily take long to investigate and resolve, causing untold suffering to the victims.

The petitioners, therefore, pray that amongst other legislative interventions, the National Assembly causes a review of the existing policy and legal framework notably, the Children Act 2003, to enable the girl-child to easily identify, prevent and effectively respond to any instances of gender-based violence. The petitioners also pray that the House legislates comprehensively to fully actualise the enjoyment and protection of children's rights as enshrined in our Constitution, noting that the Children Act of 2003 came into force before the 2010 Constitution.

Hon. Members, pursuant to the provisions of Standing Order No.227, this Petition, therefore, stands committed to the Departmental Committee on Labour and Social Welfare for consideration. I urge the Committee to engage the petitioners and report its findings to the House within 60 days or even earlier.

In the meantime, as I allow Members to make limited comments, I will allow the petitioners who are at the Bar to take the seats to be provided by the Serjeant-at-Arms. You can open the Bars now.

*(The Bars were opened)*

Let us have Hon. Soipan Tuya. Very well. Let us have Hon. Okelo.

**Hon. Jared Okelo** (Nyando, ODM): Thank you, Hon. Speaker. That is a very timely Petition presented by our young people. Allow me first, before I delve into it, to also bring to your attention that the guests from Uganda are led by Hon. Robert Kyagulanyi who is also known as Bobi Wine.

**Hon. Speaker:** Hon. Okelo, we are only dealing with this particular Petition.

**Hon. Jared Okelo** (Nyando, ODM): I was coming to that. It was just a matter of information.

**Hon. Speaker:** If you do not have anything to say about this Petition, allow me to...

**Hon. Jared Okelo** (Nyando, ODM): Hon. Speaker, the Petition as presented by our young people is very much in order. I urge that we treat it with a lot of urgency and caution because we know of lots of violence meted on young people that many times goes unattended to and unreported by the victims. If we put more legislative power into this kind of Petition, our young people and those who have been side-lined by issues of gender would be in a position to report in time, witness protection be employed and above all, remedial measures be taken against the perpetrators.

Hence, I support the Petition.

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

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Speaker. I also rise to support the Petition by the young ambassadors. I congratulate the young ambassadors for tabling a very timely and accurate Petition.

I want to share with the House the challenges the girl-child is going through. Only this morning, I dealt with a case of the rape of a 16-year-old girl by a very respectable member of the society in Isiolo. The young girl was raped, impregnated and the same person forced her to abort. I am sad to report that when the matter was taken to court, the person was released with a bail of only Kshs100,000. What we see on daily basis is so painful. The injustice that is committed against the girl-child and women is so heart-breaking. Therefore, I support the Petition and urge

this House to come up with policies that will ensure that such an incident that happened in Isiolo will face the full law.

I support the Petition. Thank you.

**Hon. Speaker:** Member for Makueni.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Speaker, for giving me an opportunity to comment on this very important Petition. At the outset, I support it.

For those who have visited the courts in the last six months, especially the Magistrates Courts, there are very many cases of rape and indecent assault on children. Also, there are very many attempts by parties to settle these strict and serious criminal matters outside the courts through the families. The witnesses do not show up in courts a lot of times to give evidence and sadly, such cases are lost and the girl-child is left with scars for life. I urge Members to support this Petition and give ideas on when it will be prosecuted by the relevant committee, so that we can amend the laws under the Children Act and other relevant law, to make sure that the children of this nation are protected.

I thank you, Hon. Speaker.

**Hon. Speaker:** Member for Ugunja.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Thank you, Hon. Speaker. I also wish to express myself on this very important and timely Petition. It is acknowledged widely that due to historical and cultural reasons, the girl-child is disadvantaged not only in this country but also across the world.

I also want to acknowledge the fact that the country has made attempts in the recent past to address the plight of the girl-child. However, a lot more needs to be done because she remains vulnerable. This House must lead in taking appropriate measures to ensure that the girl-child is not only protected but is also encouraged and nurtured to achieve her full potential. The youth represents the future of the country. Therefore, any investments of addressing the issues that affect them adversely are investments to the future of the country. Therefore, I wish to support the Petition and urge the committee which is responsible to take up the matter and address it expeditiously.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Narok.

**Hon. Kangogo Bowen** (Marakwet East, JP): Hon. Speaker, I am not the Member for Narok. I am the Member for Marakwet East.

**Hon. Speaker:** Then you must be using the card that belongs to the Member for Narok.

**Hon. Kangogo Bowen** (Marakwet East, JP): Hon. Speaker, this is my card. There is a digital error there.

Let me take this opportunity to support the Petition and congratulate the student who presented this Petition in this House. Let me say that there is no shortage of laws in the country, especially those which protect the children and young girls. The problem is the implementing agencies. We have seen several cases, including the one which was mentioned by the Member for Isiolo. Somebody raped and impregnated a student and when he was taken to court, he was given a bail of Kshs100,000. As we dispense with this Petition, we want to ask the Committee to dig deep into this Petition and make a legislation out of it, so that we can have very thorough penalties on the perpetrators.

I want to support this Petition. We want to support our girls because we are their fathers and brothers. We want to assure them that we will support them. Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Kitui South.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Thank you, Hon. Speaker, for giving me an opportunity to contribute. I would like to start by saying that I support this Petition. I would also like to congratulate the young girl who made an eloquent presentation on the Floor of the House. This is a very good start for her life.

I would like to say that this is a matter of agency. It needs to be handled as fast as possible because our girls in our societies are going through a lot of difficulties. We have many cases of rape and gender-based violence which are happening within the families and schools where children expect to get the best protection. The worst is when it comes to the people who investigate the cases. Some of them are compromised. They do not take the right actions. They make sure that there are inconsistencies in the evidence which is provided. I would like to say that this is a matter that needs to be taken very seriously by our able Departmental Committee on Labour and Social Welfare.

I support the Petition. I would like to urge the House to support it. Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Nambale.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I rise to add my voice in great support to the initiative which was brought before the House by the young ladies. They presented extremely well. It was very impressive.

I would like to say on record that I believe strongly that we have achieved equality between boys and girls. We are now beginning to exceed the opportunities in education for the girl-child in Nambale. I believe that they should be balanced in life. We have put in place several measures that have increased enrolment of the girls in high school. That is why we have the Petition. We should think about the opportunities for the girl-child through the cycle of life but not just at the young age. We should remove the deficit in opportunity in education. They should get equal opportunity as people. They should no longer need special consideration because we shall take it as a normal thing. So, this is a good start. I support it strongly and urge the House to support the Petition.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear the last contribution from the Member for Homa Bay Town.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker, for giving me the opportunity to address the House on the Petition. Let me start by thanking the young ambassadors for presenting this timely and important Petition. Let me also thank you on behalf of the National Assembly for permitting this important Petition and more so the petitioners to be allowed to step into the House to present it in person. The National Assembly takes this day very seriously. This is not something which is in the tradition of Parliament under the Constitution 2010.

The Constitution 2010 places the family at the centre of society. When we legislated the Constitution 2010, Article 53 of the Constitution was dedicated to the rights of a child. Attempts have been made to amend the Children Act and the laws which are relevant to the protection of the children, and particularly the girl-child. Those efforts have not succeeded and have not placed the girl-child where she rightly belongs. Hon. Millie Odhiambo, Hon. Soipan Tuya and I made efforts in the 11<sup>th</sup> Parliament to put Article 53 of the Constitution under the Children Act. We lost it because of the politics at the time. Article 53 of the Constitution says that all children have the right to parental responsibility which includes protection and care from all parents, whether they are married or not. When you go to the Children Act, we are saying that the children - and I am talking in the context of the girl-child - whose parents are not married, their

fathers can only take care of them if they sign a parental responsibility agreement with their mothers or have court orders.

I ask Hon. Members to think about this properly. We have many mentally ill mothers, but who conceive children and give birth to them. Where do they get the mental faculty to sit with the fathers of these children to do the things we call parental responsibility or agreements or go to court against their fathers? I am saying this to remind the House that this Petition is timely because it calls on the House to reflect deeply on the rights of the child as espoused in the Constitution and bring all laws in tandem with the supreme law. We need not only look at the Children Act but we also need to look at the Succession Act in terms of the discrimination going in the direction of children, more so where we have cultures and testaments or wills discriminating against them. We need to look at the Sexual Offences Act, particularly the law relating to defilement, which my learned friends were talking about.

Today if you go to court, because of lapses in the sexual offences law, a person who deserves to be convicted for defiling a girl-child is excused on the ground that the girl-child looks mature and big anyway. Those are the things we need to look at. So, I request the Committee to which you have remitted this important Petition to look at the entire gamut of laws and secure it. Members who could have ideas on how to better the protection of the girl-child beyond just mere legislative interventions should also attend Committee meetings.

There are some other things we need to think in the context of that Committee beyond just necessary legal amendments. Free primary education is a policy of this Government but we have not questioned how the girl-child will in particular realise that right. You will talk about free primary education for the boy-child and the girl-child. Because we have girls who are maturing or moving towards adulthood, there are issues that face them that if we do not give the necessary facilities something that moves them to maturity – I am being careful in terms of my language because of the presenters of the Petition – becomes a shame. I remember when I was in primary school, for weeks and months the girl-child approaching puberty was never in school because when the time came they were a laughing stock. So, when we have administrative measures and policy measures like free primary education, could the Committee going to treat this matter consider how we can make it effective not just for children as a generality but also for the girl-child in particular?

Hon. Speaker, I thank the presenters of this Petition. I assure them that at my level, because you have given the assurance on behalf of the House, I will be in the Committee to do the work that the Petition calls upon the National Assembly to undertake.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well spoken. As indicated, Hon. Members, you may have noticed that I deliberately allocated more than the usual time for Petitions because this is a special kind of Petition. It is also in recognition of the particular day, 11<sup>th</sup> October.

As earlier on directed, the Petition stands committed to that Committee. The Committee should not limit itself to merely looking at the Children Act it should also look at, as stated by Hon. Kaluma, the entire gamut of laws that affect in one way or another the welfare of the girl-child, particularly school-going young girls.

Thank you very much.

Hon. Members before I proceed, allow me to also recognise the presence in the Speaker's Gallery and in the Public Gallery of students and pupils from the following institutions: PCEA Ongata Rongai Academy from Kajiado North Constituency, Kajiado County; Dr. Kraft Primary School from Makadara Constituency, Nairobi County; Malilima Primary School from Kajiado

Central Constituency, Kajiado County; and Nyagatugu Primary School from Kangema Constituency, Muranga County. They are all welcome to observe the proceedings of the National Assembly this afternoon.

### PAPERS LAID

**Hon Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2017 and the certificates therein –

- (a) Wundanyi Constituency;
- (b) Kapenguria Constituency;
- (c) Kwanza Constituency;
- (d) Kacheliba Constituency;
- (e) Kesses Constituency;
- (f) Tigania West Constituency;
- (g) Turkana Central Constituency;
- (h) Kaloleni Constituency;
- (i) Changamwe Constituency;
- (j) Turbo Constituency;
- (k) Soy Constituency;
- (l) Lamu West Constituency;
- (m) Mbooni Constituency;
- (n) Kathiani Constituency; and,
- (o) Mavoko Constituency.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chair, Departmental Committee on Agriculture, Livestock and Cooperatives.

**Hon. Ali Adan** (Mandera South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report by the Departmental Committee on Agriculture, Livestock and Cooperatives on consideration of the Warehouse Receipt System Bill, 2017 (Senate Bill No.10 of 2017).

Thank you.

**Hon. Speaker:** Next Order.

### NOTICE OF MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33

#### INCREASED CASES OF ROAD ACCIDENTS

**Hon. (Ms.) Florence Mutua** (Busia CWR, ODM): Hon. Speaker, pursuant to Standing Order No.33(1), I seek to give notice of adjournment of the House for the purposes of discussing the increased cases of road accidents in the country.

Hon. Speaker, on 10<sup>th</sup> October 2018 over 55 Kenyans lost their lives along the Muhoroni-Londiani Road. The country is saddened by the incessant number of road accidents occasioned by speeding and general noncompliance of road safety rules by some drivers. For instance,

official statistics indicate that an estimate of 1967 people have lost their lives as a result of road carnage in various parts of the country to date. I wish to pass my condolences to the families and relatives of the deceased.

I wish to clarify that road accidents have taken a big toll on our country leaving many people disabled, orphaned, widowed and requiring constant assistance. It is for these reasons that I kindly seek your indulgence so that we can adjourn the House in order to discuss this matter of national concern.

Thank you, Hon. Speaker.

**Hon. Speaker:** Do you have the numbers?

*(Several Hon. Members stood up in their places)*

It looks like even the ones who are seated, like Hon. T.J. Kajwang', are in support. You have the numbers, Hon. Florence Mutua. Therefore, I direct that the House shall adjourn to discuss this particular Motion at 5.30 p.m. Hon. Mutua, be present at that time.

Next Order.

### ORAL QUESTIONS

**Hon. Speaker:** Hon. Members, I have a number of requests to defer some of the Questions that have been placed on the Order Paper.

The first request is by Hon. David ole Sankok, Hon. Naisula Lesuuda, Hon. Obo Ruweida and Hon. Elisha Odhiambo. Their Questions will be deferred to some other date. I have also received indication that Hon. Christopher Nakuleu is no longer interested in the Question that he had proposed to ask, for all manner of reasons. Therefore, we will start with the Question by the Member for Likoni Constituency, Hon. Mishi Mboko.

*Question No.019/2018*

#### STATUS OF ACQUISITION OF NEW FERRY FOR LIKONI CHANNEL

**Hon. (Ms.) Mishi Mboko** (Likoni, ODM) asked the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development whether he could provide the status of acquisition of a new ferry for the Likoni Channel, cognisant that funds were allocated for the procurement process during the Financial Year 2017/2018.

Thank you.

**Hon. Speaker:** Very well. The Question is to be responded to before the Departmental Committee on Transport, Public Works and Housing. They should prioritise the date when they want the Cabinet Secretary to appear.

Next is the Member for Suna West.

*Question No.026/2018*

#### RECRUITMENT INTO KENYA DEFENCE FORCES



**Hon. Peter Masara** (Suna West, Independent) asked the Cabinet Secretary for Defence whether she could:

a) explain the criteria used in determining the number of persons to be recruited into the Kenya Defence Forces from a particular area in a given recruitment exercise; and,

b) provide a list of the total number of persons from Suna West Constituency recruited into KDF during the last recruitment exercise conducted in February/March 2018.

Thank you.

**Hon. Speaker:** The matter is referred to the Departmental Committee on Defence and Foreign Relations to also prioritise it while at the same time informing you when the Cabinet Secretary is scheduled to appear.

The Questions by Hon. Ruweida Mohamed, Hon. Naisula Lesuuda and Hon. David ole Sankok are deferred.

*Question No. 037/2018*

THE POLICY ON OPERATIONS OF TAXIS AT AIRPORTS

*(Question deferred)*

*Question No. 038/2018*

DRILLING AND EQUIPPING OF BOREHOLES IN TURKANA

*(Question withdrawn)*

*Question No. 039/2018*

NATIONAL YOUTH SERVICE GRADUATES ABSORBED INTO DISCIPLINED FORCES SINCE 2017

*(Question deferred)*

*Question No. 040/2018*

BENEFICIARIES UNDER THE NATIONAL SAFETY NET PROGRAMME

*(Question deferred)*

The next one is by the Member for Mumias East Constituency who is also the Majority Whip.

*Question No.041/2018*

GAZETTEMMENT OF SUGAR SECTOR REGULATIONS

**Hon. Benjamin Washiali** (Mumias East, JP) asked the Cabinet Secretary for Agriculture and Livestock:

(a) when the Ministry plans to gazette the sugar sector regulations and;

(b) what measures are in place to revive the sugar industry in the country in general and in particular the Mumias Sugar Company.

Thank you.

**Hon. Speaker:** The Cabinet Secretary will appear before the Departmental Committee on Agriculture and Livestock. The Committee should prioritise it. Next Question is by the Member for Saboti Constituency, Hon. Caleb Amisi.

*Question No.042/2018*

STATUS OF IMPLEMENTATION OF SOCIAL ASSISTANCE ACT

**Hon. Caleb Luyai** (Saboti, ODM) asked the Cabinet Secretary for Labour and Social Protection:

(a) whether he could explain the status of implementation and operationalisation of the Social Assistance Act (2013); and,

(b) the achievements that have been realised by the National Social Assistance Authority since its establishment.

Thank you.

**Hon. Speaker:** Similarly, it is referred to the Departmental Committee on Labour and Social Welfare to prioritise and inform the Member when the Cabinet Secretary is due to appear.

Hon. Members, the next Question is by Hon. Elisha Odhiambo, Member for Gem, who has indicted and requested that it be deferred. The request has been granted.

*Question No.043/2018*

BENEFICIARIES OF THE OLDER PERSONS CASH TRANSFER PROGRAMME FUND

*(Question deferred)*

Leader of the Majority Party.

**STATEMENT**

BUSINESS FOR THE WEEK COMMENCING 16<sup>TH</sup> TO 18<sup>TH</sup> OCTOBER 2018

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order No. 44(2)(a), I rise to give a Statement on behalf of the House Business Committee (HBC).

The Committee met on Tuesday this week at the rise of the House to give priority to business that will be considered. Next Tuesday, the HBC has scheduled two Reports for consideration by the House: The Annual World Bank Conference Report on Land and Poverty and the Report of the Special Funds Accounts Committee on the Audited Financial Statements for the National Government Constituencies Development Fund (NG-CDF) for the constituencies in Nairobi County.

On the same day, we will consider, in the Committee of the whole House, the County Governments Retirement Scheme Bill (National Assembly Bill No.10 of 2018) and the Second

Reading of the following Bills: The Warehouse Receipt System Bill (Senate Bill No. 10 of 2017), the County Governments (Amendment )Bill (Senate Bill No. 11 of 2017), the Supplementary Appropriation (No. 2) Bill (National Assembly Bill No.23 of 2018) and the Parliamentary Service Commission Bill (National Assembly No. 6 of 2018).

In accordance with the provisions of Standing Order 42A (5), I wish to convey that having consulted with the chairpersons of the Departmental Committee on Finance and National Planning and that of Environment and Natural Resources, the following Questions are scheduled for reply by the specific Cabinet Secretaries:

Cabinet Secretary for National Treasury and Planning will appear before the Departmental Committee on Finance and National Planning on Tuesday, 16<sup>th</sup> October 2018, to answer Questions No. 007/2018 from Hon. John Oloo, MP, and Question No. 0018 of 2018 from Hon. Godfrey Osotsi.

The Cabinet Secretary for Wildlife and Tourism will appear before the Departmental Committee on Environment and Natural Resources on Tuesday, 23<sup>rd</sup> October 2018, to answer Question No. 001/2018 from Hon. Martin Owino, MP, and Question No. 002/2018 from Hon. Christopher Nakuleu.

The Cabinet Secretary for Interior and Coordination of Government will appear before the Departmental Committee on Administration and National Security on Tuesday, 23<sup>rd</sup> October 2018, to answer Questions from the following Members: Hon. Caleb Kositany, Hon. Peter Kaluma, Hon. Cyprian Kubai and Hon. Abdullswamad Sherrif Nassir.

The Cabinet Secretary for Agriculture and Livestock will appear before the Departmental Committee on Agriculture and Livestock on Thursday, 18<sup>th</sup> October 2018, to answer Questions from the following Members: Hon. Sakwa Bunyasi, MP, Hon. (Dr.) Otiende Amollo and Hon. Silas Tiren, MP.

Finally, the HBC will reconvene on Tuesday, 16<sup>th</sup> October 2018, at the rise of the House to consider the business for the coming week.

### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Hon. Members, I have two Communications which are related to some of the business that we are about to undertake. Before I do so, allow me to recognise students and mentors in the commemoration of the International Day for the Girl-Child. The Petition which we have just dealt with was conveyed by the ambassador of the girl-child.

I wish to recognise persons led by Mr. Samuel Musyoka who is the Country Director of Plan International. They are Mercy Chege, Patrick Ngenga, Purity Mbugua, Martin Mwaura, Juliet Ratemo, Allan Musumba, Dorcas Odhiambo, Rama Ambetsa, Anne Njuguna and Joseph Mbugua. On my behalf and that of the House I wish to welcome them to the National Assembly. I am sure they have enjoyed the proceedings relating to the Petition presented by the girl-child ambassador. Thank you very much.

Next Order.

### SECOND READING OF THE CONSTITUTION OF KENYA (AMENDMENT) BILL BY HON. CHRIS WAMALWA

**Hon. Speaker:** As you would recall, last week on Wednesday 3<sup>rd</sup> October 2018, the House concluded debate on the Second Reading of the Constitution of Kenya (Amendment) Bill (No. 2), (National Assembly Bill No. 5 of 2018) moved by the Hon. Member for Kiminini Constituency, the Hon. Chrisantus Wamalwa. During the debate, the Mover requested the Speaker to delay putting the Question for Second Reading under Standing Order 53(3) until such time when not less than 233 Members, being two-thirds of all the Members of the National Assembly, will be available as required under Article 256(1)(d) of the Constitution.

Indeed, the provisions of Article 256(1)(d) of the Constitution provide that a Bill to amend the Constitution shall be passed by the House if it is supported by not less than two-thirds of all the Members of that House at the Second and Third Readings. In the request, the Member seemed to vest the obligation of availing the Members required to vote on the Speaker. Further, during the sitting, the Hon. Chrisantus Wamalwa claimed that the Speaker had already determined that the particular Bill does not require to be approved by a referendum in terms of Article 255 of the Constitution.

As you are aware, the Bill by Hon. Wamalwa seeks to amend the Constitution to change the election date from second Tuesday in August in every fifth year to Monday in December of every fifth year. During debate on the Bill, some Members expressed concern that the Bill requires approval by a referendum as changing the election date from August to December would in effect also touch on the term of office of the President in terms of extending the term of that office.

Article 256 of the Constitution prescribes the procedure for considering Bills to amend the Constitution by parliamentary initiative. In particular, Article 256(5) of the Constitution provides that if a Bill to amend the Constitution proposes an amendment relating to a matter specified in Article 255(1) of the Constitution, the President shall, before assenting to the Bill, request the Independent Electoral and Boundaries Commission (IEBC) to conduct, within ninety days, a national referendum for approval of the Bill. In this regard, from a plain reading of Article 256(5) of the Constitution, it is clear that the responsibility of determining whether a Bill to amend the Constitution requires approval by a referendum or not does not lie with the Speaker of the National Assembly or, indeed, this House. The role of the Houses of Parliament is to exercise their legislative authority in terms of passing a Bill to amend the Constitution. Once passed in both Houses and forwarded to the President for assent, it is upon the presidency to determine whether such a Bill relates to matters under Article 255.

Therefore, contrary to the claim by the Member for Kiminini, neither the Speaker nor the Office of the Clerk have the powers to determine whether a Bill requires approval by a referendum or not. This falls within the jurisdiction and powers of the President in terms of Article 256(5)(a) of the Constitution. To interpret the provisions otherwise would be contrary to the provisions of Article 256 of the Constitution. It is analogous and tantamount to putting the hat of the President on the person of Speaker.

In view of the above and following the request by Hon. Chris Wamalwa to delay putting of the Question for Second Reading, I wish to guide as follows:

That, the obligation to ensure that any Bill obtains the requisite voting threshold lies squarely with the Mover of the Bill. Additionally, the Hon. Member needs to be conscious of the dictates of Standing Order No. 141 on lapsing of Bills that may be occasioned by inordinate delay in putting of the Question for Second Reading. In this regard, I wish to notify the Member and the House that the Question for Second Reading of that particular Bill shall be put on Wednesday 17<sup>th</sup> October 2018 during the afternoon sitting;

That, it is expected that the Member for Kiminini who is also the Deputy Whip of the Minority Party will lobby all Members to be present and to participate in electronic or roll-call voting on that day. Should 233 Members vote in support of the Motion for Second Reading of the Bill, the House Business Committee will thereafter schedule the Bill for consideration in Committee of the whole House and Third Reading which will be undertaken at later sittings of the House, and;

That, should the Motion for Second Reading of the Bill fail to obtain the required numbers in support and the results of the vote satisfy the requirements of Standing Order No. 62(2), I will avail a further and last opportunity for the vote to take place at a later sitting. It is worth noting that, a last voting opportunity ought to take place within five sitting days from the day of the initial vote.

I thank you.

I hope this is clear to the Mover, Hon. Chris Wamalwa. Begin marshalling people and lobbying Members to be present.

#### MEMBERS RELINQUISHING THEIR POSITIONS IN THE COMMITTEE ON SELECTION

**Hon. Speaker:** Before the House proceeds to consider business appearing as Order No. 11, allow me to inform the House that I have received notification from the Chairperson of the Committee on Selection regarding two Members wishing to relinquish their membership in the Committee. The Members are the Hon. Jude Njomo who is a Member for Kiambu and the Hon. (Dr.) Makali Mulu, Member of Kitui Central.

The two Members have cited other parliamentary duties and responsibilities assigned to them by the House as reasons for relinquishing their positions in the Committee on Selection. For clarity, the Hon. Jude Njomo is a Member of the 4<sup>th</sup> Pan African Parliament which holds its regular sittings in Midrand, South Africa. The Hon. (Dr.) Makali Mulu, MP is the Regional Representative for the Eastern African Region in the Commonwealth Parliamentary Association (CPA). He is also a Member of the Executive Committee of the CPA.

I have taken the liberty to convey this information to the House so that the absence of the two Members from the Committee on Selection is not to be misconstrued to mean that they have since been discharged from the Committee in terms of Standing Order No. 176. Their slots in the Committee on Selection are therefore available for replacement by the respective parties in accordance with our Standing Orders.

I, therefore, take this opportunity to thank the two Hon. Members for their magnanimity and wish them well in their additional continental assignments.

I thank you, Hon. Members.

Next Order.

*(Hon. (Ms.) Jessica Mbalu and Hon. Junet Nuh walked in the aisle)*

Hon. Members making their way in, please settle. Member for Suna East, why do you not just take a seat next to Hon. Omulele? He is not harmful.

#### MOTIONS

#### REPORT OF THE SIXTH ORDINARY SESSION OF THE FOURTH PAN-AFRICAN PARLIAMENT

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THAT, this House notes the report of the Sixth Ordinary Session of the Fourth Pan-African Parliament, held in Gallagher Convention Centre, Midrand, South Africa from 7<sup>th</sup> to 18<sup>th</sup> May, 2018, laid on the Table of the House on Tuesday, 31<sup>st</sup> July 2018.

*(Hon. (Ms.) Janet Ong'era on 4.10.2018)*

*(Debate concluded on 9.10.2018)*

*(Question put and agreed to)*

REPORT ON INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL POLLUTION  
BY LONDON DISTILLERS KENYA LIMITED

THAT, this House adopts the Report of the Departmental Committee on Environment & Natural Resources on an inquiry into complaints of environmental pollution by London Distillers Kenya Limited, laid on the Table of the House on Wednesday, 29<sup>th</sup> August 2018 subject to deletion of the word “tabling” appearing in recommendation 1 paragraph (i); recommendation 2 paragraphs (i) and (vi) and recommendation 6 paragraphs (i) and (ii), and substituting therefor the words “adoption by the House”.

*(Hon. Kareke Mbiuki on 9.10.2018)*

*(Resumption of Debate interrupted on 9.10.2018)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, Members debated this matter exhaustively. Under Standing Order No.95, I request that we call upon the Mover to reply.

*(Hon. (Ms.) Gladys Wanga walked on the gangways)*

**Hon. Speaker:** Hon. Members, the Question being proposed is provided for under Standing Order No. 95. Hon. Wanga, even if you want to go and sit next to the Member for Suna East, remain in the House.

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

**Hon. Speaker:** Mover!

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Speaker. I wish to appreciate the House for their contribution to this Motion of the Departmental Committee on Environment and Natural Resources, regarding the inquiry into environmental pollution by London Distillers (Kenya) Limited (LDK). We cannot overemphasise the importance of conservation, protection

and management of our environment for the wellbeing of everyone. Good environment is beneficial to the present and future generations.

Article 42 of the Constitution provides for a clean and healthy environment as a right for everyone. In Kenya, industrial waste management is a major challenge due to non-adherence to the Environment Protection Management Act. While you have focused on the LDK, this Report serves as a notice to all other industrial actors to ensure they adhere to all environmental protection laws and ask them to desist from releasing their poisonous effluent to the detriment of the neighbourhood. We cannot afford to have waste being dumped into the water that people and animals downstream are consuming. The effect of the waste on water eventually results to bad health, various types of cancers and even death.

Going by the contribution of many Members on this Motion and the investigation by the Committee, it is clear that the authority that is charged with the responsibility of protecting the environment, that is, the National Environment Management Authority (NEMA) is sluggish in executing their mandate. We know that the authority seems to be incapacitated and therefore the Committee urges the Ministry of Environment and Forestry to build the authority's capacity to effectively and efficiently undertake its mandate. The Government scrapped the environmental impact assessment fee which was a source of Appropriation-in-Aid contributing 67 per cent of the budget for NEMA. This impacted negatively especially in the operation of the authority as no alternative funding has been advanced by the Government. I therefore urge the Government through the National Treasury to consider reinstating the fee for the authority to operate effectively as it is currently operating under the three per cent budget.

The Committee noted that NEMA was reactionary in executing the issues of the complainant against LDK as it only acted after issues were raised. The authority issued closure orders which were not effected by the LDK raising concerns of its effectiveness and authority in environmental matters.

Further, NEMA seems to be inconsistent with Environmental Protection and Management Act. On one hand, they issue environmental impact assessment licence with conditions yet they fail to follow on the adherence of the conditions by the applicant. It is therefore incumbent upon the authority to act proactively in addressing such pollution-related issues in order to stem environmental degradation in line with the precautionary principle in international environmental law. We also note that the area in question had changed user through the defunct Municipal Council of Machakos. The change of user allowed a mix of use for both industrial and residential purposes. This could have been the source of conflict between the two protagonists. It is therefore incumbent upon the County Government of Machakos to ensure that it creates master plan for land use in Athi River to avoid mixed user status of land which in the first place generated the environmental pollution conflict.

Before I conclude, allow me to thank your office and that of the Clerk of the National Assembly for facilitating the Departmental Committee on Environment and Natural Resources to undertake its inquiry into the complaint of the environment pollution by LDK. I also wish to appreciate the Members of the Committee for their tireless efforts in conducting this inquiry which included visiting the site as early as 4.00 a.m. in the morning.

With those few remarks, I beg to reply. I thank you.

*(Question put and agreed to)*

#### ADOPTION OF REPORT ON CRISIS FACING THE SUGAR INDUSTRY

**Hon. Richard ole Kenta** (Narok North, ODM): Hon. Speaker I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Implementation in respect of Petition by Kenafric Industries Limited on the Implementation of the Recommendation in Paragraph 108 of the Report by the Departmental Committee on Agriculture and Livestock on the Crisis Facing the Sugar Industry in Kenya as adopted by the House on 24<sup>th</sup> February, 2016 and-

- (a) reconsiders its resolution made on 24<sup>th</sup> February 2016, which was arrived at following inaccurate information contained in recommendation 108 (page 50) of the said report of the Departmental Committee on Agriculture and Livestock; and
- (b) resolves to expunge the name “Kenafric Industries Limited” from its resolution of the 24<sup>th</sup> February 2016, as contained in recommendation 108 (page 50) of the said Report.

This is one of the cases that emanated from the debate of this House on the sugar crisis in Kenya. As a Committee that is mandated to follow up on the resolutions and petitions passed by this House, the Committee on Implementation has been following on these issues.

I wish to inform the House the genesis of this case. There was a petition by the Western Initiative Association which was on the imminent collapse of the sugar industry. This is a very crucial issue. In fact this Report was adopted and this has been a hot topic, as most Members are aware.

As I said before, the Report identified Kenafric Industries as one of the companies that were repackaging sugar for consumption by the Kenyan population. The Departmental Committee on Agriculture and Livestock after deliberations recommended that this company should not be allowed to deal in sugar. When Kenafric Industries was mentioned adversely, it wrote to us, as the Committee concerned, to have its name expunged because it did not deal in anyway or at any one time in human or table sugar. Through their lawyer, they resolved to write to this House and to the Committee in particular telling us that they would like to appear to clear this issue. Even though the letter was received by the Committee, it failed to give them a chance to explain themselves. The Committee said that they could not have time and the said company could go and express its grievances elsewhere. While these resolutions have never been implemented, that is, denying them a licence to import sugar, it was, however not done up to 2018 at the instance the Committee on Implementation asked questions to the Sugar Directorate.

*(Loud consultations)*

Hon. Speaker, there are loud consultations. I am unable to proceed.

**Hon. Speaker:** Order, Members.

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Speaker. While the Committee was pursuing this matter, among others, as far as the sugar crisis is concerned, the Speaker issued a communication on 30<sup>th</sup> August 2018, that is, Communication No.046 of 2018, on reconsideration of a House resolution by the Committee on Implementation. This was based on the fact that Kenafric had actually complained that it was never given an opportunity to be



heard. As everybody realises, that was a failure on the part of the Committee concerned because it is against the rule of natural justice for anybody to be condemned unheard.

After receiving the petition, which was necessitated by the petition by the advocate of the company, we were seized of the matter as the implementation committee. As instructed by the Speaker, we gave the company an opportunity to be heard. Having realised that Parliament cannot afford to set precedent of not allowing people an opportunity to be heard in such a matter, which involves their livelihoods and employment of people, we had an opportunity to listen to Kenafric Industries. We observed that, true to the claim by Kenafric, they were never given an opportunity to be heard. They appeared before the Committee. For us to have heard them and confirmed what they said, we also had to call the Ministry of Agriculture and the Sugar Directorate to confirm what they said.

It is also very important for this House to understand that when we called the Sugar Directorate, they confirmed that this was an anomaly, they have always been licensing Kenafric and the company has never dealt in table sugar; in fact, it has always been importing industrial sugar which is used for confectionaries. They also confirmed that they have been doing inspections at all times and at no time did they find any evidence of any packaging of table sugar by the said company. In fact, when the Committee confronted them and asked how they could have made such far-reaching representations to the committee on agriculture, they were lost for words. It became a blame game between the Sugar Directorate and the defunct Sugar Board.

It is very important to note that when the said company appeared before us, it was very clear that it operates in Nairobi only, it does not buy sugar from any other company in Kenya and that there is audit of any consignment brought in by this company. They confirmed to the Committee that it would not make any economic sense for a company to package industrial sugar as table sugar because it is more expensive and it will need three times the quantities for it to taste as much as table sugar. So, it was very clear from the beginning that this was an inaccurate presentation to Parliament.

It should be very clear to this House that its job is not to curtail businesses of the Kenyan people but to ensure that there is good working environment. What happened is that because of what was in the report, this company lost a lot of international business, which cost the country millions of dollars. It is also very important to note that whereas we have problems in the sugar industry, the corruption that has emanated from this confusion has led to destruction of many innocent companies, and Kenafric is one of them, and it is something that should not be encouraged. What transpired is that there was corruption, unnecessary finger pointing and unnecessary mentioning of people's and companies' names. And Parliament was made to do something that it was not meant to do. In fact, the Committee requests Parliament to ensure that they always double check whatever evidence given.

We went through all the evidence that was produced and there was no single evidence that a certain brand of sugar was packaged by this company. When we heard them out, there was no way we would have this recommendation stand. The Committee observed that that was a very dangerous move. It was not done by Parliament but by an entity that was supposed to guide Parliament, the licensing authority. Because of that, we call upon Parliament to call them to account, because we do not know how many other companies were condemned unheard. The other issue is that Parliament has been taken to court because of this. Whereas there are people who actually caused the demise of some of these companies like Mumias Sugar and others - they are billionaires out there - they are scot free but the ordinary factory in Ruaraka that provides livelihood to many Kenyans has been put into an embarrassing economic situation.

As pointed out in the Report, it is imperative that we save these companies from this unnecessary harassment which is not justified. It is also important to note that at all times, the Sugar Directorate, having failed to give evidence as to what this company was accused of, it also failed to implement the resolution of Parliament. It only did so after it was summoned by the Committee on Implementation. They also confirmed that Kenafic has been complying with all the necessary legislation and regulations that govern their activities and that there was no reason for the Sugar Directorate to have done what they did. In essence, the Ministry and the Sugar Directorate cleared this company of any malpractices and wrongful activities that it was accused of. It should also be noted by Members that no factory or industry in Kenya is able to produce industrial sugar. This is only obtained through importation. This company imports industrial sugar which is accounted for from the place of origin up to the time of landing in Kenya. So, there is no way that anybody can divert this sugar to other places or for other uses.

Hon. Speaker, all this having been confirmed by the relevant Ministry and the directorate responsible for sugar matters, the Committee was left with no alternative other than to say that what was done was unjustified, unlawful and that Parliament did not play any role in whatever happened. Because of this, it is the recommendation of the Committee that the real culprits in the destruction factories like Miwani and the rest must be followed relentlessly. However, this should not be used as a red herring, leading to people being denied their livelihoods as people who brought the sugar industry down to its knees continue to benefit. We also confirm that this company never imported any sugar during the window period in 2017. It was never involved in any questionable activities.

Hon. Speaker, it is the duty of the Committee to ensure that justice is done. Therefore, as a Committee, we recommend as follows:

(a) That, the House reconsiders its resolution made on 24<sup>th</sup> February 2016, which arose based on recommendation No.108 on page 50 of the Report by the Departmental Committee on Agriculture and Livestock on the Crisis Facing the Sugar Industry in Kenya.

(b) That, the House expunges the name “Kenafic Industries Limited” from the resolution of 24<sup>th</sup> February 2016 as contained in recommendation 108 on page 50 of the Departmental Committee on Agriculture and Livestock on the Crisis Facing the Sugar Industry in Kenya.

With those remarks, I beg to move and request Hon. Osotsi, who is my deputy, to second the Motion.

**Hon. Speaker:** Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Speaker. As explained by the Chair, the Committee on Implementation is very important because it is the Committee of last resort. It is such that after all committees have given their reports, and after this House has made a decision, it is this Committee that is supposed to follow up on the implementation of the House’s resolutions 60 days later. This Committee has been looking at the Report by the Departmental Committee on Agriculture and Livestock on the crisis facing the sugar industry in Kenya – the Report that was adopted by this House on 24<sup>th</sup> February 2016. In the middle of our consideration of this Report, you issued a directive that we look at the Petition that was brought to this House by Kenafic Industries Limited on the issue of them not having been heard during the Committee’s proceedings that preceded the writing of this Report.

You gave a ruling to the effect that the Committee gives chance to Kenafic Industries Limited and reconsiders their case on the basis that the rules of natural justice were not followed when the Departmental Committee on Agriculture and Livestock was processing the Report. We

sat down, as a Committee, and confirmed that indeed there were omissions by the Departmental Committee on Agriculture and Livestock.

First, Kenafric Industries sought to be heard but the Committee, in its own wisdom, refused to grant them permission to be heard. This goes against our laws on fair administrative justice and our Constitution, which clearly stipulate that one has to be heard before judgment is made. The issue of Kenafric Industries Limited was brought by the then Kenya Sugar Board, which has since changed to Kenya Sugar Directorate (KSD). The Kenya Sugar Board then indicated that one of the companies that were repackaging sugar was Kenafric Industries Limited. However, the omission was that the defunct Kenya Sugar Board did not provide documents to support their case. The Committee did not also attach relevant documents to support their case. So, there was a loophole in their Report that prompted Kenafric Industries Limited to bring a petition, requesting to be heard.

Hon. Speaker, your direction to the Committee on Implementation was very basic. It was that we receive submissions from Kenafric Industries Limited but we do not open a fresh inquiry. We did exactly that but to confirm the issues that were raised by Kenafric Industries Limited, in our own wisdom, we invited the KSD and the Ministry of Agriculture. When they appeared before us, the KSD clearly told us that they were unable to provide any evidence to implicate Kenafric Industries Limited. The same was said by the Ministry of Agriculture, who appeared before us.

Hon. Speaker, in the Report that was adopted by this House, there was no supporting evidence apart from the minutes where KSB appeared and implicated Kenafric Industries Limited. We also found out that there are two levels of inspections that are done before an import licence is granted. One is done by the KSD while the other one is done by a Council of Ministers of East Africa, which was done. In these two reports, there is no evidence that this company was involved in illicit importation of sugar and repackaging of the same.

Most importantly, this must be a lesson to our committees. Please, do a thorough job. You give the Committee on Implementation a lot of hard work to do if your recommendations are not supported by evidence that should be attached on your Report. We also noted that some of the recommendations contained in various reports are not implementable because of the style in which they are written. Some recommendations are vague in nature and so it becomes very difficult to implement. At some point, we must come up with some standards on issues of report writing. We must ensure that all reports have relevant evidence.

The other issue we noticed is that KSD did not implement the Report as required. They waited until the Committee on Implementation wrote to them asking for the implementation status. That was when they started to act. They delayed issuance of licence to this company. Our intervention is what triggered this matter. Therefore, there was the issue of not being heard by the Committee and the issue of not following the law by KSD. Thirdly, no corresponding evidence was attached to the Report to support it.

Another very important point is that Kenafric Industries Limited had been gazetted to import industrial sugar in East Africa Gazette Notice before 2016 as one of the manufacturers that repackaged imported industrial sugar as locally manufactured branded sugar for sale. One of the things we noticed was that it does not make economical sense to repackage industrial sugar because the submission we received from the Ministry of Agriculture...

**Hon. Benjamin Washiali** (Mumias East, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** What is your point of order, Hon. Washiali?

**Hon. Benjamin Washiali** (Mumias East, JP): On a point of order, Hon. Speaker. I do not intend to interject the submissions by the Seconder. However, after looking at Standing Order No.209 that gives the Select Committee on Implementation the role they are supposed to play... I am aware they may experience problems while implementing resolutions and this could be why they inform the House about the challenges they face while implementing resolutions of Committees.

Listening to what the Seconder, Hon. Osotsi, is saying he is even questioning how the Report was written. According to many other Members and I included, it is like the Select Committee on Implementation is overstepping its role by becoming a supervisor of Committees. Reports are written by clerks attached to various committees and counter-checked by Hon. Members. So, is Hon. Osotsi who is seconding in order to claim that many Committee Reports are written wrongly? I request him to withdraw that statement.

On the issue of the company the Committee has cited, I have a problem with this. I do not know how it reached them, whether it was through a petition or if the owner of that company complained to them that the Departmental Committee on Agriculture and Livestock in 2016 had an issue with his company. Therefore, is the Select Committee on Implementation in order to audit other Committee Reports?

Thank you, Hon. Speaker.

**Hon. Speaker:** I think in this specific case, for those of us who keep track of issues, you will recall that this is a matter which I specifically referred to the Select Committee on Implementation upon a complaint that was addressed to the House, drawing the attention of the House to a purported miscarriage of justice.

In that complaint, it was clearly indicated that this particular organisation had applied to be heard because it had been mentioned adversely. I have been listening to what both the Mover and Seconder are saying. An organisation dealing with sugar issues, the Kenya Sugar Board, when they appeared before the Departmental Committee on Agriculture and Livestock mentioned this organisation adversely. Upon the attention being drawn to the fact of their being mentioned adversely, they wrote to the Committee seeking to appear and give evidence. You can refer to their Report. The record shows that the Committee sat, looked at the request by this organisation to appear but they said they did not have time and were very busy because the Report was urgently needed.

Notwithstanding this, the Committee proceeded to recommend that this particular company be punished, after having refused them an opportunity to testify and give their version of the story. Surely, should a person be condemned unheard? This is the issue we took to the Select Committee on Implementation since the matter could not be referred back to the Departmental Committee on Agriculture and Livestock. It is the Select Committee on Implementation which had to check on these facts and bring a report. I am satisfied that the Committee has applied itself to the issue that I referred to them. Actually, this matter was time bound. This is because people complained they had been condemned, yet they tried to approach them for an opportunity to appear. Considering this approach was not in the streets but in writing, the Committee went ahead to make a record that they had received a letter from that company requesting to appear before them and lacked time because they had to write a Report which was urgently required.

If you take that path, you must not express yourself one way or the other and make an adverse finding on a person without giving them the chance to be heard in fairness. I appreciate that matters sugar sometimes get very convoluted. However, I think the Committee is addressing

this issue. We just wanted to know whether they confirmed that indeed, this is what happened. I think Hon. Osotsi is in order to proceed making his presentation.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Speaker. To finalise, I think the gist of this matter is that this company was not heard and this is against the law of fair administrative justice and the Constitution. On that basis, we recommended that the House; one, reconsiders its resolution made on 24<sup>th</sup> February 2016 which was arrived at following information contained in recommendation 108. Two, that the House expunges the name “Kenafric Industries Limited” from its resolution of 24<sup>th</sup> February 2016 as contained in recommendation 108.

Hon. Speaker, I second.

*(Question proposed)*

**Hon. Speaker:** The Leader of the Majority Party, do you want to contribute?

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Speaker. I beg to support this Motion by the Member for Narok North and the Chair of the Select Committee on Implementation. As you said, in the Report of 18<sup>th</sup> February 2016 the Departmental Committee on Agriculture and Livestock noted that the Kenya Sugar Board had identified -This is in their Report and Hon. Washiali was a Member of that board - that Kenafric Sugar Industries was one of the manufacturers that repackaged imported industrial sugar as locally manufactured branded sugar for sale as table sugar.

However, again, it is on record - the HANSARD and the Report will bear me witness – that in its meeting held on 6<sup>th</sup> March 2015 the said Departmental Committee on Agriculture and Livestock failed to hear the company, despite its advocate writing to this Committee. So, Hon. Speaker, all that you have said is on record. It is in the Report and it is on the HANSARD. Indeed, that Departmental Committee on Agriculture and Livestock resolved that the company does seek redress after the finalisation of the Report. As a result, Kenafric Industries Limited was adversely affected by the decision of the Departmental Committee on Agriculture and Livestock.

This is a serious matter and I am contributing to this matter just by reading the reports of the Committee on Implementation and the Departmental Committee on Agriculture and Livestock. Having lost their chance of renewal of their licence for 2017/2018, the Speaker found it necessary to afford Kenafric Industries a chance to present their case for consideration by the House in order to offer the House an opportunity to remedy a procedural oversight. In good language, we can call it procedural oversight but from where I sit, that was impunity. As a House that passed a law called Fair Administrative Justice, Parliament cannot deny a citizen, corporate or individual a chance to be heard. I do not want to go back but now I am going back to the sugar with mercury.

You remember there was a former minister called Bett who is the current ambassador to India. He was not given a fair hearing by the joint committee and he was indicted in the recommendation of that joint committee. I think we are learning a lot from what we are doing today. As a House, whether we are dealing with a petition, Question or a Bill on matters that concern the people of Kenya within the reading of Article 95 of the Constitution, we must accord each and every citizen – either an individual or a corporate – a fair hearing. That is why this matter has come back.

Hon. Speaker, we really thank you because you have not only redeemed that Committee but also the image of the 12<sup>th</sup> Parliament. The Speaker felt it necessary to afford Kenafric Industries Limited a chance to present its case for consideration by the House and to offer the

House an opportunity to redeem that procedural or impunity oversight by the Committee. The Speaker directed the Committee to submit its Report to the House within 30 days. More importantly, the House cannot be seen to be establishing a precedent or condoning the condemning of persons without affording them an opportunity to be heard. Why am I contributing? This is because I really felt this is a very important matter. It has never happened in my life as a Member of Parliament where a citizen – either a corporate or an individual – complains to the Committee on Implementation and a Report that was adopted by the House is amended. We have taken a very good step. Hon. Kenta, who is the Chair of the Committee on Implementation, needs to look at the previous reports or ask Kenyans who felt, in one way or the other, that they were indicted in a report of Parliament to report. Reports of Parliament become records of the House for years to come. For example, if you are public servant and a recommendation that you cannot hold a public office is adopted by this House, that will live with you until you die. If there are Kenyans who are watching me who in one way or the other were not given a hearing in a report of the House, please, this afternoon the Committee on Implementation has given us an opportunity to relook and to look back at the steps that we have missed as a House.

Hon. Speaker, you know any time sugar is mentioned, my Whip of the Majority Party does not want to know what it means. He will wake up. It tells you that 80 to 90 per cent of the economic activity of the people he represents in Mumias is sugar-cane growing. He played a big role in the 11<sup>th</sup> Parliament in this Report only that that report has not been implemented by the Government in most of the recommendations. Hon. Kenta, as much as you have saved Kenafric, your main function is to make sure that the Report on the sugar crisis is implemented both to the letter and spirit of the contents of that Bill.

The Committee observed that Kenafric Industries Limited was not afforded an opportunity by the Departmental Committee on Agriculture and Livestock to present their submissions either before or after the preparation and adoption of the Committee's Report. I think Hon. T.J. will agree with me because he was in the Justice and Legal Affairs Committee or in the Public Accounts Committee (PAC) where, when PAC was dealing with the matter on the accounts of the Judiciary, the former Chief Justice, Hon. Willy Mutunga, in writing, refused to appear before the Committee. So, if somebody writes and refuses to appear before a committee, then the committee is at liberty to do any indictment on that individual. However, here it is the contrary. We have an entity that says "I want to be heard" through its advocate and then the Committee did not agree. This is very important.

Hon. Junet and I have some other matters which are coming so he really wants me to conclude. I will conclude because we had an agreement earlier that this Report is adopted and Kenafric Industries Limited, whose Member of Parliament is Hon. T.J. Kajwang... He does not represent them because of any other interests. He told me they employ over 10,000 people who are the citizens of his constituency. In future, they should establish their next factory in Garissa Township if they want to see proper representation in the House. Please tell Kenafric Industries Limited that their next factory should be in Garissa so that I join forces with Hon. T.J. in defending their rights on the Floor of the House.

I beg to support.

**Hon. Speaker:** Now that you have mentioned the Member for Ruaraka, let us just hear what he says from the horse's mouth.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): I am much obliged, Hon. Speaker. Allow me to declare my interest in this matter. I am the Member for Ruaraka, which constituency hosts

Kenafric Industries Limited that employs more than 15,000 people from the low neighbourhood. If these people were to close shop, I would have more than 15,000 or so mouths looking for me to be able to feed them. This is an interest which is not monetary but an interest which brings me to the House. This chocolate business is a very important subject. It made me differ with my party leader last week. Every Member of Parliament's chocolate is in the *mwananchi* who votes for me and any time you step on my chocolate, I will speak all the English until I speak vernacular. This is what happened when I was in the Chamber.

Hon. Speaker, first of all, allow me to congratulate you because you not only received the petition but you gave one of the most considered decisions that I have not seen in this House in this 12<sup>th</sup> Parliament. There is a principal which is called *audi alteram partem*. The Leader of the Majority Party will not hear me now. I am on another wave line. This means that every person needs to be heard. Let the other side also be heard. That is what Article 50 of the Constitution is all about. That is what the right of fair administration is all about. We passed a legislation the other day to implement the Article on fair administration. This House, noble as it is, wants to condemn people without giving them an opportunity to be heard, and lynch them the way I hear nowadays in the newspaper everyday that people are condemned, hanged and judgement passed on the streets while they are still asking for bonds. If this noble House will also continue to do what people do on the streets, then we have no business being Members of this honourable National Assembly.

Hon. Speaker, allow me to congratulate the Committee on Implementation because they are wise people. I am proud because they come from this side of the House where I am. This side of the House produces wonderful people. You see it in Public Accounts Committee (PAC) and Public Investments Committee (PIC) everyday, and reports are generated here before the House. The Majority Party must be very jealous of the kind of steam power that comes from this side of the House that I am. The Committee on Implementation was considered dead in the 11<sup>th</sup> Parliament. My learned friend who is my senior resurrected it. I want to tell him to urge on. There are a lot of reports that we have passed in this House which need to be re-looked. People have been condemned or there have been decisions of this House to prosecute people. However, they are in very high public offices and they walk around as though everything is alright. So, let us now be what we are. These are the teeth with which the National Assembly is able to bite. Other than that and Article 125 of the Constitution, there is no other opportunity by which this House is able to bite. So, I urge my friend that this is the way to go.

Coming to what we have now, we passed an adverse finding against Kenafric Industries Limited. Their licences were withdrawn. You resuscitated them by ordering abatement of the suspension of their licences. You can see how many people out there would have suffered because of an act of negligence or commission by this House. Because of the orderly consideration that you made, these people are able to trade and manufacture now. These are not importers. I want my friend, the Majority Chief Whip, to allow me to state this because he needs to understand that Kenafric Industries Limited are not importers of sugar. These people do not deal in any way with table sugar. They have nothing to do with that sugar that rests on the plate. They are manufacturers of confectionery. So, they deal with industrial sugar which is rebated and rationed. They add value to it by making confectionery. Their only rivals are importers of chocolate. We want to empower these people. These are local manufacturers who add value to industrial sugar, bring development and raise the strength of our Gross Domestic Product (GDP). These are the people who should be supported.

When we talk about sugar, the Majority Chief Whip reacts the way I react when we talk about confectionery and chocolate. This is because we are representing the people who brought us here. However, these people have nothing to do with table sugar. They are industrialists. They only employ Kenyans, so that we are able to serve East Africans as we serve the world.

Without adding much, Hon. Speaker, I want to congratulate you for listening to Ruaraka people and the Committee on Implementation for listening to us and giving us justice. So, I support the re-consideration of the decision. It also teaches us that this House has powers to re-consider its decisions. We resolve things but we also have powers to re-consider them when we think we may have been wrong or acted against the law. This should make our Members know that they can at some point, by way of petition or a Motion which is well coached, bring Motions here so that we can recall and re-consider our decisions. Having done that, we then expunge those unfortunate remarks from the record.

With those few remarks, Hon. Speaker, I beg to support. Thank you so much.

**Hon. Speaker:** I can see that the Member for Mogotio is keen on contributing to this Motion.

**Hon. Daniel Tuitoek** (Mogotio, JP): Hon. Speaker, as a member of this Committee, I would like to first of all correct a notion that Members on the other side are necessarily the best. We are on this side and we belong to the Majority Party. We also contribute on the other side.

I rise to support this particular Motion. We looked at the facts. First of all, I would like to take this opportunity to thank you for giving Kenafric Industries Limited an opportunity to be heard. You made a very crucial and important decision which will guide this country for many years to come. Whenever a Committee's report comes in, it should be weighed. If a particular party or person feels aggrieved, he or she should be given an opportunity to be heard. We listened to Kenafric Industries Limited. They appeared before us. We looked at the facts and they were so compelling. This is a big company which is based in Hon. Kajwang's constituency. They employ over 2,500 people and produce so many different types of products. In fact, they brought them before us. They are exported across the East African countries. When we condemn a particular company of that size, it means we are creating unemployment in the country and reducing the respect that company gets across the border.

We also learnt one thing which is very important. I was a Member of the Sugar Committee which did not succeed on the Floor of this House. We discovered that there is no industrial sugar which is processed in this country. We were told earlier that a factory in Kibos processes industrial sugar. However, when we probed this company which uses industrial sugar, they said that they import most of the sugar which they use for confectionery and biscuits. When we examined the facts, we gave them an opportunity to explain. They even said that during the time when the Report was being prepared, they were not invited to present their side of the story. We called the Agriculture, Food and Fisheries Authority (AFFA) to explain where this allegation came from. When you look at the report on sugar which was prepared by the Departmental Committee on Agriculture and Livestock, it said that AFFA said that Kenafric Industries Limited engages in re-packaging of industrial sugar as table sugar. We discovered that AFFA did not produce any evidence. If we never re-considered this company and looked at the case afresh, we realised that there could be a lot of injustice to it.

Kenafric Industries Limited does a lot of work. We also realised that if you convert industrial sugar into table sugar, it is so expensive. It makes no sense. Therefore, it looks like the Departmental Committee on Agriculture and Livestock never looked at it critically. They did not understand some of the allegations which were made by AFFA. We also feel that AFFA did not



carry out the resolutions of this House. They recommended five companies to be barred from importation of sugar but they did not do that. Companies like Hydra and others went ahead and participated in importing sugar. So, we feel that sometimes resolutions passed by this House are adhered to by some of the Government agencies. In this particular case Kenafric Industries Limited was later denied a licence.

I, therefore, beg to support this Motion. We should consider it the way it has been worded and expunge the name of Kenafric Industries Limited from the Report that was submitted earlier.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, I can see there is a desire that I should put the Question. Hon. Members this is seeking to make a correction.

Member for Nambale.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Speaker. I appreciate the concerns of the Committee on Implementation and the corrective action they have taken because they did not give a fair hearing to a corporate Kenyan.

I am concerned about the intensity of the defence. In the process of defending that action, I have a feeling they are going overboard a bit. The only valid position I see is that they were accused without a fair hearing and if they had a hearing, they would have had a chance to evaluate that hearing in the context of the evidence. If you go beyond that and begin to do what appears to be sanitisation, that bothers me. The principle behind it bothers me. We should just stick to the fact that we have made a correction in respect of an oversight or a punitive oversight as the Leader of the Majority Party said, but I do not think we should go to the extent of defending the company.

The number of employees and the amount of taxes they pay would have no bearing if they had been guilty of what they were accused of, if evidence had been adduced. We should stick with the technicalities that have been corrected. They were sound enough to ask the House to recall that recommendation. I do not think we should go beyond that in respect of defending this particular company. That is my concern. As it goes down the annals of history, if you look at it you might find that in the absence of what you all know already, there is a lot of excitement around that defence.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Mumias East.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. I request for your indulgence because you have already given direction as far as this Report is concerned. Personally, as a Member of this House and knowing that a report of any Committee once adopted becomes the property of this House, I think two wrongs do not make a right. It may be true that Kenafric Industries Limited was not asked to meet the Departmental Committee on Agriculture and Livestock, but in the Report of the Committee on Implementation they did not give the Committee opportunity to defend itself.

*(Hon. John Mbadi spoke off record)*

Hon. Speaker the Leader of the Minority Party is a very knowledgeable person, I would not wish to react to what he has said.

As a former member of the Departmental Committee on Agriculture and Livestock it may not be on record, but I wish Hon. Mbiuki were to be with us because he was then the Vice-Chair of the Departmental Committee on Agriculture and Livestock. Three Members of the

Departmental Committee on Agriculture and Livestock visited the warehouses of Kenafri Industries Limited in Mombasa. Whatever made the Departmental Committee on Agriculture and Livestock to make that recommendation was based on the visit we paid to the warehouses.

I want to be on record before they come up with a point of order.

**Hon. Speaker:** Hon. Washiali, it will be unfair for you to begin giving evidence because this particular matter was referred on the basis of the record of the Report: Paragraph 108. The petition was very clear. Our Legal Department went through the record and said, indeed there appears to be an error on the face of the record. I am sure some other Members can tell you that. It showed that they applied to be heard by the Committee. The Committee did not indicate that they were not going to hear them because they had already visited their godown. It said that they had no time and they would proceed because the report was needed urgently. You can look at that Report.

As you know very well before a matter like this is brought in this manner, our Legal Department sits and goes through it and says that the Committee on Implementation be given an opportunity to go and look at the matter because we have no other mechanism. Correcting an error on the face of a record is an accepted process even in the Judiciary. Indeed, a judge can correct an error on the face of a record, if certain matters are brought to his attention. In this case, the attention of the House was never drawn to the fact that they are condemning somebody who had sought audience but was denied. This is the underlining reason, that the Committee on Implementation on the basis of this error, they seek the House to reconsider its recommendation. If somebody writes to you and you say that you have no time because you are in a hurry and proceed to say that he can go and hang...

Hon. Washiali, the evidence you are giving about the visit to a godown is not the basis upon which they were not heard. The reason given is that the Committee had no time. The Committee in which you belonged had no time and was in a hurry to go and do their report. That is the reason that is given there. You can look at the Report. This is factual matter. It is not based on conjecture. The record says that the Committee was in a hurry. The Report was needed urgently. The Committee was in a hurry to do a report but then having received application by a person to be heard or try to exonerate themselves, if you had given them a chance to be heard, and you went ahead to condemn them, they cannot be here seeking to be...

Hon. Washiali, please, you can look at the Report. It is not also possible for the Committee on Implementation to call the Departmental Committee on Agriculture and Livestock of the 11<sup>th</sup> Parliament. That would be an unknown procedure.

Hon. Washiali, I want you to go on with your contribution, but please do not bring facts of a visit to some godown. That particular fact was not made available.

Hon. Washiali, I cut you short when you were on the Floor. Just finish.

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker, I have heard the explanation. I was looking at Standing Order 209 that has introduced the Committee on Implementation. I have gone through it carefully. I ask all Members to look at Standing Order 209, which has given mandate to the Committee on Implementation. The position that the Committee on Implementation is taking is to become a supervisor of all the Committees. I just want to request, as I oppose this Report; that, as a House, we need to review our position. I will find time to look at the Report and should there be anything, I will also put a Motion which will then have to be listened to by this House.

I oppose.

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker, for giving me this opportunity. My heart was about to jump out when I listened to the honourable Member who I respect so much. As I stand, I want to commend and congratulate the Committee on Implementation. Literally, implementation must be true, real and the right. The Committee on Implementation seems to be the saviour, the redeemer and the Christ of this House.

Before I came to this House this morning, I was coming for a Motion that I have seen Hon. Omulele... When I listened to Hon. Kajwang', he spoke with passion because of this company called Kenafric Industries Limited. The chairs of this House represent the Government but they are trying to oppose Agenda Four, which is on industrialisation. I was at State House the other day. I pledged to the President that I am going to implement Agenda Four with agility and all my mind. When you speak about sugar, Hon. Benjamin Washiali can jump out of his skin. When we defend our companies from being closed down, he stands up here to say that they should be closed down. Kenafric Industries Limited is the only company in East and Central Kenya that sells sweets. We must be very honest with ourselves. Hon. Washiali does not live in the constituency of Hon. Kajwang'. He does not know the pain of having so many people losing jobs because of a recommendation by a Committee of this House. I feel sad. When I stand here and look at Hon. ole Kenta, I feel he is a man who respects God first because he went ahead and, in fact, looked into the thorny issues. If you close a company with multiple investments, like Kenafric, what would you be doing to the economy of this country? We are struggling with our Budget yet we want to close down this company by denying them a licence.

There is the issue of Committees denying people a chance to be heard. I wrote to the Departmental Committee on Environment and Natural Resources requesting them to invite me to speak about London Distillers (Kenya) Limited that sits in Athi River within my constituency of Mavoko. It is an old company founded in 1983 and has been employing 1,500 people during the day and 1,500 people during the night. I see a recommendation where someone is telling them to close down within six months, if they do not install an anti-air pollution system worth Kshs2.1 billion. What are we telling them? As I stand here, I know that the Committee on Implementation is the only Committee that is going to redeem that company.

I am not undermining or underestimating the capacity of these Committees. I am a Member of Parliament. First and foremost, you must know that we represent people who elected us to come and champion their interests. When I speak about London Distillers (Kenya) Limited, I speak with passion because since 1983, their corporate social responsibility is unmatched. Are we closing down that old company because of a Chinese who has come to this country to build flats? It is a question of first in, last out. Who came in first? Is it the flats or the industry? If I was given a chance, I would have told this Committee that this gentleman came to this country in 2016. We have been with London Distillers (Kenya) Limited for over 30 years. Therefore, when we are here and someone doubts the work of the Committee of Implementation, I feel very offended. Hon. Washiali, you were only a friend of the Departmental Committee on Agriculture and Livestock. You were also in the same Committee that is attempting to close down London Distillers (Kenya) Limited. I want to ask you how you feel.

**Hon. Speaker:** This Report is not about London Distillers (Kenya) Limited. Maybe, you are discussing a different report.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, you know the emotion that it carries. My stake is the people I represent. Once they are hurt, I am also hurt. I know you know, you are a respected man in this country. You have been a Member of Parliament. When we stand here, we are not joking. This country needs taxes. This country needs people to be employed. We

cannot afford to come here and do recommendations that are encouraging people to close down industries yet we are going out spending taxpayers' money to market Kenya. It is time the Chairmen of these Committees knew that every Kenyan has a right to be heard. That is why I am supporting the Committee on Implementation. Go ahead, look to all the reports, particularly the one by the Departmental Committee on Environment and Natural Resources. Going forward, there is a dossier, which I will table in this House to show that some people were not allowed to give their evidence before the Committee because of hidden personal agenda.

Many times, we have attempted to protect the integrity of this House. If we do not adhere to the rules and regulations of this House, and the activities and mandate of this Committee, we will be going out of it. Kenyans will judge us harshly. I want to tell this House that I am a very honest person. We commend Hon. Kenta's Committee. They should go on and speak out. In fact, I will encourage the company to write a petition so that I feel the way Hon. Kajwang' is feeling for his people.

Thank you, Hon. Speaker, for giving me this chance.

**Hon. Speaker:** Hon. Members, looking at the mandate of the Committees, even if you look at that Standing Order 209, inter alia, the functions of the Committee on Implementation include looking at adopted resolutions, including reports of other committees which have been adopted, to find out whether they are implementable; and if they were to be implemented, how they would be implemented. Are they capable of implementation and if they are not capable of implementation, what are the bottlenecks and then report to the House. So, you cannot begin questioning that mandate. That mandate is clear. Look at Standing Order 209(2). In fact, that is what it is supposed to do. They look at reports that have been adopted, undertakings that maybe given by Government agencies and functionaries before the committees or this House.

The Committee will then come and report that this functionary in Government gave a certain undertaking. It could even be: "We shall be flying in drones within six months." If that is the undertaking they gave, the question will be whether or not it has been implemented. If it has not, what are the reasons? That way, the House will become wiser. We cannot question the mandate of that Committee. What they are doing is exactly what they have given in the Standing Orders. Please, we may not be happy about them saying this or the other but the mandate is clear.

I see there is interest from the Whip of the Majority Party.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Thank you, Hon. Speaker.

While I contribute, it is important that we keep the records of this House true. I have listened to Hon. King'ola. Hon. King'ola Makau is trying to mislead this House that what has been recommended by the Departmental Committee on Environment and Natural Resources on London Distillers (Kenya) Limited is to close it down. He is very wrong. I have sat down through the entire debate and can confirm that they have been given six months to come with mitigation measures to reduce the pollution they are emitting into that environment. It is important we know that in as much as we are committed to the Big Four Agenda, we are all very committed, we must make sure we also save the environment at the same time. So, the best thing the Hon. Member can do is to go to that factory that belongs to his constituency and tell them: "Please, if you want to continue working here, Parliament has given you six months to go and do what you must to save the environment. Otherwise, you will be closed down." They were given a fair hearing. The Committee even visited the company very early in the morning.

**Hon. Speaker:** Can we go to this Report now?

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): I was just giving that information because I think I know he is very unhappy because things did not go his way. It is important we put the records of this House straight.

Let me also say this, that I support this Report of the Committee on Implementation. If we come up with certain recommendations that are not possible, we must as a House have a leeway to come back and ask ourselves where we went wrong and correct it. That is so that we do not put punitive measures on companies and factories that are doing the right thing. I am happy we have that recourse. I know my boss here is not happy.

*(Hon. (Ms.) Cecily Mbarire looked at Hon. Benjamin Washiali)*

For obvious reasons, anything on sugar touches him very closely at heart. It is good he stays true to his constituents. But, I would like him to also reconsider some of the decisions he makes because not everything on sugar is bad for his people. Let us also give Kenafric a chance. They need to come to the Committee and be heard. This Parliament must always give fair hearing to anybody that is mentioned in any petition or Question so that we are seen to be a just House of Parliament.

With those few remarks, I beg to support.

**Hon. Speaker:** Hon. Members, you know there is something that is going to happen at 5.30 p.m. In contributing, Hon. T. J. Kajwang' first of all began by declaring his interests. Now, without declaring any interest, I now nominate the Member for Luanda to contribute.

*(Laughter)*

I do not have to declare what interest I may have.

**Hon. Christopher Omulele** (Luanda, ODM): Thank you, Hon. Speaker for giving me this opportunity to speak.

First of all, I want to congratulate the Committee on Implementation for doing what it has done. I will take this further to say that seeing that this is more or less the first time this is happening in the proceedings of this House and sitting in the Committee that reviews our rules and procedures, I will take it up later on in the year when we sit so that we review the rules to encompass this and allow the House to sometimes revisit its decisions that may be injurious to people in circumstances such as this.

It is true that one of the rules of natural justice, and this goes even beyond the Constitution, is the right to be heard; it is the right to be given an opportunity before a decision that affects you is made. We cannot even legislate on that, it is a condition of the human dignity. It is sacred, as my brother Hon. Kaluma says.

The other one is that one may not sit in a course that is his own – to be a judge in one's course. Those are the two rules of natural justice. If this House was to break this rule, we would have no business calling ourselves a House of the people. It is good we have done what we have. I am glad I am part of this decision. I am proud of my Speaker for making this decision.

Going forward, I urge the Committees of the House to be alive to these rules. We must allow people who are affected or mentioned in any proceedings we undertake to be heard; give them an opportunity; it is only fair; it is only just; it is good in the eyes of the people of Kenya who have given us an opportunity to serve them. It is something that the Committees and the Chairs must take to heart.

I am happy, glad and I support.

*(Applause)*

Thank you, Hon. Speaker.

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

**Hon. Speaker:** What am I hearing?

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

**Hon. Speaker:** The Question should be whether the Mover should reply. In fairness, you know what is coming at 5.30 p.m. You know Members sometimes shout “two minutes!” before looking at their watches to see that it is just before 5.30 p.m.

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

Mover?

**Hon. Richard ole Kenta** (Narok North, ODM): Thank you, Hon. Speaker. I want to say a few things.

Apart from thanking you, I would like to thank the Members – more so, the Leader of the Majority Party. I would like the honourable House to note that we are not fighting vigorously for Kenafric Industries Limited. We are fighting vigorously for the truth, fairness and for the people of Kenya to be given their due rights.

I would like to state that at no time were we unfair. I understand the feelings of the Whip of the Majority Party. We were in Mumias and Miwani. To tell this country that these people are suffering will be an understatement. They are suffering because of cartels in the sugar industry. The people who did this are well known and Kenafric is not one of them. At no time did Kenafric come into contact with those factories and neither did they deal with them nor deal in sugar. There was no link in any way whatsoever. There was no evidence to show that these people did this. Just to let the House note, this complaint emanated from what I can call carelessness of the Committee. Kenafric actually applied to appear before the Committee. The minutes recorded are as follows and I read verbatim: “The Committee deliberated on the issue and resolved that it was not in a position to hear more witnesses since the Report was long overdue and, if the complainant feels aggrieved, it could seek recourse after the Report is tabled in the House.” This is what they have done. I thank the Hon. Speaker and the Committee. I can always vouch for this House that it was not their fault. It was the fault of the Sugar Board. They admitted it themselves and we told them that they misadvised this House and the House will have to punish them one way or the other, because Kenyans should not be subjected to this.

With those few remarks, I beg to reply.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

#### APPOINTMENT OF MEMBERS TO VARIOUS COMMITTEES

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move this Motion in an amended form as per Standing Order 48, in (i) and (iv), and;

THAT pursuant to the provisions of Standing Order 175, and further to the resolution of the House of 14<sup>th</sup> December 2017 on appointment of Members to respective Committees; this House further approves the following additional appointments to the Committees specified hereunder:-

1. The Hon. Gideon Sitelu Konchella, MP be appointed to the Departmental Committee on Trade, Industry and Cooperatives to replace Hon. Kathuri Murungi;
2. The Hon. Christopher Omulele, MP, and Hon. Edith Nyenze, MP, be appointed to the Departmental Committee on Finance and National Planning to replace the Hon. Alfred Sambu Wekesa, MP, and David Mboni Mwalika, MP, respectively;
3. The Hon. Alfred Sambu Wekesa, MP, be appointed to the Select Committee on Constitutional Implementation and Oversight to replace Hon. Tom Joseph Kajwang', MP;
4. The Hon. Charles Kamuren, MP, be appointed to the Departmental Committee on Sports, Tourism and Culture and the Committee on Broadcasting and Library to take up slots of the Majority Party;
5. The Hon. Silvanus Osoro Onyiego, MP, be appointed to the Departmental Committee on Agriculture and Livestock to take up the remaining slot for the Minority Party;
6. The Hon. Peter Kaluma, MP, be appointed to the Departmental Committee on Administration and National Security to replace the Hon. Justus Gesito Mugali, MP;
7. The Hon. Gladys Wanga, MP, and the Hon. Justus Gesito Mugali, MP, be appointed to the Public Investments Committee (PIC) to replace the Hon. Gideon Mulyungi, MP and Hon. Nicholas Tindi Mwale, MP, respectively;
8. The Hon. Sakwa Bunyasi, MP, be appointed the Budget and Appropriations Committee to replace the Hon. Christopher Wangaya Aseka, MP;
9. The Hon. Nicholas Tindi Mwale, MP, and the Hon. Gideon Mulyungi, MP, be appointed to the Committee on Delegated Legislation to replace the Hon. Charles Gimose, MP, and Hon. Abdulswamad Shariff Nassir, MP, respectively;
10. The Hon. John Walter Owino, MP, be appointed to the Select Committee on Members' Services and Facilities to replace the Hon. Catherine Wambilianga, MP;
11. The Hon. James Lusweti Mukwe, MP, be appointed to the Committee on National Cohesion and Equal Opportunity to replace the Hon. Mohammed Ali Lokiru, MP;
12. The Hon. Tom Joseph Kajwang', MP, be appointed to the Public Accounts Committee to replace the Hon. John Sakwa Bunyasi, MP;
13. The Hon. Asha Mohamed Hussein, MP, be appointed to the Departmental Committee on Defence and Foreign Relations to replace the Hon. Silvanus Osoro Onyiego, MP;
14. The Hon. Jeremiah Ekamais Lomorukai, MP, be appointed to the Departmental Committee on Trade, Industry and Cooperatives to replace the Hon. Ferdinand Wanyonyi, MP; and

15. The Hon. Ferdinand Wanyonyi, MP, be appointed to the Select Committee on National Government-Constituencies Development Fund to replace the Hon. James Lusweti Mukwe, MP.

The procedure of coming up with this matter was followed and in accordance with the provisions of Standing Order 173(1), the Committee on Selection, in consultation with parliamentary parties, is mandated to nominate members to serve in various committees. The changes to committee membership was adopted by the Committee on Selection on 30<sup>th</sup> August 2018, and thereafter, the list went through the House Business Committee before scheduling it on today's Order Paper. The process was followed prior to scheduling of the Motion as required by the National Assembly Standing Orders and the general parliamentary practice.

This Motion has been occasioned by the need to harmonise committee membership to ensure that all Members are represented in committees. More importantly, there are four Members who since the beginning of this Session have not been in any committee for various reasons. They include, Hon. Nyenze, Member for Kitui West, Member for Baringo South following the death of our sister Hon. Grace Kipchoim, Hon. Member for Mombasa County, Hon. Asha Mohamed and of course the Hon. Member for Kilgoris. Those four Members were not in any committee.

This is a function of parliamentary parties. If you read Standing Order Nos. 173, 174, 175, and 176, it is only on Standing Order No. 176 where the Parliamentary whips have the powers to de-whip. We have not de-whipped anybody. If whips want to de-whip Members, they must follow the procedure stipulated in the revised Standing 176, where fair and due process is given, the Speaker is given a period and the Member is given an opportunity. Let me make it very clear, the leadership has only harmonised.

Hon. Speaker, I want to go on record. This morning, I was given an order from the political party tribunal that wants to direct the majority and the minority on how we bless Members. Let me send a warning to the men and women who run the Political Parties Tribunal. You messed the political parties' nomination, you made sure that Hon. Oyoo stayed at the Supreme Court until one day to the election. We will not allow you to run the legislature. That order was talking about opposition. There is no opposition, there is minority and majority. The purported Secretary General of ANC, Hon. Barrack Muluka...

*(Loud consultations)*

Hon. Speaker, I know Hon. Osotsi is in court because he is claiming that seat. Before Barrack Muluka goes to political parties' tribunal to run the legislature, he must first win a seat as a Member of County Assembly (MCA) in Butere. I am not seeing the Member for Butere, Hon. Tindi Mwale.

The purported Secretary General of ANC must realise that in the legislature where there is minority and majority, there is also what we call parliamentary parties.

**Hon. Member:** On a point of order, Hon. Speaker.



**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I do not want to be informed. If you are not a parliamentary party and you coalesce around another parliamentary party, you must have the discipline and decency to live with that party. You must also appreciate that, that parliamentary party has gone out of its way to accommodate you. If somebody accommodates you in his House, you cannot choose where to sleep. You cannot tell ODM as a parliamentary party that you want to sleep on Baba's bed. I request you, Hon. Speaker to protect the legislature. When I was served with that letter, I asked whether parliamentary leadership can be enjoined by the political parties' tribunal. What about tomorrow when the tribunal will say you cannot discuss legislation such as the Budget?

Very soon, we are going to amend the Political Parties Act. We have the powers. We will deal with the men and women who run the Political Parties Tribunal by amending the Political Parties Act. I want to inform Hon. Members that there is nothing. It happened in the 10<sup>th</sup> and 11<sup>th</sup> Parliament. We will reconsider and harmonise so that all committees are the same. You must tell us why you want to stick in PIC. What is in PIC? We must know. We must know what happens in PIC. There are people who want to kill us. It is like you have filed a petition against them in court. Hon. Sharif Nassir must tell us what is in Public Accounts Committee.

Hon. Speaker, the Powers and Privilege Committee that you chair must do a lifestyle audit on people who insist that they must be in a particular party. I am not a Member of any committee and I have no problem. The Leader of the Minority Party is only in the Budget and Appropriations Committee. So, let us not make our lives difficult. In fact, let me say it here and go on record: We will ask the Director of Committees to submit to our whips and the leadership the attendance register of members in committees. If you do not attend committee meetings more than four times, we will have a very good reason to remove you from that committee. That is what we should do.

Hon. Speaker, you were consulting with a Member. We have a problem and we must say it on record. We have a problem touching on members in PIC and PAC, but we shall do our own due diligence. There are people who are saying that this list came because of the Finance Bill. The Committee on Selection dealt with this matter on 30<sup>th</sup> August 2018. If it was about de-whipping, the first victim should have been the choir master, the Member for Ruaraka. This matter was dealt with by the Selection Committee before the Finance Bill. We are good leaders. Even if you misbehave and go against the party line, we will not de-whip you; we are colleagues. In fact, Hon. Kaluma will now be a member of the Departmental Committee on Administration and National Security despite being a gubernatorial contestant with Hon. Mbadi. He has to face him. In the opinion polls in Homa Bay, Hon. Kaluma has been trailing, but since he went to court to represent the good family of the late Sharon, his opinion poll numbers have come up. He is now doing about 15 per cent.

So, Hon. Speaker, please, protect Parliament from those who want to serve us with letters and summons from the Political Parties Tribunal. The legislature is independent. I beg to move and ask the Leader of the Minority Party to second, so that the new Members—Hon. Nyenze, Hon. Aisha, Hon. Kamuren, Hon. Gideon Konchela and Hon. Kajwang?—can join and be active in the various committees we have placed them.

*(Hon. Mwale shouted across the Floor)*

**Hon. Speaker:** The Member who is shouting is out of order. You cannot stand there and start pointing at another Member on the other side. Please, try to learn the Standing Orders.

Proceed, Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you very much, Hon. Speaker. I rise to second this Motion. Today is a very happy day for me, especially if this House will pass this Motion, because I have had issues with some Members for a very long time; literally two Members from my coalition who for months, in fact one of them for over a year, have not had a committee. We inadvertently left the woman representative for Mombasa County without a committee. She has been coming to my office literally every week. Further, Hon. Edith Nyenze has also not been in a committee.

*(Hon. Mwale spoke off record)*

**Hon. Speaker:** Hon. Members, there is nothing out of order.

**Hon. Nicholas Mwale** (Butere, ANC): On a point of order, Hon. Speaker.

**Hon. Speaker:** If you persist, you will...

**Hon. Nicholas Mwale** (Butere, ANC): The House lacks quorum, Hon. Speaker. There is no quorum in the House.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, we cannot hear him. I am on my feet.

**Hon. Speaker:** Proceed, Hon. Mbadi. May I know all these Members who have put their requests here, like Hon. Junet, is it about a point of order?

**Hon. Junet Nuh** (Suna East, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** What point of order?

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, the Standing Orders are very clear that when a Member is on his feet and you have given him time to speak, another Member cannot be on his feet. This is gross misconduct and it is disorderly.

**Hon. Speaker:** Absolutely.

**Hon. John Mbadi** (Suba South, ODM): When you are new and you want to start with bad habits, you may end up with bad habits for years. I would urge that some of these Members like Hon. Tindi Mwale learn some good habits. There is debate in this House; you will get your opportunity.

What I was saying is that there are some Members who have not had committees, like Hon. Edith Nyenze from my side and the Member for Mombasa County. I want to also add that the media misreported that we have recommended removal of Members from Committees. It is far from it. Actually, the media attributed that to an event which took place on 26<sup>th</sup> of last month. These names were presented to the Leader of the Majority Party, as the Chair of the Committee on Selection, a few days before we went on recess. And it was informed by changes that we thought would make these Committees function better and to be fair to all Members.

If it was a matter of punishment, as the Leader of the Majority Party said, TJ Kajwang' would have been de-whipped from all the Committees because he actually misbehaved a lot on that 26<sup>th</sup> by disobeying not only the party position but also the leader of that party in the House. You will see in this Motion that Hon. TJ Kajwang' is one of the beneficiaries of these changes. Why? Because, despite his experience, capacity and commitment to parliamentary duty—and I

doubt whether anyone would fault that—he was only in the Constitutional Implementation Oversight Committee which rarely sits. So, it makes sense that we reorganise committees to accommodate some of these Members: Hon. TJ Kajwang’, Hon. Kaluma and others.

I have heard one of my members, Hon. Tindi Mwale, complain a lot about being removed from PIC and taking him to another committee. He is a member of the energy committee. He was sitting in the energy committee and PIC. There are other Members who literally do not have committees. So, if he does not want to sit on the energy committee, he should tell us so that we return him to PIC and take him out of the energy committee. It should also not be a practice that you singly decide where to sit. As the leadership, we have some space to look around, see competences of Members and allocate you a committee. In fact, I remember when Hon. Gideon Mulyungi was being assigned to PIC, we had a long argument with him. I asked him: How do we put you in the transport committee and PIC and other Members do not even have any committee? He even had to call his party leader who was out of the country. I did not want to give his party leader too much stress because he was in Germany for a very important assignment. So, because he was troubling his party leader so much, I decided to let him be on the transport committee and PIC even though it was not fair. We must correct it now. I ask my colleagues to allow others also to serve other committees. I have served in the Public Investments Committee and Public Accounts Committee. I cannot insist on serving in those Committees forever.

Hon. Speaker, if you look at the changes that we have proposed to make, we are removing a Member from one committee to another, making adjustments and giving other Members opportunity. Hon. Kizito here has also been removed from the Departmental Committee on Administration and National Security and I have not heard him come to my office to complain. He has not even complained publicly. This talk that there is party affiliation such as ANC, ODM or Wiper Party, we must understand that in this House the leadership of minority is one unless a party or someone decides to walk out of the coalition. If they qualify to be a parliamentary party, they will enjoy their privileges but as it is now, the Leader of the Minority Party is John Mbadi and the Whip of the Minority Party is Junet Muhammed. These are the people who are supposed to bring these changes.

If someone has complaints, they can still approach us. Hon. Tindi Mwale has approached me but I have told him, it is only fair that we leave him in the Committee on Energy and give PIC to another person. We will take him to the Committee on Delegated Legislation so that he has one strong departmental committee and also have another Committee. He has two Committees.

So, Hon. Speaker, as I conclude, I also saw that correspondence from the Political Parties Dispute Tribunal (PPDT). I have some good friends who are very good lawyers but the Chair has a problem. You cannot give an order that cannot be implemented. Does he not know that there is no opposition party in Parliament? Who said we are the opposition? We are a minority party in this Parliament, a coalition of parties. So, when you injunct opposition parties, I do not know the animal you are injuncting.

How do you injunct me for doing my work? Then in injuncting Parliament it says that we must follow Standing Orders. He is not even quoting which Standing Order it is that he feels we have not followed. So, the Chief Justice needs to look at that PPDT. We have had issues with that body during party primaries. I tend to think that some of the decisions they were making were not informed by the law but other considerations.

Now, you do not just allow anybody to appear before you, you issue an order that cannot even be implemented and then you say that Parliament does not respect the Judiciary.

Hon. Speaker, I can hear my colleagues complain about time and so with those many remarks, I second this Motion.

**Hon. Speaker:** Hon. Members, I encourage many of you to just read the Standing Order.

*(Question proposed)*

**Hon. Sakwa Bunyasi** (Nambale, ANC): On a point of order

**Hon. Speaker:** I see Hon. Sakwa Bunyasi wants to rise on a point of order. Hon. Members you have only three minutes

**Hon. Sakwa Bunyasi** (Nambale, ANC): Hon. Speaker, this is an extremely important matter. In the moving and seconding, they have raised a number of important issues that will benefit the full House. We have no quorum. We should ascertain that we have quorum before we sit.

**Hon. Speaker:** Very well, Clerk can you ascertain whether there is quorum? The Member who is raising his hand, at this point the issue in consideration is strictly that of quorum. You will learn with time but you are taking too long. By now you ought to have known that.

Members, once the issue of quorum is raised, you cannot walk out. It is only the whips. Hon. Washiali can go but let us first get to know what the number is.

*(The Clerk ascertained that there was no quorum)*

Hon. Members, I confirm what Hon. Sakwa Bunyasi has said. The House does not have quorum. Ring the Quorum Bell. Member for Yatta, you must remain inside.

*(The Quorum Bell was rung)*

*(Hon. Kilonzo raised his hand)*

Please inform this Member that at this point unless you want to approach the Chair from here, there is nothing you can say from there.

*(Hon. Charles Kilonzo spoke off record)*

**Hon. Speaker:** Hon. Charles Kilonzo, remember you cannot withdraw.

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

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) took the Chair]*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I now direct that the bell stops ringing, we have the numbers to conduct business.

**Hon. T.J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. T.J. Kajwang', what is out of order?

**Hon. T. J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Temporary Deputy Speaker. I rise on Standing Order No.95. These matters have been debated and canvassed by the Leader of the Majority Party and responded to by the Leader of the Minority Party. This Procedural Motion is for our information. Therefore, I request that the Mover, be called upon to reply.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to reply.

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, allow me to put the Question.

*(Question put and agreed to)*

Next Order! Hon. Members, as you can recall we have a Motion for Adjournment which was carried. I therefore, give this opportunity to Hon. Florence Mutua, Member for Busia. Those Members retreating kindly do so quietly, so that we can conduct business.

*(Hon. Onyango Oyoo consulted loudly)*

The Hon. Member for Muhoroni you must remember that this is the House of Parliament and not a public rally. Allow Hon. Florence Mutua to conduct the business of this House, she now has the Floor. Hon. Mutua, proceed.

### **MOTION FOR ADJOURNMENT UNDER STANDING ORDER NO.33**

#### **INCREASED CASES OF ROAD ACCIDENTS**

**Hon. (Ms.) Florence Mutua** (Busia CWR, ODM): First, I thank you, Hon. Temporary Deputy Speaker, for adjourning the House to discuss this very important Motion about the increased cases of road accidents in the country. I pass my condolences to the families who lost their loved ones yesterday in a very grisly road accident that happened along Muhoroni-Londiani Road. Yesterday was supposed to be a very good holiday for us. Having been a beneficiary of *maziwa ya nyayo*, I expected it to be a very good day, but it ended up being a very sad day after losing so many people. It marred the entire holiday.

We got scanty information. Until today, we do not have the actual information that 49 people died on the spot. We also got scanty information that the bus did not have a licence to travel at night. Further information is coming that even the driver was over 72 years, which in

one way or the other, might have implications on fast decision-making when it comes to the road.

We all remember when Hon. Michuki was in that docket and we had immediate sanity. Road rules were respected but upon his demise - may his soul rest in peace - the sector is in shambles to date. Of interest is that until this very minute, apart from a very lame condolence message from the Cabinet Secretary, Mr. Macharia, we have not heard any substantial statement from him. We have not heard any statement from the Inspector-General. Neither have we heard from the boss of the National Transport Safety Authority (NTSA). They are all quiet and people are out there mourning and wondering if we care about the Kenyans who died yesterday. We all understand that most of the accidents that happen out there are avoidable. Most of the accidents that happen out there are just because of unnecessary over speeding, impunity and general noncompliance of road safety rules by most drivers, lax and unbothered police officers who are out there for other intentions apart from Kenyans' safety. We also have lax NTSA officers who knew the bus was not licensed. They come out the last minute after people have died to tell us that the bus did not have a licence.

It is sad that official statistics indicate that we have lost 2,345 people on our roads. We should add the 55 people who died yesterday to this number of people who have died in road carnage in various parts of this country. Arising out of road accidents, many of our people are now disabled. Many children are orphaned. Many people are widowed and most require constant assistance. Most of them have lost their jobs because they cannot perform their normal duties. It is very sad that most of them have never been compensated arising out of these accidents. A good example are the victims of the current accident. Was the bus insured? Nobody knows. The information out there is that the bus was not insured. We do not know who is going to compensate the 55 people who have died and who will assist the families. Last week, we buried two young brothers who died in a similar bus accident two weeks ago. Who is going to compensate our people? Who is going to stop this road carnage because all we see is blame game from the CS to the Inspector-General and the NTSA. It is just going round in circles.

Last week, I put a Question to the CS, Transport, Infrastructure, Housing and Urban Development asking why the regulations of 2018 which require commercial vehicles to have two drivers on board during long distances are not adhered to. We are still waiting for the answer. This is the more reason why Kenyans need to have a referendum to bring back the parliamentary system where we can have Members of Parliament appointed as ministers. Right now, we would be having the CS of Transport, Infrastructure, Housing and Urban Development answering us this afternoon. However, here we are. We have to put the Question and wait until when he feels like he can come to Parliament.

As I end, we, as leaders, must stand up and fight for our people. We should ensure that the rules are adhered to. We have enough laws. About two weeks ago, I saw the President very angry with the maize cartels. He was very furious. Yesterday, I expected to see the President very furious about the incessant loss of lives from road carnage. We expect the Executive to have double anger on road carnage and start ensuring that heads are rolling as soon as possible. Kenyans are sad and angry. They are waiting for action. We need to know who is going to step aside because of what has happened over time as a result of road accidents.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): We shall have Hon. Dennitah Ghati. Hon. Whip, you know leadership means the Leader of the Majority Party and the Leader of the Minority Party.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you very much, Hon. Temporary Deputy Speaker, for the opportunity to contribute on this topic. Allow me to thank the Member for Busia for bringing this Motion for debate. I speak in this House as a product of a road accident. So, when such a Motion is brought, I am touched. I am happy that you have given me an opportunity to talk about this Motion.

Hon. Temporary Deputy Speaker, as you are aware, we just came from a by-election in Migori where we now have a Senator. I was extremely happy to be celebrating a new Senator from my county of Migori when the news came in. The statistics of road accidents are worrying. I would wish that this country and the President declare road carnage a national disaster. For the last few months even until 2017, this country has not known peace when it comes to our roads. Families are crying in our countryside. The recent accident in Kericho...

*(Hon. Johnson Naicca crossed the Floor  
without bowing at the Bar)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Naicca, you are out of order. Kindly walk to the Bar.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Hon. Temporary Deputy Speaker, the recent accident was the one in Kericho where over 50 Kenyans lost their lives. What are we not doing right as a country? I challenge the Members of Parliament and the leaders of this country to be serious. We cannot do everything all the time. Kenya has no shortage of laws when it comes to road usage. The Ministry of Transport, Infrastructure, Housing and Urban Development has to tell us what it is doing to curb road carnage in this country. When you go to the National Spinal Cord Injury Centre in Nairobi, you find that 98 per cent of patients there are as a result of road accidents. Disability in this country, which I have, is as a result of road accidents. As a country, we are not doing right.

We know very well that we had Legal Notice 23 that brought about the issue of ensuring that public service vehicles in this country are regulated. These are the regulations and guidelines that had the issues of how to manage SACCOs. How is our public transport system managed? In developed countries, where I have had opportunity to live, there are countries which even tell their people to walk to work. In this country, with our limited facilities, all of us have to get into our vehicles all the time from as near as Buruburu to drive to Nairobi. This country had the train system. When I was growing up, Kenya had the mass train system that operated from Mombasa to Kisumu. I do not know where the trains went to. It is high time we revived the train system so that our people can use the facilities to go wherever they want to go. Last year, we lost high profile people like the Governor of Nyeri County, who died in a road accident.

When you drive from Nairobi to Narok through Mai Mahiu, you realise that all the rails are gone. Where did the rails on our roads go? The Ministry of Transport, Infrastructure, Housing and Urban Development and the Departmental Committee on Transport, Public Works and Housing should look into the rails that were along the Mai Mahiu Road all the way to Narok.

We are wiping and drying the tears of crying families. I send my condolences to those who lost their relatives in the road accident. As Government and Parliament, we have to be serious. We are tired of sending donations all the time to bury people who have died from road accidents. We have to style up and address the issue of road carnage in this country. We are tired of going to *Harambees* to raise money to bury people who have died from road accidents while we do not act. We have very strict road regulations in this country, which are not adhered to.

I am very bitter today. The disability world I belong to is already full due to road accidents. We do not want any more visitors. As a country, we have to be serious. How do we put rails on our roads? How do we ensure that our drivers are contracted and work within the provided timelines? What was the criteria of hiring the 72-year-old driver who caused the recent accident in Kericho?

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Dennitah, I would just like to remind Members that on this kind of Motion, you only have five minutes. But because you are the first one to contribute and you seem to have a lot to say, I will allow you an extra minute to wind up. The rest of the Members should remember that you only have five minutes to contribute.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you very much, Hon. Temporary Deputy Speaker for understanding. I am very passionate about this topic of road accidents and carnage. As I have said, we will declare road carnage a national disaster in this country and make sure that we put in place structures to mitigate it. There are already laws that govern transport on our roads. We need to look at ways in which we can make sure that we do not bury our people due to road accidents. There are many other causes of death. Kenyans should die from natural causes but not road accidents. The disability fraternity that I belong to, is already full. We need to address the issue of road carnage. Most of the patients, who are at the National Spinal Injury Referral Hospital due to road accidents, are in denial and this issue should be addressed.

I support this Motion. It is important and needs to be addressed. We have to look at the traffic police who man our roads. The traffic police take...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Dennitah, on this one, you could have the whole day to contribute if it was up to me, but we have to allow the other Members to have their say on it. It is fair.

Allow me to give this opportunity to Hon. Mbai Mbithuka, Member for Kitui East. Hon. Mbai is not in the House. I will give the next opportunity to Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. Let me join my colleague, Hon. Dennitah, in thanking the Mover of this Motion, Hon. Mutua. This is a very important Motion. I want to take this opportunity on my own behalf and on behalf of the good people of Kitui Central to say *pole* to the families who have lost their loved ones. I wish a quick recovery to those who are in hospitals.

We need to stop these kinds of Motions from becoming talk shows. We have lost about 55 Kenyans. When you follow the story in the print media and on television, you realise that there are a number of unanswered questions. As a country, we agreed that it was important for public transport vehicles to be fitted with speed governors. When you read that the driver of this vehicle was over-speeding and driving carelessly, you ask yourself what happened to the issue of speed governors. That is the first question.

Secondly, for those of us who travel at night, there are many police road blocks. They check vehicles after every 10 kilometres. They stop vehicles, check them and tell you to move on. From Nairobi to Kericho, how many road blocks would this vehicle have gone through? How come they did not realise that the vehicle lacked a road licence and insurance? What is happening with our traffic police officers who should check vehicles? Is it that they did not want to tell the driver that he cannot travel because the vehicle had no insurance or were they compromised?



Thirdly, what happens to those who have lost their loved ones? What happens to the children who had parents yesterday and today they have none? They are now orphaned. What happens to the women who lost their husbands or husbands who lost their wives? What happens after this accident? What happens to those in hospital? Who will meet their hospital bills? There are very many unanswered questions.

As we debate this issue, this country needs to stop being reactive and become proactive. Now that it has happened, everybody is up in arms. The NTSA and the police are giving different stories. The truth of the matter, whether we like it or not, is that we have lost lives and the people will never come back to this world. Even if we give many excuses, we need to hold responsible all the people who did not do their work as expected, starting with the police who man roadblocks and the NTSA who should have checked whether the bus was licensed to travel at night. It is a big shame when we see the NTSA saying that the bus was not licensed to travel at night. It was travelling and it has killed people! What are they telling Kenyans? This is a very emotional issue.

As a House, we need to make sure that those who are responsible are punished so that it sends a very clear signal to others that if you do not do your work as expected, as per the Constitution, you will pay for your deeds.

With those remarks, I support the Motion.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let us have Hon. Washiali, not because you are in the leadership, but because you come from the county that is most affected by the most recent accident.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I am most obliged. Allow me to thank Hon. Florence Mutua for tabling this Adjournment Motion. I quickly take this opportunity to pass a message of condolence to the families who have lost loved ones. As you rightly put it, I come from Kakamega County. The record we currently have is not yet complete, but most of the victims come from Kakamega County. Kakamega County is mourning and I assure the families that they will not mourn alone.

This is not the only Adjournment Motion we have discussed in terms of traffic issues. Not long ago, there was another Adjournment Motion when issues of traffic accidents came up. His Excellency the President took up his executive role and removed the NTSA from managing traffic on roads and replaced them with the traffic police.

Hon. Temporary Deputy Speaker, I want to take this opportunity to thank the media for the coverage that they gave to the incident. That is where we know the problems that this bus had. One of the problems is that it was overloaded and some passengers were seated on soda crates on the aisle. That means they did not have safety belts.

We have also learnt that the driver of this bus was 72 years old and he had made a round trip. This means he had driven the bus from Kakamega County to Nairobi, got other passengers and attempted to drive back to Kakamega County. When he was on his way back, he was recalled after he reached Westlands to come back and pick more passengers from the Machakos Bus Stop at 1.00 a.m. We learnt from the media that this bus did not have a valid insurance. That is the route we take while going back home.

I know the number of roadblocks that are manned by police officers in uniform on the road before you get to where this accident took place. If I were the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development, I would resign. It has now become very clear that we are unable to manage our roads. The media took live coverage of the scene of the accident. That is why I am thanking them. The neighbours, including a Member of this

House, claimed that the road has no road signs. Driving at night is not easy for any driver to judge the distance or the condition of the road.

*[The Temporary Deputy Speaker (Hon. Christopher Omulele) left the Chair]*

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

**Hon. Ayub Angatia** (Lugari, ANC): On a point of order, Hon. Temporary Deputy Speaker.

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Temporary Deputy Speaker, I do not know why Hon. Savula wants to rise on a point of order. He should allow me to finish my contribution, so that he can also have the opportunity to contribute. This is what democracy is all about.

I want to declare here that it has become very difficult for Members of Parliament to look for positions and even retain them.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Washiali. You are the one who mentioned the Member for Lugari and I see that he is on a point of order. So, let us hear what is out of order.

**Hon. Ayub Angatia** (Lugari, ANC): Hon. Temporary Deputy Speaker, is the Majority Chief Whip in order to mislead this House that the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development should resign and yet he is in the Jubilee leadership? He is the person who should confirm to us that the Cabinet Secretary has resigned. What are the Members in the Jubilee Party doing?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): What is out of order?

**Hon. Ayub Angatia** (Lugari, ANC): He is misleading the House that the Cabinet Secretary should resign. He should tell us that the Cabinet Secretary has resigned because he is the Chief Whip in Jubilee Government. This is a disaster to our county.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Your point is noted.

**Hon. Ayub Angatia** (Lugari, ANC): He should not play around with us here that if he were the CS, he would have resigned. Tell us that the CS has resigned.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Savula, you have spoken, but allow me to say that the Chief Whip is also a Member of a constituency and he is speaking as a Member. Are you speaking as the Chief Whip or the Member for Mumias East?

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Temporary Deputy Speaker, I am surprised with my colleague here, Hon. Savula. He should know that this is Parliament and there is the Executive. I am talking as a leader in this Parliament. I said if I were the Cabinet Secretary, I would resign. I am not saying that he should resign.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Carry on with your contribution. I have already ruled on that one. There is nothing which is out of order. You have one minute.

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Temporary Deputy Speaker, I want to end there. As I conclude, I want to pledge here that I will join the families over the weekend, so that we can mourn together as the people of Kakamega County.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Member for Mavoko.

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Temporary Deputy Speaker. From the outset, allow me to thank Hon. Florence Mutua for showing true motherhood by adjourning the House to mourn the bereaved.

Every nation prides in its citizenship. Once the populace is exposed to death in such ways, it hurts. There are 22 roadblocks on the highway from Nairobi to Londiani. What is their use? When you look at the agencies which are involved like the NTSA, the traffic police and the Ministry of Transport, Infrastructure, Housing and Urban Development, you wonder whether we are sacrificing Kenyans or happy when our people are dying like this. The speakers are condemning the deaths. Even as we condole with the families who lost their beloved ones, it is very sad. If in one roadblock, at least, one police officer or NTSA officer could have noticed the age of the driver, 72 years, then we would have saved lives. The Bible says that most of your organs stop functioning, including your eyes and ears, after you attain 70 years. I do not see how a 72-year old man can sustain eight hours of driving. I do not see how a public service vehicle (PSV) can be allowed to pass all these roadblocks without any police officer noticing that there is no valid insurance. The question is whether we are paying insurance to police officers or insurance companies. This leaves a question begging in terms of who will compensate the lives that were lost. We know there are orphans, widows and widowers. We need to be serious. If as a country we have lost business to Tanzania by Rwanda and Uganda diverting their trailers to Tanzania because of 44 roadblocks from Mombasa to Busia, we must address what went wrong.

It is not just about corruption. We should re-think our culture as a nation. For how long are we going to be corrupt? Corruption is fighting back. Our people are dying because of diseases. When you go to hospital, there are no drugs and doctors because of a corrupt person somewhere. He has taken away the funds meant for drugs, doctors and insurance. It is high time we changed our culture. If we have men and women of God, this nation needs spiritual intervention. Otherwise, this fight cannot be fought like that. When you look at the Ethics and Anti-Corruption Commission (EACC) statistics, the police department is the most corrupt. We are exposed every day to dangers like insecurity and road carnage for assuming that police officers on our roads will take care of us. I have a heavy heart as I condole with the families.

Although, Hon. Washiali says he comes from Kakamega, I come from Mavoko where a few families had left Mlolongo to go to Kakamega. I am going to contribute because of a careless policeman, a careless NTSA officer, a careless Ministry of Transport, Infrastructure, Housing and Urban Development officer. We must put this to a stop.

I support the Motion and I hope those who are culpable will be dealt with severely.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Next to take the Floor is the Member for Embakasi East, Hon. Babu Owino. He has left his card as he went to consult. Let us have the Member for South Mugirango, Hon. Onyiego Osoro.

**Hon. Silvanus Onyiego** (South Mugirango, KNC): Thank you, Hon. Temporary Deputy Speaker. I equally want to join my colleagues in condoling with the families that lost their loved ones in the accident. It is quite saddening. The last time we had deaths of such magnitude was in 2013 or thereabout when we lost about 41 people who were en-route to Kisii. It was very sad. Recently, we lost about 26 lives along Keroka-Kisii Road.

It is clear we know what the country is facing. It is clear we know what our problems are. Unfortunately, the authorities do not want to correct the mess. Most of the things have been said. Our roads are not marked completely. We need to have reflective marks at night on our roads. The issue here is not about banning night travel. That is not the solution. We brag about having a

24-hour economy. Banning night travel is not the solution to curbing accidents. We need to agree that along the way, even during the day, people die in road accidents or road carnage. That clearly shows that it is not about night travel. As a country, we need to enjoy the 24-hour economy, but we need to sort the mess in the country.

Our roads are not well marked. At night, one cannot see the road well. When going to Kisii, you will notice that from Nairobi to Narok, the road is not well marked. You will get a few markings past Narok. It becomes very difficult for any driver any time, especially when it rains, to see the lane one needs to drive on. So, it is not about banning night travel. It is just about sorting out some simple mess. Perpetual sorting of problems especially when serious issues have happened should stop. The other time when we had an accident around Naivasha, the Kenya National Highways Authority realised that they needed to erect bumps in that area. It is quite saddening that when we have serious problems we start thinking about what to do on our roads. Today, we are talking about an accident that claimed 55 lives. Every person is saying that our roads are not well marked. You will see the Kenya National Highways Authority marking that road tomorrow. They will ignore another section, probably a road going to Kitui or Kisumu until an accident happens. Then you see them there saying that the owner of the bus needs to be arrested for traveling at night. This is a cosmetic solution to things that have already happened and caused a lot of suffering to our people. We are lying to families that something is being done. About 55 lives have been lost. Where were the police officers, if, indeed, there was a problem on the way? If the vehicle had an issue, for example, it was not insured, who allowed it to pass? Where were the police in Nakuru? Where were the police in Naivasha? There is a problem in this country. We want to fix a small simple businessman who has invested in the transport business. We want him to be arrested at the expense of the people who negligently avoided performing their duties. These are the police officers along the way. That should not be allowed to happen. We do not need to ban night travels. We only need to kill the madness on our roads and corruption where police officers collect Kshs50 and allow faulty vehicles to proceed. Let us correct the mess collectively.

There is equally need for us to define the buses that need to travel long distance.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member, because of the interest of other Hon. Members, I may not be in a position to add you time. I have 14 requests from Members. If I add you time, I would be denying them a chance to speak.

Hon. Jaldesa Dida, County Women Representative for Isiolo.

**Hon. (Ms.) Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this emotive and important Motion. I would also like to join my colleagues in thanking Hon. Mutua for bringing this important Motion, which touches on the lives of Kenyans. I also take this opportunity, on my behalf and on behalf of the people of Isiolo, to send my condolences to the families who are affected by the unfortunate accident. I also stand here to emotionally contribute as a victim of a road accident.

If stories were to be told, everybody in this Parliament will have a story to share regarding a road accident. You may look at me and think that I am very okay, but I have joined the league of Hon. Dennitah because of an accident I was involved in on 10<sup>th</sup> March 2017. This was during the campaigns when a reckless driver hit my car from behind and my car rolled. The unfortunate thing is that as much as it was a busy road, I stayed in that vehicle for almost an hour. Nobody attended to me, but people were looting instead of trying to save my life. I ended up losing a lot of blood and had an injury.

It is very unfortunate that we talk about road accidents day in, day out, and year in, year out, without the Government giving it the importance it deserves. That leaves me wondering whether as a country we are serious about the lives of our people. Maybe because about 80 per cent of the accidents affect ordinary people, the Government is not seen to take it as an issue or an agenda. That pains my heart.

I was looking at the statistics this afternoon when Hon. Florence Mutua brought this Motion and I am shocked to report that as of 8<sup>th</sup> October, 2,345 persons have lost their lives this year compared to 2,162 the same time last year. That tells us that the number is constantly going up. I do not know what will happen now that we are approaching December. In my view, that number is unacceptable and it should not happen.

I am saddened that nobody, neither the President nor the Cabinet Secretary in the Ministry of Transport, Infrastructure, Housing and urban Development, has condemned it. That tells us that as a country, we are headed for hard times ahead. I sit in the Departmental Committee on Transport, Public Works and Housing. Unfortunately, my Chairman is not here. As a Committee, we have summoned the Inspector-General of Police in the last three or four meetings to appear before the Committee to explain, but he has always failed to turn up without any proper explanation.

In the interest of time, I would like to say that we do not have a shortage of regulations or policies in as far as road transport is concerned. All we have is carelessness and lack of attention. Maybe, the lives of the poor people are not important. Therefore, let us declare road carnage a national disaster.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Abel Ogutu, Member for Bomachoge Borabu.

**Hon. (Prof.) Zadoc Ogutu** (Bomachoge Borabu, Independent): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to join my colleagues to mourn the many lives that we lost through this brutal accident. I also want to register my disappointment to the way we have responded as a country to the welfare of our people in different sectors. As a nation, we never grow until we reach a stage when we must make systems work. We are very good at responding to disasters and accidents. When accidents happen, we actively mobilise and talk aloud about them, but we do not seem to question our systems. I wonder why our systems are not working. We should decide how our systems should work.

First of all, I want to bring to the attention of this House the fact that as we go through the budget appropriation and implementation of the various policies and practices which we have funded, it is very important for us to ask, and in the case of transport, how we are going to ensure that road carnage decreases. What mechanism is the Ministry going to put in place and what resources have we given them? Upon that basis, we can call the Ministry officials to account on what they have said they will be achieving to see whether they have achieved it. If they have not achieved it, they should be able to tell us why.

I am looking at three categories of actors who are involved in this accident. This has been talked about a lot. We are talking about the traffic police. Their job does not stop as long as vehicles are moving on the road. Are we saying that all the way from Nairobi to Londiani and Kericho, there was no traffic inspection of the vehicle? Were there policemen assigned to man this road on the material night? Have they given an account of what they did on that material night? These are some of the things we should be seeing. We should not be seeing the owner of the vehicle being the first victim. We should be seeing the people who are supposed to make sure

that the law was enforced that particular night. We also see KeNHA here. The road is being used before it is complete. It has no road signs and markings. Why should this happen? Is it a weakness on the side of the contractors? It is a weakness on the side of the supervision of the work that is being done. This is where, again, we will expect people to come forward and say they share blame. Were there marks on this road? Were there speed indicators on the road?

We are also talking about a vehicle rolling several times. What was the body of this vehicle like? The vehicle rolled and in the first rolling, it was like an iron sheet peeling from the roof. What is the Kenya Bureau of Standards (KEBS) doing? What has KEBS done up to now? Are we going to continue having a situation where motor vehicles are manufactured without adhering to the set standards just because our industries are not working well? These are some of the things we should be seeing now. If we do not see them now, we should insist that these people give us clear indications on how they are going to contribute to reducing road carnage in this country. If we do not do this, we will be seeing the numbers going up instead of going down.

I take this chance, on behalf of the people of Bomachoge Borabu, to register my condolences to the families that have unfortunately been affected by this brutal road carnage and request my colleagues to be smart in the way we appropriate funds and ensure that the funds are used properly. If we do that, we will be able to put the people responsible to account.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, plan well for your five minutes. Hon. Osotsi, nominated Member.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this Motion by Hon. Florence Mutua, Member for Busia.

I start by sending my condolences to the family of the victims of this road carnage. Most of the people who are affected by road carnage are from western Kenya, particularly Kakamega County. It is so sad that one county can lose over 40 people in one accident.

As my colleagues have said, there are various issues that we need to look at to address this issue of road carnage. One is the issue of institutions that are involved in issues of road transport. The NTSA, traffic police officers and the Ministry of Transport, Infrastructure, Housing and Urban Development are sleeping on the job. In particular, the NTSA and traffic police officers are busy competing in taking bribes from motorists rather than looking at the security of road users.

The Ministry in charge of roads is letting us down because most of the roads do not have road signs and safety features. In fact, in most of the roads, you cannot even see a bump. You can imagine the stretch from Londiani to Muhoroni which has so many bends, has no signs indicating where there are bumps, yet we had a bus full of people going down with no clear signs in place. What do you expect? You expect an accident to happen. Why do we train in driving where we are taught all manner of road signs yet you cannot see even 10 road signs on our roads? Something is wrong. This is a very basic issue. I know this House passed a resolution that all tarmac roads in this country must have road signs and safety features. We need to revisit the resolution through the Committee on Implementation to ensure that it is implemented. Our people are dying because of simple things like lack of road signs.

There is the issue of corruption. Corruption is killing us everywhere. Our people are dying because of corruption right from the point of construction of buses. Nowadays, accidents happen and the first thing you see is the whole roof being ripped off. You wonder what kind of structural engineering was done on the bus. When a bus rolls, the first thing that comes out is the roof. Something has to be done in licensing companies that are involved in building buses.

To end, I also call upon the Government which has not even sent any condolence message to consider offering financial assistance to the victims of road accidents. Some families have up to three people who died in the road accident. It is very difficult at this point to expect the families to bury their dead in this economic situation. So, I am asking our Government to consider assisting the victims and families so that they can bury their dead. It can also help them in their livelihoods.

For that matter, I support the Motion and call upon the Government to be serious.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The next is the Member for Nambale, Hon. Sakwa Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Thank you, Hon. Temporary Deputy Speaker.

First and foremost, on my behalf and the people of Nambale, I would like to pass our condolences to the families that have been bereaved. Secondly, I thank my colleague and fellow Member from Busia for bringing this Motion before the House. It gives us an opportunity to ventilate on this very serious issue.

A lot has been said and there is no need for me to add the pain and sadness being expressed through the comments of my colleagues. However, I call upon the House to ensure that the House Committees that are responsible for the transport sector call sittings and hearings with key institutions like the Traffic Police Department, the NTSA and others like the Ministry of Transport, Infrastructure, Housing and Urban Development to converse this issue. We may discuss generally about the issues, but I would like a specific discussion of that trajectory of that night. How could the bus which was in Nairobi at around 1.00 a.m. be in Londiani at barely 4.00 a.m.? You are unlikely to be there even if you are driving your own car even if you drive slightly above the speed limit, given the conditions of the road and so on. I would like to get a specific inquiry into this, not just a general inquiry into broad things that we will just talk about and pack.

Let us get to see how many of the over 20 or 30 roadblocks ever stopped that bus. How could that bus be with people sitting on the aisles? How could that over-crowded bus travel all the way from Nairobi to Londiani where it had the accident? Let us hear the specifics on what happened. We never know who was bribed, of course, we may not. But let us be told how come it happened with all the checks on the road. Let me then pray that we can make an amendment on the law from that. In Uganda, they had roadblocks all over the place. Museveni, when he was a guerilla leader, said it was very easy to pass by the roadblocks. In fact, it was safer to pass by the roadblocks than attempt to pass through the bush. They could shoot you in case they caught you there. He abolished them. When I hit Busia and I am going to Kampala, I will not find a roadblock on the road. Not at all, from Busia to Kampala, a distance of about 200 kilometres. How come we have not done anything despite our many roadblocks?

Of course, we know what happens on the roads. Everybody just simply talks about it. Our police are rated about number one in the world from the bottom. You remember the President sort of casually saying “well, you are really not that bad”. He was praising them. That was good for motivation, but the truth may be that we are really first from the bottom, globally. This is something we have to think about and decide what incentives we can put in place.

I support any measures including banning of night travel and any other that will go towards alleviating the problem. Let us ban night travel, put an age limit on drivers across the board while we sort out the other issues. Let us decide on the price to be paid when there are impunities like the one that has happened in this case.

With those few remarks, I condole with victims. I know they are not just from Kakamega County. They could be from Busia County, but wherever they came from, even if it is from the Coast or wherever, they are Kenyans who travel to make a living.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well, the Member for Kinangop.

**Hon. Zachary Thuku** (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker for this opportunity to contribute to this Motion. From the outset, I want to thank the Member for Busia County, Hon. Florence Mutua for bringing this up. It is really sad that we are losing lives in this magnitude. The statistics are worrying. This Motion is timely although I wish we did not have a Motion emanating from such an accident. My contributions on this Motion are three pronged, namely, the issue of carelessness, rogue traffic police and safety.

I want to start with the issue of carelessness. Eighty per cent of the accidents that happen are out of carelessness. Most of our drivers are never keen on the road. They are not mindful of the many lives that they carry in those vehicles particularly those in public transport. I have had my issues while I am driving on the road and I have seen buses being driven carelessly and overtaking in areas they are not supposed to be overtaking. I have taken it upon myself sometimes to even report the same to police officers manning those routes and that habit does not seem to be dying anytime soon. In fact, drivers work in cahoots with traffic policemen. I have had several instances where I had to stop my vehicle to reprimand traffic police for soliciting or receiving bribes from the drivers. So, the issue of losing lives in this magnitude is due to carelessness and collusion between the drivers and the people that we entrust to check on the safety, standards and whether the vehicles are well driven. If we are going to win this war against rogue drivers and unroadworthy vehicles, then we have to rethink the people that we have entrusted with our roads to man and make sure that our standards are adhered to.

The other issue is the one on safety. Safety is multifaceted as far as our roads are concerned. There is the issue of the vehicles, as my colleagues have ably mentioned. The vehicles that are ferrying our people are not supposed to be ferrying our people in the first place. The materials they are made of do not have security features. In case of an accident, the number of casualties is always high. Some die because of side impact while others die because of roof impact. These are premature deaths emanating from accidents. Looking at the buses that are used in the developed countries such as the USA and Portugal where I was recently, you cannot find a bus whose structural body is done by metal. We need to think of fiber glass so that in case of an accident, we do not have so many casualties.

The other issue is, and this is the point I want to finish with, the Ministry of Transport, Infrastructure, Housing and urban Development has to really to go back to the basics. Hon. Michuki set the standards, but today nobody is interested with the 'Michuki Rules'. Our vehicles are oversped and it seems like that is the order of the day. Recently, I asked one police officer why a vehicle was driving at 100 kilometres per hour and he told me that there is no rule that stops them from doing that. That saddened me because it was a 51-seater bus. What if there is an



emergency and it is being driven at 120 kilometres per hour? Therefore, I take this opportunity, on behalf of the people of Kinangop, to condole with the families of the people who lost their lives.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Bomet, Hon. Joyce Chepkoech.

**Hon. (Ms.) Joyce Korir** (Bomet CWR, JP): Thank you very much, Hon. Temporary Deputy Speaker. Let me also take this opportunity to congratulate Hon. Florence Mutua for bringing this Motion. I want to take this opportunity, on behalf of the people of Bomet County, to condole with the families. Indeed, it is a sad moment for this country. It is a big loss.

I want to stand with the Members who have raised issues with the relevant ministries and sectors that are supposed to have taken lead in terms of responding to this fatal accident. It is true the statistics we are being given by NTSA indicate that fatal accidents are caused by motorists who do not obey the rules. I want to confirm to this House that I listened to one of the survivors who was giving a story of how they started the journey all the way from Kangemi back to the stage and all the way to where the accident happened. It was devastating. When he was explaining, I felt that it is time for us to have behavioural change.

Sometimes even passengers make mistakes although we have relevant authorities that are supposed to check on this. The bus was supposed to be a 51-seater, but it was ferrying 72 lives, some of whom were forced to sit on crates of soda. It must start with us. It is no longer time for us to just bring Motions here and discuss these issues on the Floor of the House and our people are perishing. It is high time the CSs in charge of security and transport acted and stopped the mess happening on our roads. I want to believe that from Nairobi to Fort Ternan, where the accident occurred, a number of police officers were manning the road. I believe they were set free. That is why there is nowhere the bus was stopped. Despite the fact that one of the survivors said that they screamed because of the way the driver was driving, no one listened to them, not even the security officers who were manning roadblocks along the way to the extent that we lost many lives.

Kenya, Tanzania and Rwanda are among the countries that have roads known for fatal accidents. I want to request this House, especially the Committee in charge of transport, to ensure this matter should not end only as a Motion. They should come up with something substantial that is going to curb this mess and ensure that the law that is enacted in terms of transport and safety of our people is followed to the letter. Otherwise, I condole with the family and I thank the Member for bringing this Motion to the Floor of the House. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Member for Masinga. Were you to contribute on this?

**Hon. Joshua Mwalyo** (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this time to air my views on this important Motion that Hon. Florence has brought to the Floor of the House. Indeed, by 3.00 p.m., statistics indicate that the death toll has reached 58. It is very sad for this country to lose so many people at ago. We need to come up with legislation and punitive measures to curb road accidents. The officers who man our roads and fail to maintain safety for our people should be punished. The traffic officers already in place should be replaced by serious ones. According to what we are being told, the bus insurance had expired in July. So, it has been operating without insurance since then. That means it was using our roads and traffic officers were seeing it and allowing it to proceed. This is a very serious offence especially when one is driving a vehicle without insurance.

I remember I was once put in a cell because I drove a car without insurance. It is a very serious offence to drive a car without insurance, especially a public service vehicle that carries people. This risks the lives of the people and in case of an accident, they have nowhere to claim for compensation. So, it was not enough for the authorities to go for the owners of the bus and the SACCO because this is a law that has been neglected.

The enforcers of the law are to blame. They should have been put in like yesterday because they are the ones who allowed the bus to ferry people from July without insurance. Even for that driver to have driven to and fro in one day, he might have slept on the wheel as he was driving. Although we want money and we need to travel, passengers should be very careful on what kind of a bus is transporting them. How can you enter a bus where crates of soda are put in between seats for people to sit on? That bus left Nairobi to Londiani. That means something is wrong and we need to be very careful about what we are doing. In some places like Meru-Sagana Road, Probox vehicles carrying *Miraa* and *Muguka* are driven at high speed and the police do not stop them. They overtake anybody anyhow and nobody stops or checks what they are carrying. Maybe they carry other things like drugs, but they are not checked. So, there is something wrong that needs to be corrected on our roads so that we do not lose such many lives.

I join other Members in giving my condolences to the affected families, both who have lost their loved ones and those who are in hospitals. I wish them quick recovery. The Government should take action on this. They should pay for the burials and the hospital bills because they are the ones who have allowed the law to lapse.

With those few remarks, I support the Motion by Hon. Florence.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Lari.

**Hon. Jonah Mwangi** (Lari, JP): Thank you, Hon. Temporary Deputy Speaker. I was almost giving up looking at the time.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Just contribute.

**Hon. Jonah Mwangi** (Lari, JP): God is good because you have given me a chance. First of all, I want to condone with the families who have lost their loved ones. Road carnage is a big problem. I come from a constituency that has a road passing in the middle. We always have major road accidents in Kimende and the same happened in Kericho.

First of all, let me look at human habits. We find drivers driving at night while they are very tired or drunk. So, we should condemn all these bad habits which Kenyans are doing causing road carnage. I also want to condemn the Ministry of Transport, Infrastructure, Housing and Urban Development because a benchmark was put by the late Michuki. Regarding lack of insurance, I think the owner of the buses and the SACCO should be banned from operating and jailed.

This bus did not have seatbelts and the late Michuki set the benchmarks. If this bus rolled and the passengers had worn seatbelts, they could not have flown out like flying pans and maybe more lives would have been saved. On overspeeding of vehicles, a driver could be driving at 120 kilometers per hour and on seeing a truck ahead, they try to swerve, rolling many times. I want to condemn the regulatory authorities. They should wake up and ensure that they regulate the transport sector as required. They should invest in motorbikes to be used by police officers at night rather than using roadblocks. Roadblocks are meant to inspect buses while on transit, but nobody escorts them. This should be the infrastructure side. Maybe, we should install cameras on our roads and have a system of monitoring what happens on all our roads.

As I talk more on the infrastructure, I am looking at a situation where our Government should one day make all the highways dual carriageways. When you go to Europe or the United

States of America, the main highways are always dual carriageways. This eliminates head on collisions. Most of the accidents happen when a driver sleeps a bit and finds a truck ahead, then he tends to swerve and finds himself in a ditch. We should encourage the Government to fast-track the construction of dual carriages. They should fund dual carriages from Mombasa to Kisumu and Nyeri through Kericho. All major highways should be dual carriage.

The Government should install lighting systems in all our major highways like the ones we have along Uhuru Highway. This will reduce accidents by a very huge percentage because drivers will have clear visibility especially in areas with fog which are darker at night. Looking at signage, we need reflectors on all the roads. We should have reflectors in the middle and on the sides, so that drivers are able to see clearly and drive with comfort. Driving schools teach road signage. Signages are put on the roads because drivers need to see where there are sharp bends, climbs and rivers. We need signages to reduce accidents which are killing many Kenyans.

The Government's responsibility is to protect the lives of Kenyans. They should not only protect Kenyans when at war or against terrorists. Kenyans lives and properties should be protected every day. The Government should ensure that we have a system for instant traffic fines. As police officers walk around, they should have a system for fining wrong doers on the spot. So, one can be fined even 10 times at night when he or she is on the wrong side of the law.

With those few remarks, once again, I send my condolences to the families who lost their loved ones. We need prayers for our country. Let every preacher and person pray so that we can reduce road carnage in our country. God bless our country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, with the few minutes remaining, I have five requests. The Member for Kitui West, Hon. Edith Nyenze, the Member for Teso, Member for Kabondo Kasipul and Member for Muhoroni. It will be fair if we give each Member sometime to speak so that they can appreciate for having waited. Hon. Members, if you could continue in that order. Member for Kitui West.

**Hon. (Ms.) Edith Nyenze** (Kitui West, WDM-K): (*Technical hitch*). I give my heartfelt condolences to the families that lost their loved ones through the road accident. Let me also wish quick recovery to the survivors who are hospitalised. I give my condolences and those of the people of Kitui West to the families who lost their loved ones through abrupt death.

Statistics show that in a year, in Kenya, we lose around 3,000 people in road accidents although the World Health Organisation (WHO) gives us statistics at 12,000 per year. These are very many people. This means that our transport system is wanting. We should do something to our transport system so that we can reduce deaths... (*technical hitch*) Most developed countries have smart transport systems. I urge our Government, through our legislation, to make sure that the transport system in our country is improved so that we can avoid accidents.

We have been told that the driver moved all the way to Kakamega and back and he was going the second time. That means that there are no rules in our transport system. Even the owner of the bus, who has contracted the driver, has no mercy on the lives of people. How can you have one driver going all the way and then you expect him to go back even at their age? That is very bad. Our drivers should go for refresher courses. This will be done if the Ministry of Transport, Infrastructure, Housing and Urban Development has rules for drivers to have refresher courses on our drivers. We should also have age limits on our drivers so that some of the abrupt deaths can be avoided.

Of late, we have noticed that after buses are involved in accidents, their roofs get ripped off. What does this mean? It means that the structural strength of the buses, which are operating

in our public sector, is wanting. Locally assembled buses seem to have serious problems. We should also look at that and ensure that we have the right kind of buses carrying our people as one of our Members has suggested.

Of late, we have also noticed that drivers of *matatus*, especially those who operate in town, have no contracts with the owners of the vehicles. When accidents happen, the drivers flee from the scene. They just run away and nobody follows them up. Maybe the driver had no contract with the owner. They just take the vehicle from one driver to another and there is no commitment from the driver. This means there is a disaster in waiting in the transport industry and we should look into that. When accidents happen, families are left without bread winners. Victims are left bedridden and many other families lose their loved ones. In this accident, a family lost five members. The family is very sad. I urge our Government and the Ministry of Transport, Infrastructure, Housing and Urban Development, the police and the NTSA to be serious with our transport system.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Nyenze, your time is over, and the machines have an issue. I use my discretion to give two minutes to Hon. Eve Obara and the Member for Muhoroni.

**Hon. (Ms.) Eve Obara** (Kabondo Kasipul, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I will be very brief. I have been very patient in waiting to the end. What we have heard today is the case of everything going wrong with bus transport. There was no licence, the bus was overloaded, people were sitting on crates and the bus had no seatbelts. It is a very sad story. May I first thank Madam Florence for bringing this Motion to the House. I send my heartfelt condolences and those from the people of Kabondo Kasipul to the people of Kakamega for all the lives lost in the accident. Losing 56 people at one go is, indeed, tragic.

We need to take action. First and foremost, we need to get a list of all the officers who were on duty that night along that route. Can we have the names of the people who were on duty and action be taken against them immediately? Can we have a crackdown on all the vehicles that have all these defects? Thirdly, can we recommend that concrete measures be taken to come up with certification of vehicles on the roads?

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Muhoroni. Just a comment on this.

**Hon. Onyango Oyoo** (Muhoroni, ODM): Thank you very much Hon. Temporary Deputy Speaker for giving me an opportunity.

First, I thank my colleague the Member for Busia. As you are all aware, this accident took place somewhere around Fort Ternan. Fort Ternan is at the border of Muhoroni and Kipkelion West. A lot of innocent blood was spilled moving towards Muhoroni; a place where people are very prayerful. On behalf of the people of Muhoroni, I am extending our wholehearted sympathies and condolences.

A lot has been canvassed in this House. I have made two deductions. One, it is because of ineptitude, carelessness and the greed of police officers that this happens. We have lots of police officers. One is stopped every one hour they drive. They did not mind. They were looking for money. Two, the road has not been properly marked eight years after it was completed. The road is christened C35. It crisscrosses Kipkelion, then Muhoroni going to join C34. Eight years since it was done, this road has not been completed. Even the extensions that were supposed to serve the people of Muhoroni called the Koru Loop have not been done. These markings have not been completed. The contractor was pulled out of the site a long time ago. I want the CS for

Transport, Infrastructure, Housing and Urban Development to revisit this and make sure the contractor comes back to complete his job. He should ensure that no road contacts are handed over in future without a certificate of completion to indicate that everything that was designed is done to perfection.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Member for Turbo, just one minute. You know we operate in procedure and time. I do not know what is wrong with your card. Just give her any microphone that is near.

**Hon. (Ms.) Janet Sitienei** (Turbo, Independent): Thank you Hon. Temporary Deputy Speaker. Sorry for that fault.

On my behalf and that of the people of Turbo, I join my colleagues in condoling with the families which lost loved ones. It is a matter of national concern that we have lost many lives. It is unfortunate that this has been going on for a long time. This is because of lack of self-discipline on the side of the drivers. Surely, most of the issues can be addressed. We can stop over-speeding and overlapping. We can stop the use of phones when driving.

**Hon. Oku Kaunya** (Teso North, ANC): Thank you, Hon. Temporary Deputy Speaker. On behalf of the people of Teso North, I condole with the families that lost loved ones. I wish to just emphasise two things that I feel need to be done.

One area of major concern is the enforcement and implementation of traffic rules. We have a fairly elaborate Traffic Act 2003. Some of the rules in the Act have not been implemented. I just want to cite one example in Section 30(6) which provides that drivers of public service vehicles are required to be re-tested every three years.

We have the rules, but enforcement is the major issue. I wish to urge the Cabinet Secretaries in charge of transport and security to ensure that our laws are enforced.

## ADJOURNMENT

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

The time being 7.05 p.m, this House stands adjourned until Tuesday, 16<sup>th</sup> October 2018, at 2.30 p.m.

The House rose at 7.05 p.m.