

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 4<sup>th</sup> July 2018

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** Can you ring the Quorum Bell?

*(The Quorum Bell was rung)*

Very well! We have now attained quorum. We may proceed.

PETITION

REQUEST TO AMEND ARTICLE 171(2) (F) OF THE CONSTITUTION

**Hon. Speaker:** Hon. Members, Standing Order 225(2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member.

I, therefore, wish to convey to the House that my office has received a Petition signed by Ms. Mercy Wambua, on behalf of the Law Society of Kenya (LSK).

Hon. Members, the Petitioner avers that the provision on Article 171(2) (f) of the Constitution requiring two advocates elected by the members of the Law Society of Kenya to the Judicial Service Commission to have 15 years' experience is in contravention of Article 27(4) of the Constitution as it negates the meaning of the term "election".

Hon. Members, the Petitioner therefore, prays that the National Assembly addresses her plight and considers effecting the necessary amendments to Article 171(2) (f) of the Constitution. Pursuant to the provisions of Standing Order 227, this Petition, therefore, stands committed to the Departmental Committee on Justice and Legal Affairs. The Committee is requested to consider the Petition and report its findings to the House and the Petitioner in accordance with Standing Order 227(2).

Thank you.

Next Order! Unless there are Members wishing to comment on that. I see Hon. Olago Aluoch.

**Hon. John Aluoch** (Kisumu West, FORD – K): Thank you, Hon. Speaker. That Petition by Ms. Wambua of the LSK raises very serious issues about the Constitution and matters which

my Chairman of the Departmental Committee on Justice and Legal Affairs, who is here, have had to deal with. I also believe it is subject of some court proceedings and also part of the Statute Law (Miscellaneous Amendments) Bill that we have been handling.

However, I appreciate that the matter requires serious attention not just from the Committee, but from the whole House so that, once and for all, the country knows whether nominees from the LSK, Kenya Magistrates and Judges Association and the Court of Appeal Judges are subject to vetting by this House or they are not. It is quite controversial as at now.

Thank you.

**Hon. Speaker:** Very well Members I do not see any further interests in the comments or clarifications. The Petition stands committed to the Departmental Committee on Justice and Legal Affairs as aforesaid. They will work on it.

Next Order!

### PAPERS LAID

**Hon. Speaker:** The Hon. Leader of the Majority Party or his Deputy.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notices Nos.138, 139, 140, 141, 142, 143 and 144 of 29<sup>th</sup> June, 2018 relating to 2018/2019 National Budget Process.

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

- (a) Kenya Broadcasting Corporation;
- (b) Kenya Broadcasting Corporation Digital Terrestrial Television Coverage Roll-Out Project (BVB-T2 Platform);
- (c) Kenya Medical Training College; and,
- (d) Ministry of Defence.

The Report of the Auditor-General and Financial Statements of the Kenya National Examinations Council for the year ended 30<sup>th</sup> June, 2016 and the certificate therein.

This is the first time I am laying Papers and so, bear with me.

**Hon. Speaker:** The seven legal notices which you mentioned first are referred to the Committee on Delegated Legislation. A Member of the Liaison Committee, Hon. Julius Melly.

**Hon. Julius Melly** (Tinderet, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

The Report of the Liaison Committee on the Financial Innovations and Emerging Issues Seminar in Kuala Lumpur Malaysia on 6<sup>th</sup> to 10<sup>th</sup> February 2018.

Thank you.

**Hon. Speaker:** Next Order! The Leader of the Majority Party.

### NOTICE OF MOTION

#### APPROVAL OF PROVISIONAL TAXATION MEASURES FOR 2018/2019

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Article 94(5) and Article 210(1) of the Constitution, this House:

- (a) approves the provisional collection of taxes relating to:
  1. Income tax;
  2. Value Added tax;
  3. Excise Duty;
  4. Miscellaneous Fees and Levies; and,
- (b) resolves that in accordance with Section 3 of the Provisional Collection of Taxes and Duties (Cap 415), the collection commences on the date specified in the Provisional Collection of Taxes and Duties Order, 2018 (Legal Notice No.128 of 2018).

Thank you, Hon. Speaker.

**Hon. Speaker:** I was consulting a bit. The Report of the Departmental Committee on Finance and National Planning which is the subject matter of the Notice of Motion that the Leader of the Majority Party has given will be tabled later in the day, during this Sitting. The Chair, Departmental Committee on Finance and National Planning, make sure you table the Report because it will be required when the Motion is being debated tomorrow.

Next Order! Let us have the Member for Embakasi Central, Hon. Benjamin Gathiru.

## STATEMENTS

### INVESTIGATION INTO CAUSE OF RECURRING FIRES AT GIKOMBA MARKET

**Hon. Benjamin Mwangi** (Embakasi Central, JP): Thank you, Hon. Speaker. Pursuant to Standing Order No.42(2)(c) I wish to request for a Statement from the Chairperson, Departmental Committee on Administration and National Security regarding recurrent and vicious fires at Gikomba Market.

Hon. Speaker, Gikomba is the largest market for second-hand clothes and other items of trade in East and Central Africa. About nine months ago, fire gutted down 60 per cent of the market over what was suspected to be foul play and alleged land grabbing. It is unfortunate that investigations commenced and to date, no report has been shared regarding the perpetrators of the arson. The recent fire incident claimed, at least, 15 lives, left over 70 people seriously injured and stock worth millions of shillings destroyed. I urge the police and the investigative agencies to move with speed and bring the perpetrators of that heinous act to book.

It is against this background that I request for a Statement from the Chairperson, Departmental Committee on Administration and National Security on the following:

1. The cause of the previous fire incidences in the market, if any.
2. Challenges, if any, by the emergency response agencies/units during such incidences.
3. The assistance offered to all those affected by the fire in the market.

I ask this matter because I have been a trader in the same market for over 15 years, and also a victim of the past tragedies in Gikomba market.

Thank you.

**Hon. Speaker:** Well, since your Statement is sought under Standing Order No.44 (2), I can only order that the Chair of the relevant Committee to which you seek the Statement from moves with speed to bring that Report the first week after the House resumes from the short recess. There can be no debate on this request. No other person will be allowed to make comments because it is not a Petition, but a Statement.

Hon. Paul Katana, Member for Kaloleni.

SHOOTING OF MASTER KATANA KAZUNGU FONDO

**Hon. Paul Katana** (Kaloleni, ODM): Thank you, Hon. Speaker. Pursuant to Standing Order No.42(2)(c), I wish to request for a Statement from the Chairperson, Departmental Committee on Administration and National Security regarding the shooting of Master Katana Kazungu Fondo, a pupil at Ndatani Primary School, Kaloleni Constituency in Kilifi County by police officers from Mariakani Police Station.

Hon. Speaker, on the evening of 25<sup>th</sup> June 2018, Master Katana Kazungu Fondo, a Standard VII pupil in the said school was shot dead by police officers from Mariakani Police Station. The body of the said Master Fondo was later taken to the Coast General Mortuary, Mombasa County, as unidentified body. Later, the police officers claimed that the body was of a wanted criminal. In the statement, the Chairperson should inquire into and report on:

1. The circumstances under which Master Katana Kazungu was shot dead by police officers.
2. Whether investigations into the killing have been carried out and if not, why.
3. The reasons as to why disciplinary action has not been taken against the police officers who were involved in that brutal act.

Thank you.

**Hon. Speaker:** Once again, the Statement request is to be forwarded to the relevant Committee to come up with a Report the first week after the House resumes from the short recess.

Next Order!

**BILL**

*Second Reading*

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

*(Hon. Aden Duale on 3.7.2018)*

*(Debate concluded on 3.7.2018)*

**Hon. Speaker:** Hon. Members, debate on this Bill was concluded yesterday and what remained was for the Question to be put, which I hereby do.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

**MOTIONS**

EXTENSION OF TIME FOR CONSIDERATION OF NOMINEES FOR  
APPOINTMENT AS CHAIRPERSON AND MEMBERS OF COMMISSION ON ADMINISTRATIVE JUSTICE

**Hon. Speaker:** Let us have the Chairperson of the Justice and Legal Affairs Committee.

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**Hon. William Cheptumo** (Baringo North, JP): Hon. Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011, relating to extension of period for consideration of Nominees for Appointment to State and Public offices and Section 11(7) of the Commission of Administrative Justice Act, 2011, this House resolves to extend the period for consideration of the nominees submitted by H.E the President for appointment to the offices of Chairperson and members of the Commission on Administrative Justice by a period of fourteen (14) days from 18<sup>th</sup> July, 2018.

Hon. Speaker, this is really a fairly straight forward Motion because we want to seek the approval of the House to extend the time within which we are supposed to report back to the House for another 14 days. Pursuant to the provisions of Article 250(2)(b) of the Constitution, and Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act of 2011, the President nominated three persons. They are Hon. Florence Kajuju for the appointment as Chairperson of the Commission on Administrative Justice (CAJ) and Mr. Washington Opiyo Sitati and Lucy Kamunye Ndung'u as members of the said Commission.

Hon Speaker, on 27<sup>th</sup> June this year, the House will remember that you directed the Justice and Legal Affairs Committee to consider the proposed nomination by the President. Hon. Speaker, you conveyed this particular Message under Standing Order No. 42 that the Committee concludes the exercise within 21 days. This is because under the Act, the Committee is supposed to deal with this matter within 21 days. In compliance with Section 6(4) of the Public Appointments (Parliamentary Approval) Act and Standing Order No. 45(3), the Clerk notified the general public through the print media advertisements that they do submit memoranda on the suitability of the three nominees. Again, he has written to the Higher Education Loans Board (HELB), the Kenya Revenue Authority (KRA), the Director of Criminal Investigations (DCI) and the Ethics and Anti-Corruption Commission (EACC) on information that is required for purposes of vetting those nominees.

Unfortunately, and without anticipating debate, if the House goes on recess from tomorrow, the date within which we were supposed come back to the House will fall within the recess period, that is, from 5<sup>th</sup> to 24<sup>th</sup> July 2018. So, we seek the approval of this House to allow the Committee another 14 days from 18<sup>th</sup> July 2018 so that we are able to receive memoranda from the public, undertake consideration of what the public has said, and then interview and vet the nominees within the 21 days. This is a plea of the Committee that this House allows us another 14 days from 18<sup>th</sup> July 2018 so that we able to conclude this.

This Commission has actually been without members for a very long time. Hon. Speaker, you know the function of this Commission. It is playing a very important and central role in ensuring that the Kenyan public has a place to report issues where they are not being treated well by public institutions. So, that is really the essence of this Motion. I plead with this House that you allow us 14 days extra from 18<sup>th</sup> July 2018.

With those few remarks, allow me to request Hon. Shamalla to second.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. I rise to support this Motion. My colleague, the Chairman of the Departmental Committee on Justice and Legal Affairs has succinctly put forward the reasons for the extension of time. I do not need to belabor the point. With those few remarks, I request and urge that the House indeed does support this Motion. I second the Motion.

**Hon. Speaker:** Hon. Members, before I propose the Question, allow me to recognise the presence, in the Speaker's Gallery, of students from the following institutions: Muslim Girls High School from Maragwa Constituency, Murang'a County; Ulilinzi Secondary School from Kibwezi Constituency, Makeni County and Bishop Okinda Secondary School from Uriri Constituency, Migori County.

They are welcome to observe the proceedings of the National Assembly this afternoon.

*(Question proposed)*

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

**Hon. Speaker:** The mood of the House is that I put the Question.

**Hon. Members:** Yes.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order!

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEE  
FOR APPOINTMENT AS CHAIRPERSON OF SALARIES AND REMUNERATION COMMISSION

**Hon. Speaker:** Let us have the Chairperson of the Departmental Committee on Finance, Planning and Trade, Hon. Joseph Limo. He has just been here.

Leader of the Majority Party, are you standing in for Hon. Limo?

**Hon. Aden Duale** (Garissa Township, JP): Yes, Hon. Speaker. Let me stand in for Hon. Limo. He has too much to deal with after Cabinet Secretary Henry Rotich brought several Bills and legal notices. He has gone to bring the Report on the Legal Notice.

This matter is also very straightforward. It is in line with what the Chair of the Departmental Committee on Justice and Legal Affairs has said. Based on the sections of the Public Appointments (Parliamentary Approval) Act, the timeline given for those nominees to be vetted is well stipulated.

*(Hon. (Dr.) Pukose spoke off the microphone)*

Sorry, Hon. Speaker, I agree with Hon. Pukose.

Hon. Speaker, I beg to move:

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to extension of period for consideration of nominees for appointment to state and public offices and Section 7(11) of the Salaries and Remuneration Commission Act, 2011, this House resolves to extend the period for consideration of the nominee submitted by His Excellency the President for appointment as Chairperson of the Salaries and Remuneration Commission by a period of fourteen (14) days from 11<sup>th</sup> July 2018.

Because of the time factor and keeping in mind that we altered the Calendar of the House last week through a Procedural Motion, those 21 days will lapse when we are still on recess. My mind was set on what I was supposed to do. This Motion was not part of the software in my

mind. It did not capture this. That is why I had difficulty. This crime was committed by the Chair of the Departmental Committee on Finance and National Planning. He has to be there.

It is the same issue raised. Because of the time factor, the Act is very specific. Because we are going on recess tomorrow for 17 days, all that we are asking the House to do is to approve an extension of a further period of 14 days, beginning 11<sup>th</sup> July 2018, but the Committee will conduct the vetting of the said nominee. By the time we resume on 24<sup>th</sup> July, they will table the Report in the House for Members to discuss.

I want the House to listen to me. The matter of the SRC is one that we must deal with soberly.

*(Applause)*

In the last five years, those of us who served in the 11<sup>th</sup> Parliament had a serious issue. Hon. Speaker, I am sure you, as the Chair of the Parliamentary Service Commission (PSC), can recall. We had a serious issue. This was the only Commission that decided to discriminate against the Legislature. When it came to the Judiciary, they abided by what they said. The Commission felt that its existence was only for the Legislature. Even when those Members who were to represent the Legislature joined the Commission, they became something else.

I would like to tell the Chair of Departmental Committee on Finance and National Planning that this is not an ordinary nominee the President has given you. This is a nominee that we will put on the theatre table of this House. We will properly dissect, diagnose, do a number of referrals even if it is to the Public Accounts Committee and use the experience of Dr. Pukose and Dr. Nyikal. At the end of the day, the product we will vet on behalf of Kenyans will be one that we shall be proud of and will not regret about.

Let us not get involved in regional, ethnic and partisan interests when dealing with the SRC. Every State or public officer under the Constitution has certain jurisdiction and functions. This is the time you must exercise your discretion. I am sure people will write that Hon. Duale is an inciter. I am not. I am only giving guidance on that matter as the Leader of the Majority Party.

I beg to move and ask the Hon. Leader of the Minority Party to also go on record as a statement of fact that we speak from the same position on this matter.

I beg to move.

**Hon. John Ng'ongo** (Suba South, ODM): Hon. Speaker, that is really intimidating. I want to second the Motion that seeks the leave of this House to extend the time period available for the Committee to consider this nominee for the position of the SRC Chair.

I just want to say one or two things because the real debate will come once the Committee is done with vetting the individual. I personally do not know him much and so, I want to see how he answers questions before the Committee. Therefore, it is important to us that this time is extended.

As the Leader of the Majority Party has said, let me be on record also that the SRC was created for a purpose. The purpose was to manage the public expenditure in terms of how much we spend on State officers and other public servants. I am sure that Kenyans have decided to close their eyes to the fact that the public expenditure has not gone down. Actually, it has increased much more with the SRC. Why is that? The SRC inadvertently thought that their work or single duty was to reduce the salary of politicians.

The SRC that was tasked with the very important responsibilities of ensuring that public servants are not discriminated against and that State officers are treated uniformly in a way that

depicts their responsibilities did something laughable. The starting point of how they graded State officers in this country is laughable. It is laughable because you find Members of the National Assembly and Senators who oversee the Executive, vet and approve appointments and the Budget and who can even impeach the President are 43<sup>rd</sup> in the pecking order. The excuse they give is that there is no defined academic qualification for being a Member of Parliament. It is laughable that the only tool you use to grade employees in this country is academic qualifications. Who says that those of us in this House are not educated? We are! We have professors and other professionals.

Look at the way SRC treated Cabinet Secretaries and Principal Secretaries *vis-a-vis* Members of Parliament. They have given them allowances, recommended higher mortgages, car loans and house allowances which an MP is not supposed to have.

On top of that, they are given Government fuelled vehicles but, according to them, a Member of Parliament is not even supposed to get a grant. He is supposed to take a loan to buy a car to use in his constituency. A Principal Secretary, who is supposed to sit in the office and be an accounting officer for the money in the Ministry, is facilitated to travel in this country. However, a Member of Parliament, who represents people and goes to his or her constituency every weekend to collect their views and bring them here, is told that for him to get a vehicle to take him to his constituency, he has to take a loan. That is a Commission that has gone rogue. By the way, we have an opportunity to fix it but not to punish it. I do not want to use the word “revisit” but “fix” Salaries and Remuneration Commission (SRC) to be responsive to the needs of this country.

*(Laughter)*

As I conclude, I want to come out very clearly that we have been having wrong members in the Commission. They are people who are not open minded enough to appreciate the roles and responsibility of every office. They listen a lot to what comes out of the streets and play populism. You cannot manage a Commission with populism. Some of us can now speak easily for Members of Parliament because God willing, I will not be in this House again after the 12<sup>th</sup> Parliament. When I leave Parliament, I still want to see an institution that is capacitated. I do not want to leave an institution and then it collapses or fails in discharging its obligation.

Finally, I was forgetting this point. When the Committee vets a person, it should not look at us, but his capacity in analysing and assessing the worth and the value of each office to appreciate it in terms of remuneration. Somebody may think that we are being over-concerned because we want this Commission to fix our salary. We want to be treated fairly. Let all Kenyans be treated fairly, for example, teachers, doctors and nurses. You agree with me that SRC is the cause of the frequent strikes that we have been seeing in this country, from the doctors’ strike to health workers and teachers. Health workers never used to go on strike but, because of SRC’s unnecessary and unsolicited advice that they give, which is contradictory, we have many strikes in this country.

Hon. Speaker, thank you for those many remarks. I second the Motion.

**Hon. Speaker:** Hon. Members, before I propose the Question, when there was need to create the office of an ombudsman, a Tanzanian writer cautioned that when they finally have one, let him not be an “ombudsmouse”. Obviously, Hon. Members recall that there was something called radical surgery in 2003. Some people later quipped that it was surgery by radicals. I hope the House does not become radicalised. Hon. John Mbadi said that we need



appropriateness of positions, suitability or otherwise and being fair to every person who appears before the Committee.

*(Question proposed)*

The Motion is about the extension of the period for consideration of nominees for appointment. Let us have the Chair of the Budget and Appropriations Committee and then we hear the Chair of the Public Accounts Committee (PAC).

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker, for giving me the opportunity to contribute. I have one point to make as much as I support the extension of time. It is very important for us, as a House, to have adequate time, as the Leader of the Minority Party has ably stated, to dissect each of these nominees to know their background and how they performed in previous offices they served in this country.

I want it to be known to the House that last week, or last week but one, we passed some amendments to the SRC Act that has now made this Commission a permanent one, unlike in the past when it was part-time. They are now working on a full time basis. Therefore, it is imperative that even as the Committee considers the person to chair the Commission and even the other nominees who will be commissioners, to bear in mind that it must be a person who will be committed and dedicated to work. It is not a person who will belittle the SRC to be a Commission that deals with politicians. That is a perception out there; that it only exists to deal with politicians and payments for politicians and our salaries. It is a Commission that is so critical for our doctors, nurses and teachers, as the Leader of the Minority has said. It is this Commission that will set the pace in the adjudication of labour disputes in this country, especially on matters relating to pay. Therefore, with that in mind, I support that we should have adequate time to scrutinise each of these nominees to ensure that they are people who are capable to serve on a full-time basis, without being directed by public opinion, but facts as to the payment of all public officers, not just Members of Parliament and politicians.

With those few remarks, I beg to support.

**Hon. Speaker:** Hon. Opiyo Wandayi.

**Hon. James Wandayi** (Ugunja, ODM): Hon. Speaker, I also wish to support the Motion, which seeks the extension of the period for vetting of this officer. I also want to associate myself with the sentiments which were expressed by the Member who has spoken before me – that it is important that as the Committee settles to vet this person, it gets it right for the first time.

The Commission whose term has just ended had a problem. Its leadership seemed to be complex. I call it either inferiority or superiority complex in the sense that it was so obsessed with matters of legislators to an extent that it clouded its thought process. It is also important that as we vet these officers, we ensure ultimately that whoever comes to the office is not only competent, but also ideally should be a person who is fresh enough. He should not be a retiree who has gone through his life cycle in the public service. We need somebody who has a fresh mind and the capacity to perform in the public service, but not somebody who is being recycled and given a soft landing after failing elsewhere.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear a lady's voice before I put the Question.

**Hon. (Ms.) Gladys Nyasuna** (Homa Bay CWR), ODM): Thank you, Hon. Speaker. I support the Motion.

I would like to speak from the point of view of a former Commissioner of the Parliamentary Service Commission (PSC) who dealt face to face with the former SRC. I agree with the Chairman in terms of getting more time. You must look at this person, in terms of his attitude, with a toothcomb.

What is their frame of mind? What is their thinking about the scope of their work? What is their integrity? What do they think the job is about?

Hon. Speaker, this gives the House an opportunity to really look at what this is all about. We saw that the last Salaries and Remuneration Commission, every engagement we had with them, their mind was that Members of Parliament and politicians across the country and Members of the County Assemblies must be cut to size. So, every time Parliament was on recess, they put a circular and said that those were our salaries and that they had been reduced. This is a matter the House must deal with squarely.

I want to make a point regarding the other representatives sent to the SRC by other bodies, including the Parliamentary Service Commission. In the last SRC, those members said that they no longer represented anybody in the Commission. They said they had come together and had become one Commission speaking in one voice. It must be understood that those people are sent by bodies in the view that they actually understand where they are coming from and the people they represent. If one is sent by the defence forces, it is known that you understand the challenges those people face. But the idea of conglomerating and some became senile and did not know what they were supposed to be doing in the Commission, is really shameful!

I support the Motion and hope the House will find time to vet those members.

**Hon. Speaker:** Hon. Member, because this was a Procedural Motion, let us not go to details. Nothing has come. I am sure Hon. Nyasuna Wanga will contribute to the Report when it is finally brought and because as indeed she has said, she has experience meeting with the former commissioners. We have nothing against them. Their term expired in December.

*(Question put and agreed to)*

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

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

## POINT OF ORDER

### CONDUCT OF MEMBERS IN COMMITTEES

**Hon. Aden Duale** (Garissa Township, JP): I want you to indulge me. There is a matter which I want to raise before we receive the Report of the Joint Committee.

Hon. Speaker, I rise on a point of order pursuant to Standing Order No.83. It relates to a matter of how Members of the House are conducting their activities and, in particular, the conduct of Members in Committees.

Hon. Speaker, as you are aware, of late, we have seen a new trend where Members hold numerous Press conferences to demean their colleagues and malign the work of committees where they are members. Before anyone asks where I have seen that happenings in the House, I would recommend to any Member to tune into any of the local media news at prime time and they will see item after item of news of Members issuing Press conferences, making counter accusations against their fellow Members or even colleagues in the Committees they serve.

Whereas the Constitution guarantees freedom of speech under Article 117, such freedom should be exercised with decorum. Worse still, can a Member take refuge in the provisions relating to freedom of speech and negate the provisions of Article 75 of the Constitution, which provide that a State officer shall not demean the office of the office holder?

Members of the House have also been seen commenting on active matters in courts and committees, contrary to the provisions of Standing Order No. 89(1). Whereas the Standing Orders of the House which I have cited allow reference to an active matter in court, in particular, Paragraph 5 of the Standing Order that I have mentioned is very clear and requires no legal mind to understand that it is only the Speaker who may allow reference to an active matter in court or a Chair of a Committee, as the case may be. Members, even in committees, are busy making news without recourse to the Office of the Hon. Speaker or Chair of their Committees on matters before the House or before a committee; which is very active either in a committee or in a court of law.

There is also a trend by Members in the form of friends of a committee attending a committee to which they are not members. I am aware of committees which are packed with friends of the committee and the real members of the committee are left without sitting positions. They go there very early in the morning, occupy all the seats so that the people sitting in a committee are friends of the committee and not the actual members, including some of our colleagues in leadership. Can you imagine a committee meeting full of friends of the committee with no designated member of the committee? That has happened because if there is no chair, a member of the committee leaves. So, you will find a committee sitting attended by the Chair and friends of the committee. Is the concept a clear dilution of the committee system in a presidential system of parliament? We have committees where all Members can choose to attend at their discretion.

To make it worse, Members even stopped declaring interest on matters under consideration by the House or by the committee as required by the dictates of Article 75 of the Constitution, Public Officer Ethics Act, Leadership and Integrity Act, Parliamentary and Privileges Act and Standing Order No. 90. All these prohibit and allow a Member to declare his interest.

Further to that, maybe, it is time we refreshed the requirements of the law to Members, especially on matters relating to declaration of interest and to be more particular, conflict of interest matters under Chapter Six of the Constitution.

Worse still, Committee sittings have become a parade where you are unable to distinguish who the Members are from the witnesses because, at one stage, the witnesses and Members mingle and start hugging. So, a person watching from outside would wonder who the Member of Parliament is and who a witness is. Imagine a judge walking into a court room and before he sits, he decides to hug and exchange all manner of pleasantries, including the jaw and teeth breaking laughter with witnesses, including the accused person or suspects. Committee sittings are just like the High Court sitting. After listening to lawyers' submissions, the judge leaves his seat and goes and hugs a criminal. That is what is happening. What perception does such a judge create? The House thinks I am talking about court room matters, but this is the sad state witnessed in the committees.

Members are seen exchanging pleasantries even with the witness in inquiry proceedings and yet, they are to be judges in such matters. May I remind my colleagues that perception is worse than reality. In one of the committees that you chair, Hon. Speaker, that vets Cabinet

Secretaries, after vetting nominees, they pick their bags and leave. That is the kind of threshold we need to use.

I can go on and on and give examples of what I regard as being misconduct by Members, but allow me to conclude by requesting that you guide this House and provide guidelines on how Members of this House and committees should conduct themselves while participating in the activities of the House in accordance with the Constitution and the Standing Orders.

I know we conducted induction for Members, but as it appears there is need to establish guidelines on the *modus operandi* of the Members. Those Members who served with me in the 11<sup>th</sup> Parliament can remember an instance when the Public Accounts Committee was investigating the National Youth Service (NYS) scandal. The friends of the committee were at times more than the actual committee members. Even when we were dealing with other State officers, people out there looked at us. How a committee of the House behaves is how this House and the leadership including the Speaker will be judged. I ask my colleagues, and the Speaker will give direction, that we are under obligation...

*(Hon. (Ms.) Sabina Chege and  
Hon. Julius Melly consulted loudly)*

The Chair of the Departmental Committee on Health and the Chair of Departmental Committee on Education and Research should listen to the matter that I am raising. It touches on them. It is chairpersons who run these committees. They must listen to me. How one individual out of the 349 Members behaves is how this House will be judged. We either sink together or we survive together. It is upon us to make sure that we protect the integrity of this House.

A number of us have gone to other jurisdictions like the US House of Representatives and the US Senate. Last week, those who watched Cable News Network (CNN) saw the FBI Director and the Attorney-General being grilled. Each Member was given five minutes. You ask your question within the five minutes and if you have further questions after you have finished your five minutes, you allow other Members to ask questions. If you watched the joint committee of this House, when the Cabinet Secretary for Interior and Co-ordination of National Government and other people appeared, they were folding their hands and for 10 minutes, Members were fighting. Last night, I saw a Member on television saying: "Now we are confused, what do we do?" That is not what a Member of Parliament can say on live television.

Before we are judged outside because this afternoon we are also judging the SRC nominees, we must behave. Let us maintain our House in order. Yesterday, a group of Members of Parliament went to a Press conference and said they wanted to impeach the Cabinet Secretary for National Treasury. I asked myself: "Have they received the recommendations of the committee? On what basis do they want to impeach?" If you want to impeach a Cabinet Secretary, you do not go to a Press conference. It is well stipulated in the Standing Orders. The process is in the Constitution.

The problem is when you graduate to be a Senator from an MCA. It is better to pass through the National Assembly and go to the Senate. When you graduate from an MCA and go straight to Senate, then you want to discuss issues, it becomes a problem. I am sure all of us need to protect the integrity and implement the operation of the House and the committees in accordance with the Standing Orders.

I seek your guidance.

**Hon. John Ng'ongo** (Suba South, ODM): Thank you, Hon. Speaker. The matter that the Leader of the Majority Party has raised is weighty as it touches on the integrity of this House and how we conduct ourselves. Standing Order No. 191 says as follows:

“Committees shall enjoy and exercise all powers and privileges bestowed on Parliament.”

From the reading of that, it is clear that when you are transacting parliamentary work or business in a committee, you should conduct yourself in a manner consistent with the way Parliament transacts business. The threshold that is given to the committee is equal to the threshold that is given to the plenary. I want to tie that to Standing Order No. 196 that says:

“Except as and to the extent to which the chairperson may otherwise direct for the purpose of facilitating full consideration and discussion of a matter referred to a committee, the procedure in a select committee shall be as nearly as possible, the same as that in the committee of the whole House.”

Hon. Speaker, the threshold is already there in our Standing Orders that when you are conducting business in a departmental committee, Public Accounts Committee or any committee, the proceedings of that committee should be carried out the same way we conduct our proceedings in the Committee of whole House.

We have been watching proceedings and thank God that we opened up parliamentary business to the members of the public. Nowadays, it is covered live in many media houses. Therefore, that calls upon us to be very careful in the way we conduct ourselves. Many of us, if not all, have been watching committee proceedings. Can we claim genuinely and honestly that the way most of these committee investigations are being conducted, or the way witnesses present themselves in these committees, is as nearly as possible to the way we conduct the committee of the whole House? If you asked me, of late, what I see is very far from that.

Hon. Duale spoke about friends of the committee. That is provided for in our Standing Orders. Under Standing Order 195, you are allowed as a Member of Parliament to attend any committee any time. The only thing is that you are not entitled to a vote. When you appear there, it is understood you are representing the interests of your people. You are a representative of the people, not your personal interest or rent-seeking.

I also concur with the Leader of the Majority Party. Yesterday, I watched the deliberations going on at the Joint Committee of Agriculture and that of the Trade, Industry and Co-operatives. I saw the way our Members conducted themselves. I was sitting in my office and watching. Thank God, the leadership has allowed me, at least, to watch some things at the comfort of my desk. It used not to happen in the previous two parliaments. When I watched the way my colleagues were conducting themselves, at one point, I thought the Chairman, Hon. Kanini Kega, was losing it. The question you want to ask is: Why should Members conduct themselves in a rowdy manner in a committee that is supposed to investigate a matter as important as the possibility of sugar that we are consuming in this country being poisonous? I thought that our Members should be – let me borrow the words of Hon. Leader of the Majority Party- sober during committee sittings. We cautioned them even when the two committees were struggling to decide which one was supposed to look at this matter. It makes us start asking questions that probably the struggling was not an honest struggle on who should handle the matter.

There is a limitation on our mandate as committees spelt out under Standing Order No.197. Before I conclude, the last thing that I want to quote is the Constitution. Article 75 of the Constitution talks about the conduct of State officers and requires a State officer to behave, whether in public, official life, private life or in association with other persons, in a manner that

avoids any conflict. The most important one is compromising any public or official interest in favour of personal interest or demeaning the office that the officer holds. We hold the office of Member of Parliament. We do not expect any Member, any of our colleagues to behave in a way that will demean our office. I do not want to be in a House where we are viewed like county assemblies which have refused to pass some budgets because they want to be given bribes. Some county assemblies have to be taken somewhere to be persuaded to legislate.

Two final remarks on this; I am sure my concerns and those of the Leader of the Majority Party have been aggravated by what has transacted on this issue of sugar. We have to be ruthlessly candid with each other. I remember in the 11<sup>th</sup> Parliament, some Members of Parliament disrupted a meeting of the Departmental Committee on Finance and Planning. I remember one of the Hon. Members abused one of the Members of Parliament. He is my friend and he is still in this August House, and I do not want to mention him. I will, however, mention the MP who was abused. Hon. Oburu Odinga was abused because he was asking Anne Waiguru questions on National Youth Service (NYS). It did not even last a month before NYS became a shame in this country. Those Members never spoke again about it. I have no issues with these Cabinet Secretaries, whether it is Matiang'i or who. I have no problem with them. But what business do you really have as a Member of Parliament to go to a committee to speak for a Cabinet Secretary and you do not work in that ministry! The bottom line is that the Cabinet Secretaries have staff. They are competent enough. We vetted them before they were given those jobs. Please let them defend themselves. When we see you defending these Cabinet Secretaries and then we hear rumours that some money has exchanged hands, we cannot dismiss them. I have heard a lot of rumours that MPs are being bribed. Most of the times, I say it is not true. But when I see the behaviour of some of our colleagues, I am tempted to agree with those people. How do you go to a committee and become so emotional about a matter and emotional about defending a Cabinet Secretary as if you work in that ministry? This is a matter that should not be treated casually. As a matter of fact, you will allow some of us to do our investigations. We have been holding very high threshold for Cabinet Secretaries. If you are mentioned, go home first as we investigate you. If a Member of either Jubilee or National Super Alliance (NASA) is adversely mentioned in a matter, we remove them from committees as investigation continues. That should not be seen as witch-hunt. It is just about bringing sanity and pride back to this House. That is why some of those people have the courtesy and the guts to call us "pigs" when some of us are very clean. We can never be near being described as pigs. We are clean not just in terms of our dressing or showering every day, but we are clean in terms of character and integrity. This is a matter that is timely and we need to pronounce ourselves. We are not mentioning any names. We are not targeting any individual.

If you know you are a victim, there is a saying that I use when I am campaigning. I cannot easily translate it in English but I will try. When Hon. Millie rises, she will translate better. I usually tell people that when a pastor or a priest is delivering a sermon and you feel that the sermon has touched you in a way that has pricked your conscience, instead of complaining that someone must have leaked your secret to the pastor, please change your character. We are just delivering a sermon here. The Leader of the Majority Party and I, have become preachers. We are delivering a message that if you are a bad apple amongst us, please change. You can do your things without looking at those small handouts which make you cheap, like hugging a witness for no reason. Someone who is suspected of possibly killing our people even if it is not true and before we rule it out, how do I hug such a person and I do not know whether he has brought bad sugar in this country? I have been consuming sugar, since then to date, and I have

not changed. I am one of the Kenyans who continue to consume sugar. Then you hug such a person who is probably killing me slowly. If I do not stop there, I may go on and on because I am becoming a little bit too emotional about this.

Thank you. I support the sentiments of the Leader of the Majority Party.

**Hon. Speaker:** I can see a number of Members who want to say something. Unfortunately, as you may have heard from both the Leader of Majority and the Minority parties, they are restraining themselves from offending the Standing Orders and, more specifically, Standing Orders forbidding discussion of the substance of matters that may be active before committees table their reports in the House. Suffice to say that the issues which have been raised are matters that are well covered in our Standing Orders and the various pieces of legislation that govern matters to do with integrity, dignity and honour. This is found in the Public Office Ethics Act, Leadership and Integrity Act and broadly captured in the grand norm of the country in Chapter Six.

I feel constrained to allow more Members to contribute because the danger is: I am not too sure that many of you may not veer into specifics. We do not want to go into specifics, now that we have just heard about hugging, and I saw it exciting many of you. Let us just be satisfied to that extent. If we are just discussing matters of conduct and decorum, I would expect that by now, many of you having had to campaign, going to great extents to look for votes to convince and/or persuade people to vote for you, I am sure by now we do not need to re-state the point that even those that appear before you, appear as witnesses and you may feel very strongly about them or against them. But remember everybody must have their dignity and you must treat everybody with the necessary respect. If the perception that you send out there is one in which Kenyans may interpret your conduct as pre-judging issues or being in favour of this or the other, then you do not become the representative sample that we expect each one of us to be of the entire institution of Parliament. I see the Member for Kisumu West really agitated. What is the issue John Olago Aluoch?

**Hon. Olago Aluoch** (Kisumu West, FORD-K): Thank you, Hon. Speaker. This point of order raises very fundamental issues. I am happy the Leader of the Majority Party has brought it up and he is supported by the Leader of the Minority Party. I hope that the issues which have been canvassed will elicit well researched guidance from your Chair.

There are certain issues which arise and which must be addressed. One is how effective is our system of induction of new Members? We have to relook at that, because most of the resource persons during induction are members of staff who are fairly senior. Unfortunately, for Members of Parliament, once they arrive here, they assume that they are more senior than the staff that they have found here. But some of the staff are senior than them. So, when someone they consider junior trains them, they do not take it seriously. That is one.

Sometimes, when I watch committee proceedings, I feel so ashamed and I feel like closing my eyes when I imagine that the men and women I am seeing in front of me are the ones that I call my colleagues. It is very embarrassing. I think the problem that we must address is the craving for media attention. It is a craze!

*(Applause)*

The craving for media attention makes you do really unprofessional and crazy things. We must be mature enough to know that, that will not assist in the long run. In the short term, it may. In the long run, it will not.

Fundamentally, the issues which have been raised now call for a closer look at our Standing Orders. I have the privilege of serving in the Rules and Procedure Committee and when I listen to Members talking, I get ideas on what we need to do to make our Standing Orders more receptive to some of these challenges. Many times, I have noticed that when Members are interrogating witnesses in committees, there is complete lack of interrogating skills. Members accuse each other in front of witnesses. I know that in the Executive, there are Cabinet Secretaries who know how some Members behave and when they come before a committee, all they need to do is say one sentence that creates controversy and then they sit back smiling as the Members fight themselves. That is their method of dealing with committees. They create controversy and then they sit back smiling as you fight yourselves. What do we portray when we fight ourselves?

These are issues very close to my heart. How do we deal with conflict with each other, either in committees or even outside this House? Do we need to shout? Do we need to be so friendly and fall over ourselves because we want to be friends with the Cabinet Secretaries? Even if we feel that they are innocent, is there not a better way of handling those issues?

Standing Orders, as they are now, allow for friends of committees. There is a reason why that was put in the Standing Orders. But when a Member of this House appears as a friend of a committee with a fixed purpose - to defend a witness and start fighting with his colleagues in the committee - what are we portraying of ourselves? Do we need to look at the Standing Order providing for what a friend of a committee can or cannot do? As it is now, a friend of a committee can participate in the deliberations but cannot vote. Do we need to relook at that so that we know how to limit ourselves or retrain ourselves?

Sometimes I feel embarrassed when I see that we lack the art of dealing with those who appear before us, as committees. Ultimately, as you give guidance on this very important issue, I would like us to relook at our Standing Orders so that we address these issues. If we do not address them and retrain ourselves, then we are going to be an embarrassment to this nation and some of us will be ashamed to even say they are Members of Parliament.

Thank you, Hon. Speaker.

**Hon. Speaker:** We must emphasise that if you have the honour of being chosen by your colleagues to chair a committee or to deputise the chair, why would you allow disorder in a committee? Any Member purporting to be a friend, even if he is an enemy, should be kicked out in accordance with Standing Orders. That is why we provide security personnel. If a Member just goes into a committee meeting for purposes of disrupting it, he should be kicked out. Unless a Member is going to give some input that he or she feels is going to help the committee in making a better decision...If you are not a member of the committee, you do not have the power to vote. You should know that your participation should be limited to assisting the committee to arrive at a fair determination of the matter that may be before the committee or arrive at a decision that helps the country to move forward.

I am also alive to current trends and I have had occasion to discuss with both the Leader of the Majority Party and Leader of the Minority Party. The technical staff that we have employed to help committees are shoved aside. Members do not want to be given advice. Indeed, even those committees that consume the services of other agencies that are attached to Parliament traditionally, if you do not listen to the advice that may come from, say, the officers sent to you by the Auditor-General, the Controller of Budget or the Inspectorate of State Corporations, then just tell us to withdraw them. They will be happy. You suddenly want to assume that because you are the Member, you know everything. Some have complained that they



are finding it increasingly difficult sitting in committees because the committees are not listening to any advice. So, the committees should not say that they do not have people to assist them to arrive at fair decisions. Why is it that we keep trying to get various competencies into Parliament? It is because this institution is called upon to make determinations on all manner or issues. Some could be complex or technical. That is why we look for those competencies from outside on a regular basis when we have to look for them.

I think it is only fair, even as I will make a definitive guidance on this matter that we try to retrace our steps. It is a matter that is becoming of great concern. I want to agree with the Leader of the Minority Party that you have no business defending people who appear before you. I also chair committees where we get witnesses. We have no business defending them. They know. Even villagers in ordinary subordinate courts are taken before courts and you hear them saying: "I did not know that what I did was wrong."

The Member for Sirisia knows that some years back, a policeman would arrest somebody and take them to a subordinate court and the first question the accused person would ask is: "How can I be here? I need to have been taken to an Omukasa or a Liguru, a village elder." They never believed that a police officer could just go, arrest and hurl them to court. You should have consulted this village elder. He is more appropriate to deal with this matter. But, at least, they still make their defences. So, let us agree that the people that appear before us are also Kenyans like ourselves, human beings deserving of respect. Many have certain dignities that they would also want respected, just as much as we too go to great lengths to ensure that the honoured dignity of Members is respected and upheld at all times. So, we should extend to those who appear before us the same respect.

Even when we do not agree with what they are saying, do not shout at them because you have the opportunity to retire and, with the technical advice from the staff, to write the report making recommendations. Why would you want to shout at them? Even if you do not agree with them or if you know, for whatever reason, that what they are saying is not true, you do not have to shout at them. Do not tell them: "You are a liar!" No, you will convince your colleagues when you retire to write the report and to do the recommendations to say what you think about them. Members of this House will read the report and look at the reasons why a committee thinks so and, who told them lies and why they think further investigations should be conducted by other agencies.

Since we are not angels, whatever reports we come up with will be recommendations. Through our Committee on Implementation, those reports will go to whatever specialised agencies to do as you recommend. Our Committee on Implementation will then pursue those agents to know how far and what action they are taking in the enforcement of the recommendations adopted by the House. So, this is just gratuitous because there was an induction. I want to call upon the chairpersons of committees to be firm now. I know many of you had a lot of threats of impeachment. However, when your conscience is clean, do not fear. This is the biggest problem that has faced chairpersons of committees.

Again, we have records showing that there are some Members, from both political divides who have not attended meetings. We want those reports. It is important that both the Leader of the Majority Party and the Leader of the Minority Party, as agreed last night in the House Business Committee, get reports of those Members who have been appointed to committees and they do not attend meetings, so that they can be removed. I have people who want to work. You cannot be appointed to a departmental committee and then you do not attend

a single meeting or when you attend, you pretend that someone is calling you and walk out, pretending that there is something very urgent.

Surely, if time has been dedicated for your committee to sit, please, just dedicate that time to the work of that committee. If for one reason or the other you are not able to serve in a particular committee, just involve the leadership. Since we are not getting that, we will now get those reports from the people clerking those committees. The Director of Committees has been instructed to get those attendance lists. Very soon, we will also start checking how long you sit in those meetings.

The committees are the engines of Parliament. You do not want to go there for five minutes. Some of you go, ask a question and before the response has been given, you pretend there is something very urgent and you have gone out to represent people. These are simple things and we all can adjust. This is so that the chairs of committees also can know. I do appreciate for one reason or the other Members have all manner of issues in the area of representation of their constituents, but it is only fair that you inform the chairperson or the clerk in charge of the committee that you are not able to attend so that a decision can be taken in good time not to sit.

I hear some murmurs that chairs are very lonely because they just appear on their own and Members walk in while still representing. Represent, but also spare some time for the work of the committee. Please, Hon. Members, I will be making...

Hon. Nyamita, what is it? The Member for Uriri seems to be dying with some issue.

**Hon. Mark Nyamita** (Uriri, ODM): Thank you, Hon. Speaker. I talk as someone who has been a friend of a few committees.

**Hon. Speaker:** A friend of a committee?

**Hon. Mark Nyamita** (Uriri, ODM): I know that the matter on the Floor of the House is very weighty, but we must maintain the honour of this House. I just wanted to say that, as much as we may blame the Members, and I am talking as a friend to a couple of committees, even the capacity of our chairs needs to be enhanced.

*(Applause)*

Whereas you say that certain Members do not know how to interrogate issues, a number of committee chairs do not also know how to preside over committee sessions.

**Hon. Member:** *(off record)*

**Hon. Speaker:** No, do not respond to that one. You may require a substantive Motion.

*(Loud consultations)*

**Hon. Mark Nyamita** (Uriri, ODM): Absolutely! Thank you, Hon. Speaker for protecting me. If the committees are supposed to be a reflection of what is in the House, whenever you give a Member an opportunity to speak within this House and even when you disagree, you, at least, allow them to land on the point they want to make. That is rarely happening in some of the committees. When a committee chair realises that you have taken a certain trajectory, even before you mention something, you are told, "No, we are not doing that one", without referring to anything.

Therefore, I challenge the leadership of the House, on both sides, especially on the majority side. Some of these chairs are computer-generated or they were designated from the

point the committees were being set up. The positions of committee chairs were used to reward some individuals without capacity.

Secondly, I read in the newspaper last week an allegation that a committee went on a retreat sponsored by one of the organisations they were investigating. I want to believe that no committee of this House would go without the authority of the Clerk. Probably you might also just want to check. Did the Clerk of this House authorise the committee to go on this retreat? Before they authorise, there is an agenda that is set out. Did the Clerk of this House authorise a committee to go out and have a meeting investigating a Semi-Autonomous Government Agency (SAGA) that has itself sponsored the very meeting outside Parliament?

We read this in newspapers. It was alleged that a committee of this House was hosted by one of the parastatals and it had portrayed the House in very bad light. So, in as much as we might blame the Members, I urge my colleagues that we carry ourselves with a bit of decorum. Let us listen to the professionals that are seconded to the committees. We ask the chairpersons to be responsible and emulate the way Hon. Speaker runs this House, so that whenever we are in committees, a committee can be an extension of the House. Also, check whether it is Parliament that authorises our committees to go out investigating organs that have sponsored the investigation.

Hon. Speaker, if I am one of the accused persons of the many scandals that we hear of, a witness has imported sugar, for example, and he hosts you at the factory, gives you the sugar and then you sit there to investigate them and hopefully come up with a report, it is not possible. Therefore, I urge the Members to be responsible. Committee chairs need to be taken for further training, as you induct other Members, but also check whether the House has put Members in a situation where there could be conflict of interest.

Thank you, Hon. Speaker

**Hon. Speaker:** Hon. Members, I just wanted to make it absolutely clear so that we all know that we do not fall victim of rumours. The functions of departmental committees shall be, and it is important that I restate this, to investigate, inquire into and report on all matters relating to the mandate, management, activities administration, operations and estimates of the assigned ministries and departments. Study the programmes and policy objectives of ministries and departments and the effectiveness of the implementation. Study and review all legislation referred to them. Study access and analyse the relative successes of the ministries and departments as measured by the results obtained as compared with their stated objectives. Investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House and, of course, the area of vetting.

It is not always that you are investigating. Some committees have their work plans which have already been approved and you have seen them. So, in the process, certain things may crop up which are not necessarily under any investigation. That is not to say that the committee will shy away from meeting with the SAGAS. They are dealt with by departmental committees on the basis of the functions I have just read out and also with respect to reports emanating from the Office of the Auditor-General.

If it regards operations, the committee may want to understand and measure the relative successes and bring a report to the House on what they discovered. When doing that, you are not investigating. We have always said that we do not want committees to be invited by other bodies or even SAGAS. They have to give their work plan through the Office of the Director of

Committees to be approved by the Clerk. I do not want to go into matters that can begin raising issues.

**Hon. Katoo ole Metito** (Kajiado South, JP): On a point of order, Hon. Speaker. First of all, this matter was discussed in details and with specifics today by the Liaison Committee. We are fully aware of this as chairs. My point of order regards a statement that was made by the previous speaker, the Member for Uriri. I do not think it should go on the records of this House, for future reference.

He finished by saying that we should remain honourable and I think this should start with him because he referred to chairs as computer-generated. Some of us have been in this House for quite sometime and we subscribe to what Hon. Mbadi has said that we cannot be close to what can bring suspicion and all manner of things. I think his words ‘computer-generated chairs’ is not parliamentary.

**Hon. Speaker:** Member for Uriri, Hon. Nyamita, did you say computer-generated chairs? I thought all the chairpersons were elected by the Members. Did you say so?

**Hon. Mark Nyamita** (Uriri, ODM): Hon. Speaker, maybe he did not understand, I said computer-engineered.

**Hon. Members:** No!

*(Laughter)*

**Hon. Speaker:** Hon. Nyamita, you know we will refer to the HANSARD. Did you use the phrase “computer-generated chairs”?

**Hon. Mark Nyamita** (Uriri, ODM): Hon. Speaker, because I cannot remember very well, let me apologise and withdraw.

**Hon. Speaker:** Are you withdrawing and apologising?

**Hon. Mark Nyamita** (Uriri, ODM): Hon. Speaker, I withdraw and apologise, but allow me to say, as the Leader of the Minority Party said, that sometimes when a preacher preaches and you hear the message, you can just repent and keep quiet. My message may have touched a few people, but for the record...

**Hon. Speaker:** Enough.

**Hon. Charles Kilonzo** (Yatta, Independent): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Charles Kilonzo, we are through with this for now and I will be making a comprehensive guidance on it. You want to contribute to this? He is independent and does not belong to any party, so, I will allow him.

**Hon. Charles Kilonzo** (Yatta, Independent): On a point of order, Hon. Speaker. An issue was brought up and I think you need to address it when making your ruling. This is about committee activities being funded outside Parliament by State corporations, commissions or ministries. This needs to be made clear. As long as committee activities at any particular time are funded by other organisations, we expect when a matter arises, the committee will be friendly to that organisation.

Another issue is that majority of committee chairs do not either understand their work or are not interested. I think you need to have an induction course or act on them. I am sure there are Members who are more than willing to become committee chairs. There are also other evils and it is unfortunate we do not have an opportunity of holding a *Kamukunji*. We have seen cases where nominees appear for vetting and have already been coached by Members of the same committee. This is very unfortunate.

Also, we have seen very sad cases. For example, when the Executive touches your tribesman, Members from that community call a Press conference. We are supposed to remain honourable and not that when a member from your community is touched, all of a sudden, you go to small cocoons of tribes. We need to address this issue. Finally, we have seen cases of indiscipline where Members abuse each other in committees. This is not acceptable because it goes to the HANSARD. Surely, there must be order and if the chairs are unable to act... Their names were brought here by the Leader of the Majority Party and the Leader of the Minority Party. So, it means there is a problem with the leadership of these committees and this is a problem of the concerned parties.

Hon. Speaker, as you bring your ruling, we need to bring back discipline to committees. I want to refer to the issue of Members appearing in committees just to sign the register. This does not serve any purpose. I remember I served in the Constituencies Development Fund Committee in the 9<sup>th</sup> Parliament and the Chair was Eng. Karua. If you came to his committee for technical appearance, he would not allow you to sign the register. The minimum time one could sit in that committee was 30 minutes. Probably, you need to organise a retreat with your team of leaders so that they can instill discipline in committees.

Thank you, Hon. Speaker.

**Hon. Speaker:** Well spoken. You know you are a sizeable number of independents in this House. This is not about the youth. Do not become a friend of a committee merely because somebody from your village is appearing and you want to show solidarity. It becomes intimidating. Like it was said by Hon. John Mbadi, it was obvious in the last Parliament. So, please, do not become a friend of the committee merely because some villager from your place is appearing and maybe he is just appearing to give information. We may call them to come here and give information and all of us will be here. They are not criminals or suspects. So, they do not even need your support. The jobs they do, hopefully they have been put in those places because they are competent. So, they do not even require village support. Hon. Members, we will be making a substantive Communication on that.

Hon. Members, using Standing Order No.1, I had indicated that I will interrupt the next Order so that I allow the Chair of the Departmental Committee on Finance and National Planning an opportunity to do what should have been done under Order No.5.

## PAPER LAID

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker, for this opportunity to prosecute this particular important business before the House. Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Finance and National Planning on Consideration of Provisional Collection of Taxes and Duties Order 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Table the Report. I believe it will be helpful when debating the Motion, notice of which was given by the Leader of the Majority Party earlier in the day.

Let us go to the next Order.

## BILL

### *Second Reading*

## THE LAND VALUE INDEX LAWS (AMENDMENT) BILL

**Hon. Speaker:** Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the Land Value Index Laws (Amendment) Bill 2018 be read the Second Time.

Hon. Speaker, as a background, this Bill was first introduced to the House in the 11<sup>th</sup> Parliament. It was passed by the National Assembly but lapsed and died at the Senate. So, we have republished it and that is why it is before this House. As you are aware, the Kenya Vision 2030 development strategy is largely pegged on the development of infrastructure which again is dependent on, among other things, the availability of land, which in certain instances, needs to be acquired by the Government for the purpose of project development. That has created the need for us to have land for big national infrastructure as envisaged in the Vision 2030 of the Government.

So, the creation of easement of land, creation of public rights of way or the acquisition of wayleaves for infrastructure installation is a matter that is being discussed in this Bill. Land is required for building highways and major road infrastructure. Land is required by the Government in the construction of railway lines and substations. Land is required in the construction of big transmission wayleaves and other major infrastructural installations and projects. The ease with which the required land or rights over land are accessed is a pointer or it signals Kenya's quality in terms of ease of doing business. We must set a standard in terms of how we acquire land rights that is also found in law where even investors sitting out in major cities in the world can be very comfortable that: "I can go and invest in Kenya. This is how land is available and this is how land is accessed and acquired."

The importance of this Bill is with regard to the amendments of the Land Act of 2012. So, this Bill is making major amendments to one principal Act, which is the Land Act of 2012 in order to provide for the development of a land value index where we can standardise and harmonise the value of land across the country for the primary purpose of creating one single window of creating a land index. You can sit in Singapore, New York or London and say that that particular piece of land will cost this much as a result of the land value index. That standardisation and harmonisation of the value of land across the country for the primary purpose of determining what we call land rent, land rates, stamp duty on conveyance of land and when it comes to compensation of particular land is what this Bill is all intended for.

We are saying that land rates, land rent, stamp duty and even the compensation in this case must be harmonised, standardised and predictable. You can buy a piece of land here and when you reach the Intercontinental Hotel, the same piece of land has a different value. That is the essence, that we can have the three components, namely, land rates, land rent and the stamp duty harmonised and standardised and again predictable.

Let me go to the clauses. Clause 2 of the Bill proposes to amend Section 2 of the Land Act 2012. It is good for Members to have a copy of the Land Act, 2012.

*(Hon. (Ms.) Odhiambo-Mabona and  
Hon. Caleb Kositany consulted loudly)*

Hon. Speaker, Hon. Millie and the Member for Soy cannot speak to each other across the aisle. He can cross over. They can have handshakes and hugs. Clause 2 proposes to amend Section 2 of the Land Act, 2012 by introducing a definition on new terms including “just compensation”, “prompt,” “full” and “tribunal.” These are new sections.

Clauses 3 and 4 propose to amend Sections 31 and 32 of the Land Act, 2012. What do they do? They limit the application of the principles of equity against land where you want to forfeit where land held under lease or licence is required for public purposes. The Government can compensate pieces of land in the interest of the nation either through building infrastructure work or doing infrastructure installations.

Clause 5 seeks to amend Section 107 of the Land Act, 2012 in order to correct some typographical error and substitute subsection (4) with a requirement that the commission will ensure, upon its determination, that for you to acquire land, the laid down requirements must be met and the land that is the subject of adjudication is mapped and valued by a Government valuer using the valuation criteria set out in this Act.

Clause 6 of the Bill proposes to introduce a new Section 107A that will provide for the criteria for assessing the value of land to be compulsorily acquired that distinguishes between matters to be taken into account and those to be disregarded. It provides for a compensation matrix to be paid to occupants of land in good faith. That section deals with how the Government acquires land through compulsory acquisition.

Clause 7 of the Bill proposes to amend Section 111 of the Land Act, 2012 in order to provide for alternative allocation of land of equal value and comparable use as primary form of compensation. That section says that the Government can acquire land if that land is within the wayleave, the Standard Gauge Railway (SGR) or where the Government wants to build a serious national infrastructure. The Government will compensate you by giving you an alternative allocation of land of equal value to the one taken from you. It is about the transfer of equity in terms of development rights and equity shares in Government-owned by entities.

Clause 8 proposes a minor amendment to Section 113 of the principal Act in order to align the provisions with the amendments proposed in Section 11. It is more of an amendment where this House has an opportunity to relook at the Land Act of 2012. Clause 9 proposes to completely delete subsections (2) and (3) of Section 114 of the Land Act, 2012 in order to align the provisions with the amendment proposed in Section 11.

This Bill borrows from the Land Act of 2012. As we borrow from that Act in creating a land index where the land rent, land rates and the stamp duty will all be harmonised and standardised, there are certain provisions within this Bill that will be aligned to the parent Act.

Clauses 11 to 16 seek to rectify some inconsistencies which were found in the marginal notes and some typographical errors. This has given us an opportunity to amend Sections 117, 118, 120, 121, 122, 124(3) and 125 in order to enable the commission to take possession of land upon making the award and prohibits courts from issuing orders stopping any public-funded project from proceeding after the formal taking-over has been concluded. This gives power to the NLC that where due process has been followed and the commission has acquired land on behalf of the Government for a major project, it prohibits courts from issuing orders stopping any public-funded project to proceed.

Clause 18 proposes to establish what we removed earlier in that law, namely, the Land Acquisition Tribunal. It provides for the composition of the tribunal, the terms of office of the members and appeals to court. This is so that where the Government entity and the owner of the land do not agree in terms of the compensation, they can address their matter through the Land

Acquisition Tribunal. How that tribunal is composed, term of office of the members, functions and jurisdiction are well-documented in that section.

Clause 19 proposes to reduce the number of days after which the commission is supposed to make its decision following an application for the creation of a public right of way from 90 days to 30 days. The whole timeline in terms of the time required to pay for this land or substitute the other land takes place within 30 days from 90 days.

I, therefore, wish to request the Members to support this Bill in order for us to create a legal framework that will facilitate the actualisation of our country's development strategy relating to public infrastructure. This enables the reestablishment of Kenya as a jurisdiction of choice for investment, the improvement of ease of doing business in Kenya through the regulation of the long and protracted process of compulsory acquisition and standardisation of compensation. It will eliminate the huge variance when it comes to what we pay in terms of land rate, land rent and stamp duty.

In the 11<sup>th</sup> Parliament, the Departmental Committee on Lands looked at this. Amendments were proposed and this Bill went to the Senate where it lapsed. There are five Bills which lapsed in the Senate in the last Parliament. We have sent the Senate the same five Bills, namely, the Energy Bill, the Petroleum Bill, the Kenya Roads Bill and the Physical Planning Bill and I hope this time round, they will not keep them for another four years until they lapse. I hope they will do their duty in terms of legislation.

The Chairman of the Departmental Committee on Lands conducted public participation and got the records of the previous Departmental Committee on Lands in the 11<sup>th</sup> Parliament, which was chaired by Hon. Alex Mwiru. It listened to stakeholders; both Government and private. I am sure she will share with the House the views of the stakeholders.

I ask Hon. Rachael Nyamai to give the side of the stakeholders.

I beg to move and ask her to second.

**Hon. Speaker:** Even as the Chairperson of the Departmental Committee on Lands rises to second, it is only fair to appreciate that this Bill was passed by the 11<sup>th</sup> Parliament and forwarded to the Senate where it met its Waterloo or some natural death. This is just to remind the House that the chairpersons of departmental committees, in keeping with the resolutions of the House on Wednesday 14<sup>th</sup> February this year, have a maximum of 30 minutes in speaking. You have a maximum of 30 minutes in speaking. You do not have to take the entire 30 minutes, but it would depend on how much material you have. You are the one who chaired the various sittings where the stakeholders gave their views. Let us have Hon. Rachael Nyamai.

**Hon. (Ms.) Rachael Nyamai (Kitui South, JP):** Thank you, Hon. Speaker. I rise to second the Second Reading of the Land Value Index Laws (Amendment) Bill, 2018. From the outset, Members of the Departmental Committee on Lands looked at this Bill.

We also decided to make use of the notes that had been made by the Committee in the 11<sup>th</sup> Parliament and decided not to reinvent the wheel in areas where they had looked at. I would also like to take note that it is unfortunate that this Bill was deliberated in this House, but it was not finalised because of problems that did not emanate from the National Assembly, but the Senate.

Hon. Speaker, as you are aware, compulsory acquisition of land in this country is governed by the Constitution and the Lands Act, 2012. The laws only provide for the procedure for compensation or compulsory acquisition of land. This is provided to the NLC with no clear framework to guide them on the valuation of the land that is being acquired compulsorily. So, we can already see at the outset that there is a problem. We have a procedure, but we do not have a



clear framework. This is largely being misused at times. This law, which is coming at this time, will help this country to make decisions that will ensure that implementation of projects is done within the correct timelines and Government funds are not misused. As the Departmental Committee on Lands, we have already experienced this first-hand. There is a problem as a result of lack of legal framework to govern compulsory acquisition of land.

The Committee has a huge workload currently which emanates from a number of petitions. We receive petitions, some of them through the House. We receive letters which are written directly to the Committee. I was talking to one of the Members this afternoon who was asking me whether it is right for a committee to handle a matter which has been written directly to it. We are already experiencing these problems where people write petitions to you and they also write letters directly to the committee on issues relating to compulsory acquisition of land. Most of these claims talk about under-valuation. We know very well that this is not within our mandate.

I would like to go to some examples. The Committee is examining one Petition that was filed recently by the people of Kajiado County, through Hon. Manje. We observed the great variation in compensation between two pieces of land that are adjacent to each other with a difference of nearly Kshs10 million even in places where pieces of land are separated by a mere fence. This tells us that this Bill is timely. It is important that this House participates in making a decision on matters to do with valuation. When this Bill goes through, it will give a clear framework for the whole country, so that we can stop people from taking advantage of Kenyans and misusing the process for their own gain. What explains this variation? It is because there is lack of a framework to govern the valuation. Valuers make decisions, but I do not know what they base these decisions on. They can decide that a piece of land costs this much, the next one this much, and the next one, which is adjacent, costs much more, which is a problem. The feeling within the Committee is that this does not just happen. It looks like people are influenced to make this kind of a decision.

We are also aware that the Departmental Committee on Lands recently tabled a Report on the Ruaraka Land matter in this House. I must state that although it largely relates to matters of procedure, issues of compulsory acquisition were also raised. The matter of valuation was also widely discussed. This Bill will assist to ensure that valuation is standardised as per the areas. The market value will also be considered and other parameters that are used within this profession.

From the Report of the Ruaraka Land, which we tabled, it was clear that matters of valuation were misused. That is why land in such an area was valued at over Kshs200 million. We are also aware that the Government has had many difficulties in acquisition of land for undertaking Government projects. We have problems in getting land for dams and wayleaves. The SGR is an example that we cannot forget. It is always in the newspapers where issues of overvaluation of the SGR land have been raised in this House and outside by the media. As soon as the Government announces that it is undertaking a project, some of the so-called land buying companies take advantage. They purchase land near the areas for purposes of speculation. This makes the prices of land within such areas to skyrocket into extreme highs. Court cases are also filed in plenty which make Government projects to stall. As this Bill has been explained by the Leader of the Majority Party, it will bring a solution to the issue of people who run to purchase land in areas where they expect the Government to implement projects because it gives some timelines in occupancy.

All these are due to lack of a legal framework to govern the compulsory acquisition of land process. Therefore, the importance of this Bill cannot be overstated. My Committee had opportunity to look at it. We observed that the Bill seeks to provide a criterion for assessing value for compulsory acquisition of freehold and leasehold land, which will be through the land value index which will be developed by the national Government. This will be done in consultation with the counties. The proposer of the Bill is very well aware that this cannot be done by the national Government alone. There is need for consultation. This will cover the whole country. It means that it will be easy to acquire land without taking too much time in doing valuation because it will have already been done. Using the parameters which are explained within the Bill, they will identify the value in consultation with the people who live within that land.

The land value index will provide an analytical representation which shows the distribution of the land value in given areas using factors such as payment of rates, rents and the market value among other parameters. This Bill will also expand the forms of compensation that will be available to the people who are affected. It will not only focus on monetary value but will also provide an avenue where an individual can be compensated with land either within the same area or in a different area as agreed between the Government and the people who are affected. The people can also be given equity shares in Government-owned entities and any other lawful compensation that is agreed. This gives the Government an opportunity to explore more ways of compensation beyond only monetary terms.

This Bill will also establish the Land Acquisition Tribunal as it has been well explained by the Leader of the Majority Party. If someone is aggrieved with the decision that has been made by the NLC in valuation, he or she can appeal to that Tribunal instead of going to court. We know very well that there is a lot of backlog within the courts. This tribunal will be there to deal with the aggrieved persons as the first opportunity.

Hon. Speaker, I could go on and on, but in summary, the Bill is progressive. It comes at an opportune time when the Government is pursuing the Big Four Agenda, which might call for investments in infrastructure development projects in various parts of the country. This is the right time for this Bill. I would like to encourage the Members to support it. The Bill is also critical in that it will safeguard Kenyans' rights to property as enshrined in Article 40 of the Constitution so that where land is acquired by the NLC, each Kenyan can be guaranteed that they will be compensated for the real value of their land.

There are many cases of complaints about the NLC having undervalued land and many complaints emanate from the people next to the person who has been given more money. This is a matter that will be sorted out by the Bill, if it is passed.

Hon. Speaker, as I conclude, allow me to quote the words of one of the Presidents of the US, Franklin Roosevelt, who said that land is the most important resource we have and it ought to be given the highest level of value in terms of deliberating on matters concerning land. In the Kenyan situation, as I have said earlier, we are talking about the Big Four Agenda. Many communities in the country will be reached by the national Government as it tries to deal with matters to do with healthcare, housing and manufacturing. The Bill is timely and I request the Members to give it the support it requires.

With those many remarks, I beg to second.

*(Hon. Swarup Mishra walked in the gangway)*

**Hon. Speaker:** Member for Kesses, take your seat.

*(Question proposed)*

I would have wished that the Members who were not in the 11<sup>th</sup> Parliament would have been the majority present to contribute to such an important piece of legislation. But I see the majority have decided to go and take tea or represent their constituents at the coffee place. Well, that is also an aspect of representation. Or they may be overseeing at the lounge.

Fortunately, the first Member on the queue happens to be Hon. Dr. Gogo Achieng’.

**Hon. (Dr.) Lilian Gogo** (Rangwe, ODM): Thank you very much, Hon. Speaker. It is a real good moment to be here for the first time today and get time to contribute to such an important Bill. I do not want to be out of order but being a first time Member of Parliament in the august House, I have watched with awe certain proceedings, especially on matters that touch on the conduct of Members. I do not want to be out of order, but it is important that Members who have been in Parliament doing their second, third or fourth terms, give leadership and those of us who are new accept to be led. We also need mentoring programmes in Parliament even if we are only coming for one term. It is good to be mentored.

This is a very important Bill. Land is a very important resource in the country. It is critical because it touches on lives and we live on land. Given the proposals that I have seen and as have been well elaborated by the Mover and the Seconder, it is a good Bill and I support it. I wanted an addition to the indices, the future values of the current pieces of land or the future of the current sub-systems or valuation be used also as an index. This would be important because some land may have low value now, but for purposes of avoiding hoarding of land if we use the system then, land will be given a good index for purposes of payments of rates, rents and also for payment of stamp duty.

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

*[The Temporary Deputy Speaker (Hon.  
Patrick Mariru) took the Chair]*

I am particularly impressed by the need to remove variations, especially in the value of land. There are aspects of land that have been devolved, but there are others that are still controlled by the national Government. If we were to remove variations and have a uniform way of giving value to land, we will reduce the number of land cases in the country.

This is a very important piece of legislation. The amendments are very critical, especially at this time. I laud the Member who seconded the Bill. She articulated very well the Land Acquisition Tribunal and roped in the idea of the number of cases of land that are clogged in courts. If we were to have a very well-structured Land Acquisition Tribunal to handle certain cases, it would bring down the number of cases that are taken to courts. This would be a step in the right direction.

There was an element of looking at value for value. When the Government acquires land, it should look for alternative compensations. Other than monetary compensation, there are alternative means of compensation for land that can be given and that would be based on

comparing of values. But it is important that at times, when the Government acquires land that is of lesser value, it should also compensate with land that is of higher value, especially when considering the spirit of the Big Four Agenda that will drive the country forward. It is a pleasure to have been given an opportunity to contribute.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Shaban.

**Hon. (Dr.) Naomi Shaban** (Taveta, JP): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to give my opinion on the Land Value Index Laws (Amendment) Bill of the National Assembly (Bill No.3 of 2018).

There is a strange thing that happens in Kenya. Most of the land being compensated for was originally public land. It was allocated to people and the same people sold it to the Government again at exorbitant amounts of money. The Bill has come at a very important time because the Government is trying to acquire land compulsorily to either settle people or to do some of the major infrastructure projects in the country.

I do not know where the buck should stop, but first and foremost, the main consideration should have been how one got land and once you got it, what happens to it? Does land which you acquired as public land, because it was meant to be public land, appreciate in value when it has your title on it or do you go back to the fact that it was public land and give a nominal fee? Those are some of the things that should be put into consideration. We have a major problem. You find even people on known road reserves with a temporary structure there and you hear someone has been compensated millions of shillings. Something is not right. It should have been common sense and it should have been looked at from the point of view that this is taxpayers' money. We should not have used public funds to compensate someone who was squatting on a road reserve. Somebody is on land which originally was public land, which was meant for some of these projects.

All those considerations should have been put in place in the beginning. In the 11<sup>th</sup> Parliament, we were doing things in a rush considering that the Constitution had just been promulgated and we needed to move on to activate some parts of it. In the process, we left so many gaps. Those are the loopholes which are being misused today by Kenyans who have been given the mandate of dealing with land valuation and compensation. They have taken advantage of that loophole and they are misusing taxpayers' money. They do not have a conscious I also have many examples. You find somebody who is being compensated for less than a quarter of land being given more money than a person with 10 acres of land. I have seen this. It has happened even when they were doing compensation in my area. I had to point it out that it was wrong. It should not have happened because the value of land should have been the same across the board. It should have been the same amount of money so that some people do not lose out. You do not punish people because they own big chunks of land.

We have had places where people have destroyed permanent structures in the name of compensation yet those permanent structures were not given the value they deserved because if anything, you are not supposed to leave people as destitute. People are not supposed to leave permanent homes and stay without shelter. Even if you had non-permanent house or a temporary structure, you should be able to move somewhere and acquire some small piece of land and put up a structure where you can have shelter with your family.

These laws will give guidelines to the people who do valuation. The valuers also need to be reminded because if a serious audit is undertaken, you realise that a lot of taxpayers' money has been wasted. In some areas, people have become rich overnight because they speculate. They

know when a project is going through a place. I also ask my colleagues to be very careful with the people getting into office. People use those who are supposed to be doing the valuation, especially the NLC as a place to make themselves rich by misbehaving and giving out taxpayers' money without planning and thinking what that means to the taxpayer.

I beg to support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Member for Kiminini.

**Hon. Chrisantus Wakhungu** (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I thank the Chair of the Departmental Committee on Lands, Hon. Rachael. I expected Hon. Rachael, when seconding this important Bill, to give us a sampling framework, at least, of those who participated in public participation.

When I went through the executive summary and the entire Report, I was surprised that the land valuers were not included anywhere. When you talk about the value of the land...

*(Hon. Rachael Nyamai consulted  
with Hon. (Dr.) Naomi Shaban)*

I wish she could listen. I know the Commissioner is busy. What I am raising is in line with Article 118 of the Constitution. Public participation is critical. When you do public participation, you are supposed to involve key stakeholders. When it comes to matters of land, land valuers are very critical. I was surprised that land valuers were not involved anywhere in this Report. These are the experts and the people who look at the matters of land valuation. I wish they could find a way to hear their views because they are the critical people. I went through the Report and they are nowhere. I have only seen surveyors. When you talk of land surveyors and land valuers, the two are totally different. A land surveyor is not a land valuer.

Having said that, I want to note that this is a very important Bill. We debated this Bill in the last Parliament. It went to the Senate, but it died there. It is high time we looked for a framework of what we need to do in case it goes to the other House and dies there. It is very critical because when we differ with them, we normally have mediation. We should look for a framework whereby when a Bill has gone to the Senate, we give them a specific timeframe that a Bill should not go beyond, for instance, six months. This will help us to work in a better way in a bicameral system.

This Bill is important. We have had issues in acquisition of land. I will give an example of National Government Constituencies Development Fund (NG-CDF). When somebody somewhere hears that the NG-CDF would be used to buy land, he exaggerates the price of the land. This is something that has led to wastage of funds. At the same time, valuers will collude with the sellers and value it at three times the actual value of that land. This is something that is happening. If we have these laws in place, they will minimise corruption.

Land is a very important factor of production. Any economist will tell you that. It is basic knowledge for those who have done statistics that when you come up with an index, you must come up with a base. Now, when it comes to determining a base, I wish there is clarity because we have different valuations when it comes to land. Land in Nairobi is totally different in terms of valuation to land in another place.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Wamalwa. What is it, Hon. Nyamai? Are you on intervention?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Yes.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is out of order?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): It is just a point of information, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): To who? To the Member for Kiminini?

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Yes.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Member for Kiminini, would you be kind enough to receive the information?

**Hon. Chrisantus Wakhungu** (Kiminini, FORD-K): Yes.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Proceed, Hon. Nyamai.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): I would like to inform him that the Committee did public participation. We invited all the stakeholders within the land sector, namely, the Ministry of Lands, Council of Governors (CoG) and the Institution of Surveyors of Kenya (ISK). People also wrote to us like Ashitiva and Company Advocates. We also got memoranda from valuers. So, the Bill is comprehensive enough. It is important for him to be informed that the Committee's amendments are well informed.

Also, I would like to ask the Member that it is not good to always criticise. I listened to him when he made his presentation on the Report that the Committee presented on the Ruaraka Land scandal and he started by being negatively critical of the Committee. It is good to appreciate that Members put a lot of work to get things done.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Chris Wamalwa is laughing. I do not know whether it is in appreciation of the information or not.

**Hon. Chrisantus Wakhungu** (Kiminini, FORD-K): Hon. Temporary Deputy Speaker, I look at things critically. I started by saluting the Committee, but the fundamental issue when you talk of valuation of land is the valuers. It is common sense. It must be written in the Report. When you go through this Report, I have gone through the executive summary, but it has not shown anywhere that a land valuer did a presentation or sent any memorandum. So, the Chair should stop misleading the House. Give to Caesar what belongs to Caesar. When it comes to matters of valuation of land, land valuers are very critical. I expected to see people like Tysons Limited here. If they gave you a memorandum, it is good to specify in the Report the memoranda received and the analysis. If you go through this Report, it is not mentioned anywhere. She is on a fishing expedition.

This is to help her improve next time. We must take criticism positively. She has done well, but she can improve. She should take these comments positively. That is why she will be given an opportunity to respond.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Jennifer, I am not going to allow a cross-fire on this one. What is your point of order?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Speaker, I am rising on a point of information. Our colleague, Hon. Wamalwa, is suggesting that the Chair of the Departmental Committee on Agriculture and Livestock should have written to every interested party. Those are not the rules for public participation. In her report, she has stated that they advertised. If the thousands of the world found it important enough, it is for them to have submitted memoranda to the specific chair. It was advertised and the people in that specific industry and the professionals in that industry, whether they were land valuers or any other

professional, should have submitted memoranda. Having said that, memoranda were submitted by some professionals.

**Hon. Chrisantus Wakhungu** (Kimini, Ford-K): Thank you, Hon. Temporary Deputy Speaker. Hon. Shamalla has worsened it. She is saying the Chair of the Departmental Committee on Agriculture and Livestock. I do not know whether she is in Budalangi or on the Floor of the House. When you are here, we must pay attention to details. She even misled this House by saying the Chair of the Departmental Committee on Agriculture and Livestock. We have no business with the Chair of the Departmental Committee on Agriculture and Livestock. We are talking about the Chair of the Departmental Committee on Lands, Hon. Rachael Nyamai. If you go to the memoranda, the principles of report writing are basic and I expect Hon. (Ms.) Shamalla, as a lawyer, to know this. It must be in the Report. It is not noted in the Report. How will we know that there was public participation yet the land valuers are very critical? Accept this criticism for improvement in future. If you take criticism negatively... That is why this is a House of debate. When this is a House of debate, you say something that will add value and if you want to learn, you must accept that you are ignorant. This was said by one of the top philosophers.

As we move on, land is a very critical issue. In terms of the index, the basic principle of coming up with an index is that you must have a base. The challenge is that it must be stratified. The valuation of land, let us say in Mombasa, is different from the one in Nairobi, Kitale and Nyeri. That categorisation or stratification is key. Economists are very good in doing this. We have seen this in inflation index so that you put a factor as the years progress. Land appreciation in Nairobi is not the same as land appreciation in Makueni. Those factors must be put into consideration so that when it comes to acquisition of land and we have a base rate, the factors of appreciation are totally different. The Nairobi one is different from the one of Mombasa and the one of Kitale. Land valuation is totally different and the level of appreciation is equally different. You cannot say it is uniform across the country. Otherwise, they have done a good job and there is always room for improvement. Next time if you do that, I will say hallelujah. You have done a good job.

We looked at the issue of the SGR when I was in the Public Investments Committee. Up to now, we have people who have cases of not having been compensated. This is how the NLC comes in. You realise the way people were being compensated was haphazard. With such a law in place, it is going to provide a framework that is going to guide and to bring harmony. This is what we are talking about. This is a very good law and I want to salute you for looking at the issue of the tribunal. We have cases that have piled up in courts, but this tribunal is going to expedite the complaints. It is also going to attract investors. One of the critical factors of production, as I said earlier, is land. Land will attract investors to this country. When you look at the Big Four Agenda, housing is one of the components. A house cannot be built in the air. It must be built on land. With the Public Private Partnerships (PPP), we will attract the private sector to put up the housing units that the Jubilee Government is talking about. This law must be in place so that an investor in America, Dubai or China will know that if they are coming to Kenya, this is what they are likely to spend and after this duration, this is what is going to be the value of land or property. It is very critical. At the same time, other than housing, we are talking about manufacturing. When you are putting up a factory, it must be on land. Manufacturing is one of the agenda that is going to create employment for the youth. Therefore, land cuts across the board.

I want to thank everyone for paying attention when it comes to matters land. When you earn a salary, the first thing you want to think of is to buy land, plot or house. You cannot exclude a house from land. That is why Hon. Shamalla - and I can see her smiling - who comes from near my village, knows very well that land is very critical.

I want to mention something about the alternative compensation. I have reservations on alternative compensation. I come from Kitale and we have an organisation called the Agricultural Development Corporation (ADC). At the end of the month, workers at the ADC expect to be paid a salary, whether it is Kshs20,000 or Kshs30,000. There is outcry because the company has developed an alternative method of compensating. Instead of getting your cash, some people are being forced to take maize. The quality of some of the maize is compromised or your priority could not be maize. So, when it comes to alternative methods of compensation, we are looking at the Government. They should not take advantage and abuse the process because money should be the alternative thing that you can buy whatever you want with. The moment you say that we are going to have alternative methods of compensation, my friend, Hon. Dido Rasso, could have a piece of land where a railway line is passing through. The Government could say it is going to compensate him by giving him some shares in some parastatal which could be going down and he may not be aware. So, when we get to the Committee of the whole House, we should amend that particular section. When it comes to valuation and compensation, let it be in the form of money. It can be in different currency such as dollars. It is not bad, but for you to be compensated in an alternative method, it is very dangerous because it can be abused. In exchange for land, you might be given cattle. I can see Hon. Dido Rasso shaking his head in agreement because this thing has been abused and we must oppose it. We should not allow that somebody has acquired your land and they want to give you alternatives. This should be done with one's consent. It should be that you have accepted and you want a four-wheel drive car. That is acceptable. If we leave it open-ended the way it is, it is likely to be abused.

Thank you, Hon. Temporary Deputy Speaker. I salute the committee for the work well done. There is room for improvement.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Rindikiri Murwithania, Member for Buuri.

**Hon. Mugambi Rindikiri** (Buuri, JP): Thank you, Hon. Temporary Deputy Speaker. First, let me congratulate the committee for this piece of legislation that they are trying to bring forward. It is quite an improvement from the existing Act of 2012. We all know that the Government intends to do a lot of economic activities, lawns, railways, some parts of the sea line, some parts of the intelligence hardware that the Government is putting up and a lot of dams. The Government is trying to put up a lot of infrastructure particularly on security and therefore, some instances call for compulsory acquisition of land.

This Bill sets to put a clear guideline as to how the Government is going to operate in the process of acquiring land compulsorily. I totally agree with some of the recommendations, but I have some reservations. One of the reservations is who is going to be compensated. We know some lands are owned by absent landlords and some people have invaded their land. They have been on the land for more than 12 years as the Bill is proposing. When it comes to compensation, who is going to be compensated? Is it the original owner or the people who occupy that land? It is something that we wish to look at because there will be those kinds of cases, particularly in the so-called absent land owners' areas. They have the titles, but they are not the ones occupying the land. Other people are occupying the land.



The other issue that I have a bit of problem with is: Who is the valuer that we are talking about? We have land and building valuers. Of course, there will be land acquisition and there could be an improvement on the land, meaning that we need to have building valuers. So, it needs to come out clearly. This Bill talks about valuers. It is not specific. If we are acquiring areas where there are buildings, obviously we need to have building valuers. When you are acquiring, obviously we need a land valuer. Of course, there is a provision for surveyors.

The other aspect that we need to look at is compensation. In as much as I agree it has broadened the areas of compensation, strictly speaking, if I was the owner of the land, I would not like to be compensated by a Government bond because I do not know how it is going to perform. When you give me shares, I do not know how the shares are going to perform in the future. We must look at that critically. We will be dealing with people who do not understand some of this information.

With regard to the composition of the tribunal, it is one sided. The members having been picked from the Government, I expected to have a representation from the community or non-partisan persons in the tribunal. Otherwise, the NLC would be more favoured. Given the circumstances under which we are operating, we might end up having a tribunal which is subjected to the influence of the NLC.

This is a good legislation and we may wish to think of the proposals if they make sense. I am sure at one point in time they will. I also want to raise the issue of the criteria being used after doing mapping to, say, land values. I do not know what the words 'land values' mean. If it is not there, then you resort to stamp, rent and market rates. I totally agree with one Member who talked about the future values of land. I have quite invested in land and it is one of my investment areas. I have acquired pieces of land so that I can sell them in future. This will be very subjective and the Government might oppose it. If I have my land and the Government wants to compulsorily acquire it and I do not want to be paid at the price they are offering, then, I must be given a leeway to determine. You cannot force me to be paid at the market rate which is not universal. Hon. Junet comes from Suna where one acre of land costs Kshs500,000. I come from Buuri, where one acre of land costs Kshs7 million. This is practical. So, when we come to these criteria, they must be very specific to the areas that we are talking about.

That is all I have but let me also echo the fact that we are learning bad habits from the old Members of Parliament. Some of them seem to be institutionalised by the Speakers who chair sessions. As new Members, we come here - I have to say this although I do not know the consequences of it - Hon. Junet just appears and because he has a title, he is given 30 minutes to speak. He stays. Somebody else comes in. You basically find that for the whole morning session of eight hours, it is only seven or 10 senior Members who speak. The new Members have no opportunity to express themselves. So, we find ourselves at the Tea Lounge and start doing other businesses there. I have done my own research and it is documented. If we do that, the systems that we have put in the Standing Orders will weaken participation in this House not because the new Members have nothing to say. Belittling the new Members by the old Members is becoming a prominent thing of the day. We plead that the Speaker's Panel looks at that issue very seriously.

I support this Bill. I hope the issues that we have raised will be taken into account. Thank you very much.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, Hon. Murwithania, your point is made. I can see you are excited after making that point. Anyway, part of the resolutions that the House makes is how you allocate time to the Members and you always note

the allocation done to the leadership of the Majority and Minority and the resolutions are passed by this House. There are no consequences of making the point that you made. And I am sure that can be raised at another time and place.

Hon. Manje Wathigo.

**Hon. Joseph Manje** (Kajiado North, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to also contribute to this important Bill, which seeks to amend some sections of the Land Act to make sure that, at least, there is uniformity that is being talked about. We are talking about land, a very important resource in this country that is liked by many Kenyans. It is a factor of production. Also, it has aesthetic value that is valued by most Kenyans. Therefore, when we talk of land, we have to be a bit sensitive to what we are saying.

It is important that we are putting this Act in place when the second phase of the SGR is passing through my constituency. Just the way the Leader of the Majority Party has said, there will be need to acquire land for development, because from the word go, we have to have that continuous development in the country. We will have road and railway infrastructure. Therefore, acquisition of land is almost inevitable. While we do that, we have to be sensitive about what is happening on the ground.

Currently, the NLC is given the mandate to survey, do valuation and compensate. My constituents have been put under a lot of pressure because initially, the Chinese company that got the contract came, because it needed early entry, did some valuation with some ministry officials and then started the work. Later, the NLC came into place. They again did a survey and valuation. It became an issue with the people as to why these types of variations had discrepancies.

Currently, Kenya Railways and the Presidential Delivery Unit are on the ground trying to also do a valuation and this is like the fourth survey and evaluation that is being done. Therefore, the people are getting agitated. Why is it being done this way? As we continue, I will bring an amendment to this particular Bill to give mandate to a certain institution to do valuation and survey which should be final. Government institutions should appreciate and trust each other. If a Government valuer does a valuation on a particular asset, we should not subject it to another Government valuer otherwise the Government will be seen as if it is contradicting itself and people get agitated. It should be straightforward and I will be bringing that amendment.

I also realised that valuers are not considering the market value of that area. My constituency is right adjacent to Nairobi and the values are very high, yet they want to compensate at a very low rate where the constituents will not get adjacent land at the same value. Therefore, when compensating and getting the value index, they should consider the market value of that area. They should compensate in monetary value. When it comes to giving other things such as shares, it is not a good way to compensate these Kenyans because they come from simple backgrounds. The valuers should also consider the development that has been done for quite a long time in that area. Remember when somebody settles somewhere they settle with the intent of living through the next part of their life on that piece of land and that must be considered. Also, since it is not the will of the person being compensated to move from that land, there ought to be a disturbance allowance based on something. Therefore, those who are enacting the index value should factor in the disturbance allowance to those affected.

Some people who are affected have been doing business with their land and so if you prove that your land was giving you some direct income, then there should be a compensation for the loss of business from that land. These are some of the issues that have to be captured well.

Hon. Speaker, when you go and settle somewhere, you expect your people to be buried there when they die. It should come out clearly because it is affecting people who are being compensated. You buried your father, mother and very important people and when it comes to compensation, it has to be considered as a factor that affects that particular person. We should also remove conditions such as having to get license from the county government to re-bury. I have an issue where some people say they do not have any land they can bury their departed family members. They want to be given enough money to relocate the remains to Lang'ata which is at a distance. Therefore, they have to do a fresh burial of somebody who was buried 20 years ago. These are some of the issues that should be articulated before we come up with a proper index for this.

What I find disturbing in this Bill is that, if you do a development two years before the gazettment of that land, then it will not be considered in the valuation. This is not a good legislation because when you are developing your land, you do not know whether the Government will come and acquire it. Therefore, the timeframe of two years is on a higher side, unless we say that when the Government gazettes that land, that is when it becomes Government land and you should not do further development. Prior to that, you are not sure whether the Government will acquire that land and all the investments should be considered equally.

Lastly, I am happy about this Bill because it has come up with the Land Acquisition Tribunal. At least those people who will be agitated will have somewhere to go to. These people who are coming back to revalue the land will again pay at the stated rate and if you do not agree you go to court. You know when you are taken to court, proceedings are cumbersome. There is the idea that there were early entries and the Standard Gauge Railway project is ongoing. My people feel they are not properly treated and this should stop.

With those few remarks, I support this with the few amendments that I will be bringing in before it becomes law in this country.

Thank you very much, I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Let us have Hon. Okello Odoyo, Member for Nyando. He is not there. Let us have hon. Gimose, Member for Hamisi

**Hon. Charles Gimose** (Hamisi, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for this opportunity. This Bill is important for this country. It is the first time it is addressing important issues of development leading to Vision 2030. Compulsory acquisition has been a pain for many years because the Government takes much time to compensate those whose property has been taken away. I am happy because this Bill addresses compensation promptly, justly and fully.

The only problem is that it has not addressed those persons affected in the earlier years. In my constituency, there was relocation into Kakamega Forest by some people from Vihiga. A hospital was constructed and the people were resettled in Kakamega Forest which forms part of my constituency. They have never received their title deeds to date. They were not given any money and they have suffered for long. The Chinese also have had a very bad habit when they are constructing roads passing through certain areas. They have not compensated people since they took their land in 2006.

This Bill should address such issues but I am happy the tribunal is part of the design in this Bill. It will be very bad when this Bill passes yet the Commission will not live to see its effects. The tribunal, I believe, will promptly address it. I agree with one colleague who said that we should include valuers in the composition of the tribunal.

There is this aspect of enforcement that is not part of this Bill. The penalty of Kshs5 million is okay, but after the Bill is passed, the aspect of how a particular citizen will enforce their rights without going through much pain, has not been addressed in this Bill.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ndindi Nyoro.

**Hon. Samson Nyoro** (Kiharu, JP): Thank you very much for this chance to contribute to this Motion. At the outset, I support.

Land is a very important resource and factor of production. As you know, and as it has been said before, land is a very important resource and factor of production, when talking about everything we do as a country. Whether we talk about economic development or social justice, in all areas land is vital. I am sure I do not have much time and I will go directly to my points. I have read what this Bill seeks to achieve. One, from the Committee's observations the principal object of this Bill is to provide an elaborate framework for governing compulsory acquisition process.

Clause 6 states that the market value of land shall be considered in calculating the land value index in addition to other specified principles. The reason why I have referred to those two is because as you know in our country every other time we are departing from the competitive economy and moving to more of a command system. This is where the Government directs investments, production and pricing of commodities and services. This is because the competitive nature of our economy is more or less failing. The oil sector has left it to the competitive forces to bring up prices and the cartels to fix prices. That is why we now need such kind of a fallback position. Even fixing of prices in this country ought to have been left to the market forces to determine them because the market is not homogenous.

Land is very different in every other corner of this country. Therefore, market prices ought to be the best, but of course, this has failed because of the nature of people and especially business people. I will make a few comments regarding Committee Report and the Bill.

Currently, looking at the projects we have from the Standard Gauge Railway to our roads in the constituencies, pricing of land has been arbitrary. Land next to each other can cost double without any utility or advantage on the highly valued land. I am sure this pricing index and the Bill will come up with a harmonious manner on how to compensate land which is taken for common good and especially for building infrastructure.

If you look at some countries like Ethiopia, which is currently the fastest growing economy in the world, at more than 10 per cent; and if you look at their land regime and that of other countries like China, there is no chance for private interests to hamper public good in terms of infrastructure. Land belongs to the Government and is nationalised, while in Kenya this is different. I am sure by coming up with a standard way, on how we compensate the land which the Government invades to build infrastructure; it will go a long way in accelerating the development we want to take to our villages and estates.

I have looked at the compensation. To depart from the many arguments I have heard from my colleagues, I hail the Committee for coming up with different ways on how the Government will compensate land that is taken compulsorily.

Currently in Kenya, we all know it is speculators galore. If the people who sell land have a hint that possibly a road or dam will be built somewhere, they go and buy land to speculate and milk money from the Government. The issue of allocating alternative land instead of money is very timely. It will lessen the speculative nature which the business people in this country have.

As you know speculation does not account to any kind of production. People make money for doing nothing but only as a matter of time.

Therefore, coming up with a way where, for example, if your one acre is taken, then the Government will give you exactly one acre or any other acreage of land equivalent to the one they have taken is good. Also giving Government bonds and equity shares of Government entities is good because Government's work is not just to give money to people whose land has been taken compulsorily. The Government also has an obligation to grow our markets. In the capital market there are bonds and shares and it is also the responsibility of the Government to grow this market. The alternative of giving these instruments in place of money is very good.

I have also noted that the notice given when the Government wants to take up land will be shortened because it will compensate for that short notice. Moving from 90 days to 30 days goes to accelerating the same promises we gave to our electorate of taking development to where they are.

In the National Land Commission, as you know, there is a lot of collusion between the NLC officers and land owners. We have seen people colluding with land owners to benefit. For example, in this country if you have some land valued at Ksh10 million you can always collude with NLC officers and add their *chai* on top of the actual land valuation.

Therefore, coming up with punitive measures on people who engage in these kinds of practices is very timely. I have some reservations on the formation of the tribunal. I have seen the composition as one person appointed from the Judicial Service Commission (JSC), surveyors, Attorney-General and valuers. I tend to think we are creating a professional club. The biggest stakeholders of land in this country are the citizens whose land is being taken compulsorily. Therefore, from the outset, I think it is very good we include a person who is not a professional but has a clear mind with no interests whatsoever, other than being a citizen of Kenya and land owner.

Over and above that, I think in this country we have a habit of forming so many entities. In the land sector we already have a moribund NLC that has only succeeded in corruption. We actually have more land issues in this country since the formation of NLC than before. Today in this House we have just discussed, the SRC. They were meant to sort out matters in as far as the ballooning and increasing of the wage bill is concerned. We have more strikes and issues concerning salaries than even before its formation. We already have NLC as an entity, instead of forming another entity to also milk taxpayers in terms of maintenance, it is better for the Committee to look at how we can have a smaller sub-committee within NLC to look at matters which will go to the tribunal.

Even beyond that what is fall back position? Can you appeal? I would want the Committee to put these kinds of sentiments. If you are not satisfied, with the judgement of the tribunal what is the fall back position and where will you appeal? Such matters ought to have been looked into.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Nyoro, your time is up. Before I get to my left, let me give this opportunity to Hon. Ali Rasso, Member for Saku.

**Hon. Ali Dido** (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. It shows the progressive nature of our Constitution and it gives effect to the constitutional order that we believe in.

At the outset, I think the anchoring of this particular Bill is in the first observation by the Committee. The principal object of the Bill is to give a framework governing compulsory

acquisition of land. The land in Kenya either belongs to individuals or communities. The Constitution is very clear in terms of what public, private and community land is.

An example is the construction of the Nairobi-Addis Ababa Highway or the Isiolo-Moyale Road in the county of Marsabit; which is a good road. It has opened up our area to development. That road passes through the major urban centres that are spread across Marsabit County. When you look at the schedule of compensation, people are compensated with as little as Kshs1, 000, yet they lost half their plots or almost all their plots within town. This Bill gives us grounding, particularly as the people of Marsabit. In the fullness of time, we will petition the National Assembly for compensation because if we compare the compensation for the Standard Gauge Railway and what people in Marsabit were given, we were given peanuts. We must bring our voices to this House so that those, whose land was taken for the good purpose of constructing the highway, can be compensated according to the prevailing market prices in that area.

For sure, land is capital in Kenya. It is a factor of production. We cannot run away from that fact. We must also ask ourselves as Kenyans: When did the rain start beating us? I think immediately after Independence, the land belonged to individuals. Individuals were allowed to acquire big pieces of land. Today, they are able to speculate and sell that land at whatever price they wish. Through this particular Bill, we are able to have a clear understanding and direction, particularly to the policy makers, on how to proceed in acquiring land by law and not by force as it used to happen, where the administrators were able to take land from the citizenry without following the due process of the law.

Earlier speakers have added their voice on the area of land acquisition tribunal. However, I particularly want to say that when we say that the land either belongs to the community or to the individuals, those lands are in counties and we would expect an individual to be appointed by the Council of Governors to be part of that tribunal so that he or she represents the interest of the people during a particular discussion.

On the part of compensation, it is good that various options have been provided. But the guiding principle should be that it must be in consultation with the owner or owners of the land so that the owner or owners can be at liberty to take some of the options that are provided without necessarily being forced to accept a particular option.

The interesting thing in this Bill is on the valuation of freehold land and community land for purposes of compensation. Almost 150,000 acres of land belonging to the people of Marsabit and the people who live along Lake Turkana was taken over by the wind company without payment of a single coin to the communities that live in that area. That project will supply 360 Megawatts of electricity to the national grid. Such Bill gives grounding to those communities to have something to hang their hearts on, and something that will allow them to raise their voices.

Also, on community land, this Bill is going to be very helpful to those of us who do not have title deeds for most of our land, particularly in arid and semi-arid areas or pastoral areas. It may not comprehensively answer all the questions, but it will allow us to challenge policy makers when they go astray or when they try to move their position forcefully against the interests of the community occupying a certain area.

This Bill makes a provision to challenge the court, or that the court should not participate or challenge a particular issue. We should not go in that direction. The court is the arbiter of last resort. When a statute says that you should not appear before a court of law, then we will go against the grain of our Constitution. The Committee should think deeply about that provision with a view to re-phrasing the particular clause.

Finally, I want to say that via this Bill, issues of land grabbing, land speculation, community participation and all that will be given some thinking or some voice. This Bill is very important. Those Members who will not be able to contribute to the debate should actually be present during the Committee of the whole House.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I can see Hon. Junet is quite busy. Hon. Savula, you cannot. Let us have Hon. Junet.

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

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is it, Hon. Savula?

**Hon. Ayub Angatia** (Lugari, ANC): Hon. Temporary Deputy Speaker, my boss, the Whip, is alleging that I am a sugar baron. Can he substantiate the statement, in view of the fact that the Departmental Committee on Agriculture and Livestock, and the Departmental Committee on Trade, Industry and Cooperatives, are investigating this matter? I have not been summoned to appear anywhere. Can he clarify now or apologise?

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Savula. There seems to have been a private conversation between the two of you. The Speaker did not hear.

Hon. Junet you have the Floor.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Temporary Deputy Speaker for protecting me. That was a private conversation. They say you cannot substantiate the obvious.

I support the Bill that is before us today, namely, the Land Value Index Laws (Amendment) Bill. This is a very important Bill for this country. The biggest resource that we have as a country is land. This issue of acquisition and compensation of land by the Government has been a big problem in this country. The issue of compensation has been run by cartels since this country's economy started growing. The amount of money spent every budgetary cycle on compensating land that has been acquired by the Government for public good and use is so huge that it is almost a third of the project's cost.

This country has gone to the extent where tenderpreneurs get information that there is a certain huge project that will pass through a specific piece of land. They go ahead and acquire the same land so that they can be compensated in a big way. They are connected people who know which projects will be done in that area then they go, pay a very little amount of money to those peasants who are living near that project and they end up getting huge payments as compensation when the Government acquires the land for the project it intends to do. The amount of money that has been spent on compensating people who were living along the Standard Gauge Railway Corridor alone is so much that it has made that project look like it is one of the most expensive projects that have ever been undertaken in this country. When you look at the books properly, there is a large amount of money that has been spent on compensating people who have acquired land along that Corridor genuinely or through dubious means. If that kind of norm or behaviour is allowed to continue, it is very unlikely that this country will hit the 10-digit economic growth that they intend to achieve.

In many developed countries, when their governments want to put in place huge infrastructural projects like the SGR for example, many of the people give land for free. In some countries, the Government acquires the land and you are given a small fee as compensation. In our country, it has become business. The best thing somebody can do or the "manna" that can come from heaven for someone is for a huge project to be developed on your land by the Government. Even if it is a wayleave or one pole of electricity passing through your land, you

will claim so much money such that it stalls that project for two years. A case in point is the wind power project that was done in Turkana. By the time that contract was completed and the wind power was ready, there was no line to evacuate that power. There were issues with compensation of land owners. This is a very serious matter. I am very happy that this Bill has come in time to solve that problem.

In Ethiopia, for example, as my colleague has alluded to, they have done huge projects, be it rail or road. We went there one time and the amount of money that has been spent on acquiring that land is so insignificant that many of the projects are completed on time. This is a man-eat-man society. We cannot develop when we know that half of the money that is supposed to be spent on a project will be used to compensate people - some of them who have acquired that land in an unscrupulous manner. This country must change that kind of behaviour. For once, it must change.

I am happy I have seen in this Bill that if your land is acquired, you can be compensated with another piece of land somewhere else. People do not want that. They want money and nothing else. They want to be paid in cash. They do not want another piece of land. Sometimes I wonder why their land is better than the land being offered as compensation. In fact, if you want to give them a better piece of land than what the Government is acquiring for public use, they will want to be paid money. They will say they do not want any other land and want to be paid in cash. This will not help the coming generations. This development will not stop. The SGR is now up to Naivasha.

Many of our neighbouring countries and trading partners with whom we are supposed to jointly engage in some of the huge projects like pipeline, road and rail are complaining that we cannot do it jointly because land compensation rates in Kenya are so high. They tell us to do our side and they will do theirs then we can meet at the border. That has happened. I am aware of that. In the last Parliament, I heard a Cabinet Secretary explaining to one of the Committees that I was a Member of that some of our neighbouring countries have said that compensation rates of land in Kenya are so high and full of corruption.

When the National Land Commission was put in place through the new Constitution, many of us thought that that problem would be solved at that level. It became the beginning of the problem. I sit on the Public Accounts Committee. The other day the NLC came to explain how they spent Kshs2 billion on compensation and they could not tell us anything about that payment. They do not have any records, L/R Nos., or names of the people they compensated. Kshs2 billion is not a small amount of money. If the NLC that was supposed to handle those issues cannot do it, I wonder who will do it for this country.

Land is an emotive issue in our country. That does not mean that you need to stop the Government from doing what they are supposed to do for the public good. If we do not allow the Government to do infrastructure projects or any other project that they intend to do, will they do it in the sky if not on land? This is a very serious matter. I thank the Committee for the good work it has done. I have read the Report. They did public participation. They even went further ahead and said that the courts should not issue unnecessary injunctions when the Government acquires land compulsorily for public good. Somebody just runs to court and stops the Government from acquiring a quarter piece of his land in Likuyani or Lugari, saying that until he is paid billions of shillings, a project of Kshs200 billion will be stopped. The project costs Kshs2 billion and the land in Lugari is Kshs500, 000. Who will lose? The project will cut across many counties. It could be coming from Turkana all the way to Mombasa. My friend here knows that matter very well. He has stopped many projects. Who will lose?



Some politicians are the ones advising the public not to allow their land to be used unless they are compensated very well. Politicians are inciting members of the public to not give out their land unless they are paid very well. Who will pay very well? It is the taxpayers. It is not the politician who will pay you. You will be paid by your own taxes and will lose the big project that you are supposed to achieve.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us go to that wing now. Let us have Hon. Obo Mohamed.

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): Asante, Mhe. Spika wa Muda kwa kunipatia hii nafasi ya kuchangia. Naona huu ni Mswada mzuri ambao utasaidia sana. Pia, nakubaliana na Wabunge waliotangulia kuchangia kwamba kuna matatizo. Watu wengine wanakataa fidia ya shamba ambayo wanapewa na Serikali na wanasiasa wanaingilia.

Kuna sehemu zingine ambazo ziko na matatizo zaidi. Watu wengine wanasema wamelipwa fidia kidogo ama wanataka Wabunge waingilie ili waseme walipwe vizuri. Sehemu zingine kuna matatizo, kwa mfano Lamu East.

Kuna sehemu katika Kisiwa cha Pate ambazo hata Mhe. akienda anaona ni sawa. Mtu anaambiwa mnazi ukatwe alipwe Kshs3,000 na ataona ni dhuluma ya wazi. Utaona barabara ilikuwa *gazetted* mwaka wa 2007 na hapo kulikuwa na visima au kuna nyumba za miaka 200, kisha Serikali inawaambia wachukue Kshs3,000. Hii ni dhuluma.

Huu Mswada utasaidia katika Kaunti ya Lamu kwa sababu fidia itawekwa usawa. Katika sehemu zingine, gogo la stima linapita na watu wanalipwa Ksh500,000. Kisha mtu mwingine kwa hiyo Kaunti, analipwa Kshs3,000 na pengine umegawanya shamba lake. Limekuwa nusu na hawezi kuweka *fence* vizuri kwa sababu barabara imepita. Huu Mswada ukifuatwa vizuri utatusaidia sana. Utaleta usawa. Mara nyingine utaona majina yameandikwa na hayajulikani ni kina nani kwa sababu yamefichwa. Hawaweki uwazi. Unashangaa kwa nini haya majina hayawekwi wazi. Kuna tatizo gani.

Huu Mswada unazungumzia mambo ya Internally Displaced Persons (IDPs). Itakuwa ni vizuri katika Kenya nzima tujue kwamba kuna sehemu zingine za Lamu ambazo kuna IDPs kutoka miaka ya nyuma wakati wa *Shifta*. Walifukuzwa kwao. Tukisikia IDPs, tunaona ni wa hapa bara, lakini kunao wa Pwani katika historia. Kuna watu wa bara ambao walifukuzwa kwao kwa sababu ya kukimbia mateso ya *Shifta*. Walikaa kisiwa cha Pate na wengine katika Lamu na Kilifi. Huu Mswada umeangazia mambo ya IDPs na itawasaidia. Lamu kuna IDPs.

Ukiyasema haya mambo ya ardhi, watu huinua macho mpaka unaonekana saa nyingine wewe ni mbaya. Kuna ile *cartel* ambayo inangojea utaje mambo ya shamba.

Mhe. Ruweida akizungumza mambo ya ardhi leo, watu wengine watatuma ujumbe waseme miaka mitano. Hii ni kwa sababu mtu amepata asilimia 10 na anasema unapinga mradi na kuchochea wananchi lakini unawatetea. Sisi tumeletwa hapa kutetea watu. Ukiitwa uende, wengine wanasema unapinga mradi. Watu wanataka miradi lakini usawa ufanyike.

Mhe. Spika wa Muda, sina mengi zaidi ya hayo. Asante.

**The Temporary Deputy Speaker** (Patrick Mariru): Hon. Kiai.

**Hon. Anthony Kiai** (Mukurweini, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute after a long wait.

At the outset, I want to support the Bill because it will provide the structure and methodology of land compensation, especially where the Government is acquiring land for public utilities.

The principal aim of this Bill is to ensure that the compensation of the land that is acquired compulsorily from a private citizen by the Government for purposes of putting up a Government utility must be done within a reasonable time. It must also be adequate. We have a history when it comes to major infrastructural development in Kenya. Those who are in the know always rush to where that infrastructure will be put up and they buy that land cheaply from the locals of that area and wait for the project to start and then sell it to the Government. Thereby, they make huge amounts of money. The easiest way to get money in this country is by buying land for speculative purposes, when you have prior knowledge that the Government will put up some development for public utility.

There are quite a number of examples. One of the biggest projects this country has ever undertaken is the Standard Gauge Railway. Part of the reason why this project has become very expensive to this country is because the land acquisition has been bogged down by cases and overinflated compensations.

We cannot forget about Outer Ring Road which to date has not been completed on an account of an issue that has come up about land compensation which initially was a road reserve. It is the same case with Lang'ata Road and many other roads in this country. Therefore, this Bill is very timely because it will ensure that such cases are not there. There will be a structured framework and methodology of ensuring that land which is acquired compulsorily for public infrastructure is paid for. The inconsistencies that have been there in determining value for land, despite the fact that it is in the same locality and neighbourhood, has also been an impediment to the achievement of Vision 2030 and the Big Four Agenda.

As you are aware, land is a factor of production. We can only use this factor of production effectively, if we have in place such a structured method of compensation where land is acquired compulsorily by the Government.

The Bill also provides a resolution mechanism in the event of any dispute between the Government and the person to whom the land is acquired from. As a lawyer, you are aware that the biggest numbers of cases in this country are found in Environment and Land Court. Most of those cases revolve around land disputes. In the event one is not satisfied with the compensation that is given, you have to go to court. Currently, you can only get a date in that court in 2020. Therefore, providing a mechanism for quick, fast and efficient way of resolving such dispute is a welcome relief to any people who may have such a dispute. The period upon which compensation will be done has also been shortened. This makes sure that once your land is acquired, you are assured within a certain duration and timeframe that you will get your compensation.

As I finish, if we need to attract investors, we also need to have a clear way of compensation or acquisition of land. This way we will make sure that investors are now able to invest in our country with a clear knowledge of the structure of land acquisition in this country.

Thank you very much. I support the Bill.

**The Temporary Deputy Speaker** (Patrick Mariru): Hon. Nyikal, Member for Seme. I am sure the Majority Whip is taking notes and he wants one or two other Members to contribute.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill that seeks to set guidelines for valuation index for land which will be used to set standards for land rates, land rents, stamp duty and compensation where there is compulsory acquisition.

Hon. Temporary Deputy Speaker, the Bill also seeks to shorten and harmonise the processes. It is long overdue.

Land is not just the greatest means of production. It is the essence of life. There is no living thing that does not depend on land. We are all terrestrial. If you look at all goods on the earth that touch on human welfare, they are land based: the necktie I am wearing, the seat you are sitting on, the cars we drive and, the food we eat, are all land based; as they all come from land. So, this is something which needs to be looked at critically particularly when there is going to be exchange of ownership.

As a lawyer, Hon. Temporary Deputy Speaker, you know that exchange of ownership of land is probably the source of the greatest number of disputes whether it is between nations or individuals. This morning we were talking about Migingo Island - a small piece of land in Lake Victoria - and the great heat it has created. Families fight to the end and fail to bury their dead because of land. Family members kill each other fighting over land. It is also a big thing when it comes to succession.

It is, therefore, important we have a clear guideline. When we talk about acquisition of land for Government purposes, we cannot have development unless Government is able to acquire land, whether it is for infrastructure, like roads or for schools and hospitals. We cannot get far on the Big Four Agenda of putting up 500,000 houses unless we do that. We cannot have infrastructure for health. When we talk about manufacturing, we will need land and if we are to encourage investment the Government will need to acquire land.

This has been beset with challenges. Sometimes the Government acquires land that actually belonged to it initially, just as others have said. Historically, land belonged to the Government, but some people acquired it for development by whatever means, then they extract a pound of flesh plus blood on it from the Government. I know very many projects – as Members have indicated here – where projects cannot go on because of valuation. When land is meant for development and providing services for people, it is valued at rates you cannot imagine. Our valuers seem not to have any clear guidelines. They have different rates for different pieces of land. We hope that when the Bill becomes an Act, it is going to help us to sort that out. We know that many times there is collusion. Our Constitution has a whole chapter on land. It classifies land as communal, private and public. All will be sorted out with this Bill and, therefore, we must support it.

On the other hand when private citizens lose land or it is acquired, again, some of them suffer great losses because there is no clear index. As Members have said, one land owner gets peanuts while another gets a windfall, huge amounts of money. Where is the justice in this? Therefore, we need this Bill.

I support this Bill particularly as it provides for a tribunal which will sort the issue of disputes. Some Members have said that it will be restrictive if we were to say that court processes cannot be allowed but, it is the same court processes that have been used to deny development and they have caused even private citizens to lose their land. So, let us support this Bill. It is unfortunate that the Bill was discussed in the House and went to the Senate and never saw the light of the day. We are again, to an extent, repeating ourselves. It has come at a time when we should be looking at the law and give time limits. If a Bill has been passed to the Senate and so much time has passed, it will be deemed to have been passed through the Senate and therefore assented to.

I appreciate that we are giving alternative means of compensation. Whereas some people indicated that it is probably not right to give alternative means, land owners will have the right. If people choose to have shares or if they choose to have an alternative means of land, that freedom should be allowed.

We may need to make amendments when we come to the Committee of the whole House. But in general, I support the Bill.

With those few remarks, I support the Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Gakuya.

**Hon. (Ms.) Mercy Gakuya** (Kasarani, JP): Thank you, Hon. Temporary Deputy and the Chair of the Departmental Committee on Lands. The Land Value Index Laws (Amendment) Bill is key. It is high time we made sure that people do not reap from where they did not sow but it has been happening. Some people have lost land or have not got value for their money and others have gained irregularly. This is happening in Eastlands. There is a lot of development going on in line with the Big Four Agenda. The city is being cleaned up, but instead of the Government looking at how it can assist Kenyans... I remember during campaigns, most people rushed to markets where there were many people, but of late you find most Kenyans especially within Eastlands or within Nairobi City, the capital of Kenya, suffering. Instead of the Government ensuring that land which was acquired illegally or the public land which was meant for markets... The Bill should be amended so that before the Government looks at what it is going to get in wayleaves, it should first consider what it owns.

We have many public utilities and we have many people who live on riparian land. There are others who have taken Government land. At Outer Ring, the road cannot be completed because some people took Government land and have title deeds and because the value of land is quite high, you find there are issues. Government projects stall as a result of such things.

I urge the Government to ensure that before it compensates people, it looks critically at who owns the land. If we go that way, there is no way the common citizen who has been affected will benefit. In the case of the Internally Displaced Persons land does not shift, it is still there. Before the Government compensates IDPs, it should look at who owns the land belonging to the people who were displaced.

Displacements happened in 1992, 2007 and it can also happen later. Before we compensate, we should ensure that people go back to their land. During the compensation, people who are not IDPs appear. It is high time the Government provided security so that people can go back to their places before dishonest individuals start making money.

When it comes to compensation of the IDPs, the list of real IDPs is not considered. Other people are compensated. It is my request as I support this Bill that we ensure that the right people are always considered. The IDPs have been in camps since 2007. They have not been compensated. What is it that the tribunal which will be formed will do? It is up to the NLC to ensure that the right and the correct people are considered. The matters to be discussed in the tribunal should always be made public. If the matters discussed are kept secret, the common person affected does not get the proper share or what is needed.

In Eastlands, the market places have been taken by some people. When the Government wants to expand the road or bring development to the area, it should not evict people. People are suffering. It happened yesterday in Kasarani area around Roysambu. Over 300 stalls were demolished. We can claim that we are cleaning the city, but we have land which is available for the market. So, before the Government demolishes structures, it should look at how it can compensate the people affected. We can have a commission, tribunal or taskforce to ensure the plan is available. There is a lot that people are going through. It has affected most of the residents within the city, like it happened within Kangundo Road. More than 1500 people were affected and they do not know what to do or where to go.

On the housing agenda, before the Government acquires land, it should first utilise the many public spaces left. It should not waste money acquiring new land. It should, first, secure what it has before it buys more land. A lot of people could be having interest. Since the information to do with development like road construction is in the public domain, the Government should first ensure that it utilises what it has before it goes to what it does not have. It is taxpayers' money that is used and we need to ensure, even if we want to bring development, that taxpayers' money is spent properly rather than use it to enrich a few people.

I support the amendment. I know that land has always been a big issue. When people talk about land, everybody looks around what is happening. If we carefully ensure that people's self-interests are not considered, but that *mwananchi's* interest is considered, development will be affordable.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Jeniffer Shamalla.

**Hon. (Ms.) Jeniffer Shamalla** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support what I refer to as a landmark amendment. Indeed, it is crucial that if we want to move from Third World to First World, we will require huge infrastructural development. For infrastructural developments, we are going to need land acquisition. It is such a critical tool for development of nations that are moving to the next level.

In the US, land acquisition is referred to as eminent domain which means that the state is the supreme landlord. Compulsory acquisition of land is facilitated and is done to enforce and to facilitate private economic growth of states. Hence, it is important that we have land index to be able to give us the prices and the land rates. I say this because one of the difficult situations in this country to infrastructural development has been the speculation of land. With this landmark legislation, that is going to stop. In as much as we see Government acquiring land for infrastructure development, we also hope that very soon, we shall see land that will be acquired for public parks and recreational facilities for the people of this country.

With those few remarks, I support the amendment.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Hulufu Oda.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to speak to this proposed amendment. As Members who have contributed have indicated, land is a very key factor of production in our country. We derive most of the things that we require from land. We have the Big Four Agenda which is meant to transform our economy. All the mega projects under the four key pillars of the four-point agenda require land. Most of the land as we speak today especially in the places which are appropriate for these big investments are owned either individually or collectively. The amendments have clearly indicated that acquisition of public land should not be compensated. I fully agree with that unless a public entity has made investment for which they need to be compensated.

I have looked at the proposed amendments and also the two existing land laws - the Land Act and also Land Registration Act which the various proposed amendments are supposed to improve. This is a very good practice because these laws, especially the Land Act, were passed in 2012. Having implemented them, we have discovered that there are clauses which were not sufficient enough to enable particularly the Government to acquire land it requires for development in an easy way without undermining the rights of the owners.

Compulsory acquisition of land requires that those who are giving up their land are compensated in a timely manner and also adequately. The proposed amendments do that. With these proposed amendments, I am sure we will be able to have a very systematic way of

establishing the values, who needs to be compensated and also the timeline. In most cases, those who give out their land for public use often end up not receiving their compensation in a timely manner.

Having said that, I think the land value index is an improvement on the two statutes. I would like to speak to a few amendments. Looking at the amendment to Section 31 of the Land Act, from the face value, it may look as if it may be in contravention with the Constitution. Of course, the courts are independent because Judiciary is an independent arm. Therefore, when we suggest that they should not consider a matter which is brought to their attention, probably it may sound a little bit unconstitutional. The wording encourages me not to oppose it because it says “the court may not grant leave.” We are just pro-giving the judges or the magistrates, whoever is going to look at whatever is brought to them; that if the land is being acquired for public use, even if there is delay in terms of what has been agreed on, then the judicial officer may not grant leave.

There are other specific amendments particularly to Section 107 which are very important especially to areas where I come from. It is important to note that where I come from and especially most parts of ASAL areas fall in the same category, people do not have title deeds for land they own. It is not their fault, they applied for these documents but they were never given. Therefore, when I see an amendment which is in line with the existing laws it recognises that once you have occupied a piece of land for more than 12 years, you can claim it, you can be compensated for it, it can be mapped or valued and on the basis of the valuation you can be compensated. This is very important especially in the pastoral and ASAL areas. It is a good thing. The valuation process is a good thing, but there is some element which I am not personally comfortable with. If the Government in the interest of the country decides to put up a mega infrastructure where I have been residing, the aspect of anticipating and living there does not arise. Therefore, the value increases as a result of Government intention.

Clause 107A (4)(a) says:

In assessing the value of freehold land and determining the just compensation to be awarded for land acquired under this Act, an increase in value shall be disregarded if-

(a) the increase in the potential value of land is occasioned by the intended use or development of the land to be acquired.

If the railway line from Lamu passes through Isiolo and we have been living there and therefore we have not moved to that area in anticipation, the increase in value should not be disregarded. If I give up that land, I give it up with its new value as a result of that new development. Probably these are some of the things which I would like to see when it comes to the Committee of the whole House.

Looking at the various forms of compensation, it is important to give the various options so that those who are compensated can choose from a variety of options. Limiting the compensation to money was not a good thing. When the land owners take the option of either going for a monetary compensation or for a Government bond or being given an alternative land which is equivalent to the one you are giving up or being given shares in Government-owned entities, these are things that are very progressive and good. I particularly like these new amendments.

The other important thing that I have also appreciated from the proposed amendment is the aspect of not compensating acquisition of land which belongs to a public body. If a public body has been allocated land and it has not put it to good use, the Government can take over and

put it to an alternative use. There should not be any compensation for that kind of acquisition. The Government cannot compensate itself.

The introduction of the tribunal is another very important amendment. In the old Act, the NLC was required to develop rules to regulate how these issues on compensation and handling disputes are going to be handled. This thing is better addressed by the proposed tribunal and therefore this proposed amendment is a very good thing. The composition of the tribunal is also very good except that it is important that we consider a representative of the Council of Governors. When we talk about land, the two levels of Government must be involved. Of course, the registered valuers are important people in the tribunal; the surveyor is represented because it is a very critical discipline in management of land. The Chair and the other lawyer are also good, but when we will look at how we need to make further amendments, it is important that we consider addition of the representative of the CoG on this tribunal.

With those few remarks, I would like to support the amendment.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Oda, your time is up.  
Hon. Ali Athman.

**Hon. Ali Sharif** (Lamu East, JP): Asante, Mhe. Naibu Spika wa Muda. Ningependa kuungana na wenzangu kuunga mkono Mswada huu ambao uko mbele yetu hapa leo. Nikiamini pakubwa, ni Mswada ambao wakenya wamekuwa wakiusubiri kwa siku nyingi sana. Hakukua na mwongozo kamili katika swala hili nzima ya maswala ya ardhi. Ingawaje mwaka wa 2010 Wakenya walipitisha Katiba, miongoni mwao yalikua ni haya ya kuweka Tume ya Ardhi ili kusawazisha tatizo hili la ardhi.

Leo hii tutapata kwamba, Kenya nzima, sana sana Pwani ambako nimetoka kumekua na tatizo kubwa katika swala la ardhi. Matatizo haya yamesababishwa na kutokuwa na mwongozo kamili katika swala hili, kwa namna watu wanafidiwa wakati wanapopokonywa sehemu zao ama ardhi zao zinachukuliwa na Serikali.

Naona Mswada huu umeangazia mambo muhimu sana. Miongoni mwao ni utaratibu ambao namna wale ambao wameweza kuchukuliwa ardhi zao watakavyolipwa pesa zao na namna Serikali itakavyochukua utaratibu huu. Huu ni utaratibu ambao uko sawa isipokuwa, unahitaji kutiliwa mkazo katika maadili ama utekelezaji wa swala hili kwa ujumla. Tayari tumeona katika Kaunti ya Lamu tuna matatizo haya mpaka sasa tunavyozungumza, watu wameweza kusikiliza amri ya Serikali na kutoa ardhi zao. Mpaka sasa tunavyozungumza, watu hawa wameathirika kwa muda wa takriban miaka mitano hivi sasa na hakujakuwa na mwongozo wowote kwa Serikali namna ya kufidia watu hawa. Kutokana na hayo, ndiposa nikasema kuwa naamini kuwa ni Mswada ambao utakuwa na mwongozo katika swala hili.

Vile vile, jopo ambalo naona hapa litaundwa kutembea na kusikiliza malalamishi kama haya ni jopo muhimu sana. Naliunga mkono kwa sababu matatizo mengi yemekuwepo. Naamini pakubwa ili Serikali ijiendeleze na miradi yake, bado inahitaji ardhi nyingi ambazo hivi sasa zinamilikiwa na watu binafsi ama mashirika. Kutokana na hayo, ili nchi hii iweze kujimudu na kujiendeleza kiuchumi ni lazima ardhi hizi ziwe na utaratibu wa kupatiwa kwa Serikali kwa sababu miradi hii ina mipangilio ya kiserikali. Miongoni mwa mambo ambayo tunayaona wazi ni barabara zetu ambazo zinahitaji kupanuliwa.

Hali halisi ya nchi yetu ni kwamba barabara zetu vile zilivyo zahitaji kupanuliwa. Kutokana na hiyo, itabidi Serikali itumie mbinu hizi ambazo twazungumzia leo za kuchukua ardhi hizi kwa utaratibu huu, na wale wenye sehemu hizi ambazo watapeana kwa Serikali kwa sababu ya mambo kama haya na kurahisisha usafiri ni kwamba utaratibu huu utakapofanyika kwa njia zake, sidhani kama kutakuwa na tatizo lolote.

Ningependa kuunga mkono wenzangu na ningeomba Serikali ihakikishe kwamba utaratibu huu umefuatwa kikamilifu na wale wote ambao wataathirika na swala hili wazingatiwe kikamilifu na kupewa haki zao. Ili amani kupatikana na mwongozo ama uchumi kuendelea kisawasawa katika nchi hii, ni lazima haki ya kila Mkenya ipatikane.

Kama nilivyosema, ni tatizo ambalo limekuwa kwa siku nyingi sana, hasa katika sehemu ya Pwani. Tumeona mara kwa mara watu wamepokonywa sehemu zao na Serikali kwa njia za mabavu ama za kulazimishwa na hakuna lolote ambalo linafidiwa. Hufika wakati mtu anapokonywa haki yake akiwa ameshika hati miliki mkononi. Haya tumeyashuhudia na ni mambo ambayo hayapendezi katika nchi hii. Naamini pakubwa kutokana na Mswada huu ni mambo ambayo tutaweza kusawazisha.

Vile vile, ningependa kuzungumzia swala hili la namna watu watakavyofidiwa. Ikiwa Mswada huu utabakisha kusema kwamba fidia hii itakuwa ni maswala ya pesa, ardhi na kadhalika lakini iwekwe kipengele kinachosema kwamba haya yatapatikana kwa ushauriano na yule atakayeathirika, itakuwa vizuri. Libaki swala la pesa peke yake ama ikiwa yatabaki maswala haya mengine kama ardhi nyingine ama bondi, kuwe na kipengele kinachosema kuwa haya yatapatikana kutokana na uwiano baina ya Serikali, *tribunal* ama kamisheni na kusema ya kwamba yule atakayeathirika kile atakachochagua katika hizi mbinu ambazo ziko hapa, isiwe ni lazima.

Kwa hivyo, kuwe na sehemu ambayo itaonyesha kwamba ili kupatikana haya ama kufanyika hili, lazima kuwe na uwiano baina ya yule aliyeathirika na Serikali kuhusiana na maswala haya ya fidia.

Vile vile, utaratibu ambao utatumika...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Ali. What is it, Hon. Joshua Kutuny? You seem to have pressed for intervention.

**Hon. Joshua Kutuny** (Cherangany, JP): Asante, Mhe. Naibu Spika wa Muda. Mimi ni kati ya wale wanaoketi kwenye kamati hii ya ardhi. Ningependa kumwarifu Mheshimiwa.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Is it a point of information?

**Hon. Joshua Kutuny** (Cherangany, JP): Ndio, nataka nimpatie taarifa.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ali, are you okay to get that information?

**Hon. Ali Sharif** (Lamu East, JP): Ndio, Mhe. Spika wa Muda, nimekubali anifahamishe mahali ambapo ameona kwamba nahitaji kufahamika.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Proceed, Hon. Joshua Kutuny.

**Hon. Joshua Kutuny** (Cherangany, JP): Asante, Mhe Naibu Spika wa Muda. Kwa sehemu ambayo amesema kwamba yule ambaye anatakikana kufidiwa atashurutishwa, ukisoma kwenye Mswada huu ambao tumeutengeneza kama kamati, hakuna mtu ambaye atashurutishwa jinsi ya kufidiwa. Itakuwa yeye mwenyewe kuchagua jinsi atakavyofidiwa. Kama hatataka malimbikizi kutoka kwa Serikali, itakuwa sawa. Kama hataki ardhi mbadala, itakuwa sawa. Kama anataka hundi kutoka kwa Serikali, ni sawa.

Kwa hivyo, itakuwa muhimu kwa Mheshimiwa kuelewa kwamba, hakuna mtu atashurutishwa. Itakuwa kwa hiyari jinsi ya kufidiwa.

Asante.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ali, I am sure you are well advised or informed.

**Hon. Ali Sharif** (Lamu East, JP): Asante Mhe. Spika wa Muda. Ningependa nifahamishe mwenzangu aangalie vizuri vile Mswada unasema. Hakuna mahali ambapo unasema kwamba



mtu atalazimika, lakini Mswada haujawekwa wazi. Hofu yangu ni kwamba kumewekwa utaratibu wa kusema kwamba ni maswala ya pesa, ardhi, bondi na kadhalika. Moja ya hizi. Ningeomba kwamba, katika hizi kuwe na kufahamika kwamba kutakuwa na maridhiano. Ndilo neno ambalo nataka liwepo hapa, kwa sababu tunapowacha wazi ni kuonyesha kwamba ni mtu atachagua mwenyewe. Lakini inafika wakati kulingana na hali tunavyoiona, wale wahusika wakuu wenye mamlaka au majukumu ya kuendesha haya inafika wakati wanakwenda na maamuzi yale wanayotaka wao. Haya tumeyaona yakifanyika katika nchi yetu. Mtu anakwenda na maamuzi, anasema ni hivi, ilhali kuna namna nyingine ya kusuluhisha swala lile. Hiyo ndiyo hofu yangu.

Kwa hayo ambayo nimeweza kuchangia, naunga mkono Mswada huu na nawapongeza wale wote ambao walikaa kulifikiria swala hili na kuileta hapa kwa wakati mwafaka kama huu, huku tukiamini pakubwa kama viongozi Wakenya wanaendelea kuteseka kwa matatizo haya ambayo tunayajadili leo.

Asante Mhe. Naibu Spika wa Muda.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Washiali.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Bill. I want to thank the framers of this Bill. I think they have been following what I have also been following, majorly in the media, the way the Government and investors have been suffering whenever they are developing a project.

I was reading in some paper someone comparing the cost of SGR in Kenya and the cost of the railway line that was developed between Ethiopia and Djibouti. Of course, you cannot compare because of the aspect of compensation. Also, when Tullow Oil was developing the current oil fields in Turkana, there was something that came up in the newspapers: That one of us leaders of this country had acquired that land just before Tullow Oil discovered oil there. That tells you what is happening in this area.

There was a time we learned that the Uganda Government was reluctant in joining the Kenya Government in developing a pipeline that would then take crude oil from the two countries for further processing. The reason they were citing was the cost of that pipeline which was determined by the cost of land. The problem we have in this country is the land policy.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Washiali, I am afraid that it is now 7.00 p.m. and I can tell a number of Members who still have not spoken to this and have registered their interest.

Hon. Washiali, in the next sitting when this is considered you will have a balance of eight minutes.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Thursday, 5<sup>th</sup> July 2018 at 2.30 p.m.

The House rose at 7.00 p.m.