

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 21<sup>st</sup> March 2019

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** It looks like today Hon. Johnson Naicca has decided to do the work of the Serjeant-At-Arms and he confirms that the House quorates. Very well, we now have quorum.

### COMMUNICATION FROM THE CHAIR

#### VISITING DELEGATION FROM THE CONGRESS OF THE UNITED STATES OF AMERICA

**Hon. Speaker:** Hon. Members, I wish to recognise a delegation from the United States Congress seated in the Speaker's Gallery. The delegation comprises of:

- (1) Representative Jeff Fortenberry – Congressman and Co-Chair, International Conservation Caucus (ICC);
- (2) Representative David Cicilline – Congressman; and
- (3) Representative Doug Lamborn – Congressman.

The delegation is accompanied by a team from the International Conservation Caucus Foundation (ICCF), who include the following:

- (1) Mr. David Baron – ICCF Group, Chairperson;
- (2) Ms. Agnes Mosiany – ICCF Country Director – Kenya;
- (3) Ms. Carolyn Ann Weis – Programme Director, Ocean Caucus Foundation;
- (4) Ms. Jill Barasa – ICCF Programme Officer;
- (5) Mrs. Celestine Marie Fortenberry – Spouse; and
- (6) Mrs. Jean Anne Lamborn – Spouse.

The delegation is in the country for bilateral meetings and also to meet and exchange views with the Kenya Parliamentary Conservation Caucus chaired by the Member for North Horr, Hon. Francis Chachu Ganya, MP and the Catholic Members of Parliament Spiritual Support Initiative chaired by the Member for Kiminini, Hon. (Dr.) Chris Wamalwa, MP.

The delegation is welcome to observe proceedings of the National Assembly this afternoon.

*(Applause)*

Hon. Members, before we start the main business of the House, I will issue the next Communication which is on the matter to do with the Public Investments Committee. We can proceed.

There is a Message from the Senate on its consideration of the Warehouse Receipt Systems Bill which is being transmitted. I will convey it to the House later.

## PETITIONS

### PROCUREMENT OF MEDICAL COVER FROM REPUTABLE INSURANCE PROVIDERS FOR TEACHERS

**Hon. Patrick Ntwiga** (Chuka/Igambang'ombe, JP): Thank you, Hon. Speaker. I rise to read Petition No.23 of 2019.

I, the undersigned, on behalf of representatives of the Kenya Union of Post-Primary Education Teachers (KUPPET) in Tharaka Nithi County draw the attention of the House to the following:

THAT, KUPPET is a registered union that represents all post-primary teachers in Kenya with a current membership of 70,000 teachers;

THAT, in January 2015 the Teachers Service Commission (TSC) entered into an agreement with Minet Group Limited to underwrite health insurance for teachers employed under the TSC;

THAT, the Commission was obliged to satisfy the terms of the contract by taking away medical allowance from all teachers;

THAT, the entire process was shrouded in secrecy without adequate consultation with a majority of teachers who are in the Ministry as well as the beneficiaries;

THAT, due to conflict of interest amongst the parties and procurement entities, TSC terminated the tender awarded to Minet Group Limited who petitioned the Public Procurement Administrative Review Board;

THAT, the Board ruled in favour of the applicant and subsequently Minet was awarded the tender;

THAT, most credible health facilities have withdrawn from Minet's pool of health providers forcing insurers to move to private clinics that lack capacity to offer proper medical attention;

THAT, teachers lack confidence in such facilities and, therefore, majority of teachers end up paying for medical services in other better-equipped facilities not among health providers contracted by Minet Insurance Brokers;

THAT, the outpatient services as per the contract are supposed to be limitless, however, some of the health facilities offering outpatient services require that patients pay for services rendered;

THAT, efforts have been made to have TSC address the above issue to no avail; and

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

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Education and Research:

- (1) investigates whether Minet Group Limited pool of health services providers have the capacity to handle or cover over 70,000 families;
- (2) recommends procurement of medical cover for teachers with other reputable insurance providers amongst them the National Health Insurance Fund (NHIF);
- (3) causes an audit of the Teachers Medical Fund to ensure that the funds which might have been diverted by the underwriter are recovered; and
- (4) makes any other order or direction that it deems fit in the circumstance of the matter.

**Hon. Speaker:** Before I allow comments, let me allow Hon. Mwashako to also present his Petition.

#### FAILURE TO PAY HARDSHIP ALLOWANCE TO TEACHERS IN TAITA TAVETA COUNTY

**Hon. Danson Mwashako** (Wundanyi, WDM – K): Thank you, Hon. Speaker. I stand to reintroduce this Petition that was presented on the Floor of the House in the last Session but lapsed. It is Petition No.26 of 2019.

I, the undersigned, on behalf of the teachers of Taita Taveta County, draw the attention of the House to the following:

THAT, Article 41(2)(a) of the Constitution stipulates that every worker has a right to fair remuneration;

THAT, further, the public service policy provides that public servants working in hardship areas are entitled to hardship allowances;

THAT, Legal Notice No.534 of 1997 read together with Section 7 of the TSC Act, Cap. 212 provide that teachers in hardship areas shall be paid hardship allowances at the rate of 30 per cent of their basic salary;

THAT, most areas in Taita Taveta County including Kishushe, Mwanda and Wumingu, among others, have not been gazetted as hardship areas despite the state of the road network, harsh climatic conditions, water scarcity, human-wildlife conflict, lack of mobile telephone network coverage and social amenities, among other prevalent problems;

THAT, the Ministry of Education has continued to discriminate against the teachers of Taita Taveta County and some parts, particularly Wundanyi Sub-County, some parts of Mwatate Sub-County and Taita Taveta Sub-County as well;

THAT, there has been growing discontent among teachers from various schools because of the disparities in payment of hardship allowances;

THAT, teachers have been reluctant to take up teaching positions in areas that are not entitled to hardship allowances hence adversely affecting performance and general development across the aforementioned sub-counties;

THAT, efforts to solve this matter with the TSC and the Salaries and Remuneration Commission (SRC) have been futile; and

THAT, none of the issues raised in this petition are pending in any court of law, constitutional body or any legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Education and Research:

- (1) investigates the circumstances under which there are disparities in payment of hardship allowances to teachers in Taita Taveta County;
- (2) causes the SRC to harmonise payments of hardship allowances for teachers in the county;
- (3) causes the Cabinet Secretary (CS) for Education to gazette Taita and Taveta sub-counties as hardship areas;
- (4) recommends that the TSC effects payment of hardship allowances for teachers in the said sub-counties who were entitled to hardship allowances but were never paid; and
- (5) makes any other direction it seems fit in the circumstances.

Your petitioners will ever pray.

**Hon. Speaker:** I will allow a few comments on both Petitions. Let us have Hon. Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. I thank the Members who have raised the Petitions, especially the one on hardship allowance.

I will be very precise. That is one of the petitions that keep on coming to Parliament. It used to come to Parliament before I came. When it comes, there is no particular Committee or department of Government that wants to deal with it directly. It is normally referred to the Departmental Committee on Education and Research but later on when you talk to the TSC they tell you that this matter can only be dealt with by the Ministry of Labour and Social Protection and other ministries.

I sit on the Departmental Committee on Labour and Social Welfare. When we called the Principal Secretary (PS) over the same, he said that there is need to create a consortium of officials from several ministries including the Ministry of Education, the Ministry of Labour and Social Protection and other departments of Government. I request that whichever Committee this issue will be referred to be all-inclusive so that all the concerned players come together and finally deal with the issue of hardship allowance. I do not want to belabour the point on who is and is not getting hardship allowance.

Finally, on the issue of insurance, it is not just the teachers of KUPPET but the teachers of Kenya who require a good medical cover. It was in earnest search of the same that the teachers wish to have a good medical cover. Unfortunately or fortunately, TSC negotiates who provides medical cover for the teachers. You will probably direct this Petition to the Departmental Committee on Education and Research. I ask that the Committee helps the teachers of Kenya get a good medical cover that can assist them holistically together with their families so that they are also covered.

I thank the two honourable Members.

**Hon. Speaker:** That appeared to be a serious response or suggestion and not a comment.

Let us have the Member for Mwea. Before you make your comments, allow me to recognise the presence in the Public Gallery of students and pupils from the following institutions:

- (1) Kenyatta University, Kasarani Constituency, Nairobi County;
- (2) Mugiko Secondary School, Lari Constituency, Kiambu County;
- (3) St. Anthony's Secondary School, Narok East Constituency, Narok County; and
- (4) Fountain Primary School, Limuru Constituency, Kiambu County.

They are welcome to observe the proceedings of the House this afternoon.

*(Applause)*

**Hon. Josphat Kabinga** (Mwea, JP): Thank you, Hon. Temporary Deputy Speaker for allowing me to comment on this and especially the last Petition on hardship allowances.

I have in the past contributed on the same. The criteria used in identifying hardship areas needs to be reviewed because sometimes we do not understand how some areas are left out as hardship areas. There is a tendency to look at a constituency or a county and think that all areas in that constituency or county are the same. In my constituency, there are parts that may not qualify as hardship areas but there are also parts that over-qualify as such. There is a whole location called South Ngariama with eight primary schools and one secondary school. If you go to this area, you even wonder how teachers make it. There is no water; roads are in poor conditions and there are no houses for them. They have to go far to find accommodation yet these struggling teachers are not compensated alongside their colleagues who are in the neighbouring constituencies.

Looking at the constituencies that are given hardship allowance, you can clearly notice a difference. Schools in my constituency are clearly seen to be underperforming compared to schools in the neighbouring constituency that benefit from hardship allowances. Most teachers prefer...

**Hon. Speaker:** Comments, please. This is not an occasion for debate.

**Hon. Josphat Kabinga** (Mwea, JP): Hon. Speaker, I concur with my colleague who commented that he does not understand why some areas in Taita are not considered as hardship areas. I am aligning myself with that particular comment that I also fall in the same category. This issue of hardship areas needs to be reviewed.

**Hon. Speaker:** Hon. Members, let us move to some other business. The Petitions are referred to the relevant Committees as prayed by the Members. Members making their way through, please do so quickly. Hon. Mwadime, this is not the occasion to debate about the handshake. It is some other business.

## MESSAGE

### REJECTION OF NATIONAL ASSEMBLY'S AMENDMENTS TO THE WAREHOUSE RECEIPT SYSTEM BILL

**Hon. Speaker:** As I indicated, there was a Message from the Senate which I needed to convey to the House.

Pursuant to the provisions of Standing Order No.41, I wish to report to the House that I have received a Message from the Senate regarding its decision on the Warehouse Receipt System Bill (Senate Bill No.10 of 2017).

Hon. Members, you will recall that the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) was passed by the National Assembly on Tuesday, 27<sup>th</sup> November 2018 with amendments.

The Message reads in part and I quote: "The Senate on Thursday, 14<sup>th</sup> March 2019, considered and rejected the National Assembly's amendments to Clauses 2, 3, 4, 9, 10, 11, 16,

17, 21, 23, 24, 25, 27, 30, 31, 32, 39, 41, 43, 44, 45, 48, 50 and the Schedule to the Bill...the effect of which the said Bill is referred to a mediation committee.”

Hon. Members, as you may also recall, the National Assembly rejected the Senate amendments to the Kenya Roads Bill (National Assembly Bill No.47 of 2017) on Thursday, 14<sup>th</sup> March 2019. Therefore, the two Bills stand referred to two separate mediation committees in accordance with Article 112 of the Constitution. Consequently, the leadership of the Majority and Minority Parties in the House are hereby directed to expeditiously nominate three and two Members respectively for appointment to each of the two mediation committees to be established for consideration of the Bills. Once constituted, the Committees will be expected to speedily embark on the process of developing mediated versions of the said Bills in accordance with Article 113 of the Constitution.

I thank you.

Next Order.

### PAPERS LAID

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Thursday, 21<sup>st</sup> March 2019:

Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ending 30<sup>th</sup> June 2018 and the certificates therein:

- (a) Commission for Administrative Justice;
- (b) University of Kabianga;
- (c) Ewaso Ng'iro North River Development Authority; and
- (d) National Sports Fund.

Report of the Auditor General on the Financial Statements in respect of Mwatate Constituency.

Revenue Statement of Business Registration Service for the Fourteen (14) months ended 30<sup>th</sup> June 2018.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order.

### NOTICE OF MOTION

#### ALTERATION OF HOUSE CALENDAR

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Standing Order No.28(4), this House resolves to alter its calendar for the Third Session of the Assembly as adopted on 13<sup>th</sup> February 2019 as follows:

- i. By proceeding for the short recess on Friday, 5<sup>th</sup> April 2019 and resuming its regular sitting on Tuesday, 23<sup>rd</sup> April 2019.
- ii. By commencing the long recess on Friday, 10<sup>th</sup> May 2019 instead of Friday 3<sup>rd</sup> May 2019.

Thank you, Hon. Speaker.

Next Order.

**Hon. Speaker:** Hon. Members, in keeping with the provisions of Standing Order No.43, before we go to Questions, because this Order requires Statements to be made before 3.00 p.m., I will allow the Statement by a Member of the Departmental Committee on Defence and Foreign Relations, Hon. Beatrice Nkatha.

## STATEMENT

### DEPLOYMENT OF KDF TO QUELL FIRE IN MT. KENYA NATIONAL PARK

**Hon. Beatrice Nyaga** (Tharaka-Nithi CWR, JP): Hon. Speaker, I rise to make a Statement pursuant to Standing Order No.43 and update the House on deployment of Kenya Defence Forces to support the Kenya Wildlife Service in response to a fire outbreak in Mt. Kenya National Park.

Hon. Speaker, Article 241(3) (b) of the Constitution provides that the Kenya Defence Forces shall assist and cooperate with other authorities in situations of emergency and disaster, and report to the National Assembly whenever deployed in such circumstances. Further, Sections 31(2), 33(1), 34(2) and (3) of Kenya Defence Forces Act of 2012 - revised 2018 - obligate the Cabinet Secretary for Defence to report to this House when KDF is deployed to contain disaster within the country.

In keeping with this provision, the CS for Defence submitted a report to this House which was subsequently tabled in the House and referred to the Departmental Committee on Defence and Foreign Relations.

During the sitting held on Tuesday, 19<sup>th</sup> March 2019, the Committee considered the content of the report and noted the following:

On 1<sup>st</sup> March 2019, the KDF were deployed to support the Kenya Wildlife Service to contain a fire outbreak in Mt. Kenya National Park which constituted an environmental emergency. The KDF were deployed to Chogoria and Nyeri within Mt. Kenya National Park. The personnel deployed were four officers and 391 service members.

The following under-listed equipment was deployed: Six troops-carrying vehicles; two FVZ Isuzu; one FF Land Rover and one Land Cruiser. The deployment was discontinued on 3<sup>rd</sup> March 2019 when the fire was contained.

Lastly, approximately Kshs5 million was incurred for equipment, logistics and fuel.

Hon. Speaker, as I conclude, I would like to thank the KDF for the role they played in protection of sovereignty and territorial integrity of the Republic of Kenya. Moreover, I wish to thank all the officers from the KDF who were deployed to contain the fire outbreak in Mt. Kenya National Park.

Thank you.

**Hon. Speaker:** Hon. Members, that is just in keeping with the requirements of the law. We now go to Questions. The first one is by the Member for Kieni.

## QUESTIONS BY PRIVATE NOTICE

*Question No.013/2019*

## FACILITATION OF MS. EPHARUS NDUMIA TO TRAVEL FOR TREATMENT

**Hon. Kanini Kega** (Kieni, JP): Thank you, Hon. Speaker for giving me this opportunity to ask a very important Question to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development.

- (i) Is the Cabinet Secretary aware that one Epharus Wangari Ndumia of Identification Card Number 34076183, a 3<sup>rd</sup> year student at the Jomo Kenyatta University of Agriculture and Technology (JKUAT) was on 7<sup>th</sup> March 2019 denied travel to India for specialised medical treatment by an Air Arabia Aircraft after having checked in at Jomo Kenyatta International Airport (JKIA)?
- (ii) Is the Cabinet Secretary further aware that Ms. Ndumia was again denied to travel on 17<sup>th</sup> March 2019 and forcefully ejected from an Etihad Airways aircraft at the JKIA?
- (iii) Has the Ministry taken any action to ensure that Ms. Ndumia is facilitated and allowed to travel to India to seek medical treatment and that she is not discriminated by any airline on account of her medical condition?

Hon. Speaker, I am seated next to the Chair of that Committee and I will beseech and plead with him to make this matter a priority, of course with your indulgence. This is a very urgent matter. The lady is still in the country yet she needs urgent medical attention but the two airlines forcefully ejected her having even taken her money for travel.

Thank you, Hon. Speaker.

**Hon. Speaker:** I thought you are asking a Question. You are now giving information. It should go to the Departmental Committee on Transport, Public Works and Housing.

Next Question is by the Member for Buuri, Hon. Mugambi Murwithania.

*Question No.014/2019*

## INVESTIGATION INTO DISAPPEARANCE OF PAUL KARANI MUNGANIA

**Hon. Mugambi Rindikiri** (Buuri, JP): Thank you, Hon. Speaker, my Question is directed to the Cabinet Secretary for Interior and Co-ordination of National Government.

- (i) Is the Cabinet Secretary aware that on 17<sup>th</sup> July 2018, one Paul Karani Mungania of Identification Number 24276630 from Buuri went missing and the matter reported at Subuiga Police Station on 20<sup>th</sup> July 2018 and a statement recorded at Isiolo Directorate of Criminal Investigation Offices on 26<sup>th</sup> July 2018?
- (ii) Is the Cabinet Secretary further aware that on 19<sup>th</sup> September 2018, his body was found at Kalama Conservancy near Archers Post in Samburu County and taken to Isiolo District Hospital Mortuary but the family was not informed until 6<sup>th</sup> October 2018 after which a postmortem was carried out on 5<sup>th</sup> November 2018?



- (iii) Could the Cabinet Secretary provide the status of investigations into his disappearance and cause of death?

Thank you, Hon. Speaker.

**Hon. Speaker:** It is therefore referred to the Departmental Committee on Administration and National Security.

### ORDINARY QUESTIONS

*Question No.131/2019*

#### BLACKLISTING OF M/S INTEX CONSTRUCTION COMPANY

**Hon. Speaker:** The Member for North Imenti, Hon. Abdul Rahim Dawood.

**Hon. Rahim Dawood** (North Imenti, JP): Thank you, Hon. Speaker, I would like to ask the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development the following Question:

- (i) Could the Cabinet Secretary explain the qualifications and capability of M/s. Intex Construction Company Limited to undertake the construction of Mate Road in North Imenti Constituency which has been ongoing for the last 7 years?
- (ii) What steps has the Ministry undertaken to ensure that the said road is completed on time?
- (iii) Could the Ministry consider terminating and blacklisting the company on account of not meeting the contractual obligations?

Thank you, Hon. Speaker. I see the Chairman has already taken note.

**Hon. Speaker:** It is referred to the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Kisauni.

*Question No.132/2019*

#### NON-PAYMENT OF GOODS SUPPLIED TO PRISONS IN MOMBASA COUNTY

**Hon. Speaker:** Sorry Hon. Members, the Member for Kisauni has written to request that the Question be taken out of the Order. He is not available.

*(Question deferred)*

*Question No.133/2019*

#### NON-PAYMENT OF HARDSHIP ALLOWANCE TO TEACHERS IN CENTRAL IMENTI

**Hon. Speaker:** The Member for Central Imenti has also requested that his Question be deferred. Those two Questions are accordingly deferred at the request of the Members.

*(Question deferred)*

The next Question is by the Member for Endebess, Hon. Dr. Pukose.

*Question No.134/2019*

COMPENSATION FOR LOSSES CAUSED BY WILDLIFE IN KOKWO AND CHEPKWIROT AREAS

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, I beg to ask the following Question to the Cabinet Secretary for Tourism and Wildlife.

- (i) Is the Cabinet Secretary aware that sections of Mt. Elgon National Park, specifically at Kokwo and Chepkwirot areas are not fenced leading to wildlife invading farms thus destroying crops and posing danger to humans?
- (ii) Could the Cabinet Secretary give an undertaking for the compensation of victims for the losses caused by wildlife in the said areas?

**Hon. Speaker:** It is referred to the Departmental Committee on Environment and Natural Resources.

The last Question by Member for Baringo Central.

*Question No.135/2019*

NON-PAYMENT FOR SERVICES OFFERED TO NATIONAL YOUTH SERVICE

**Hon. Joshua Kandie** (Baringo Central, MCCP): Hon. Speaker, I beg to ask the following Question to the Cabinet Secretary for Public Service, Youth and Gender Affairs:

- (i) Is the Cabinet Secretary aware that youth and women who offered services under the Presidential Youth Empowerment Programme of the National Youth Service in Baringo Central Constituency in 2017 are yet to be paid their allowances to date?
- (ii) When will the said persons be paid their dues?

**Hon. Speaker:** It is referred to the Departmental Committee on Labour and Social Welfare.

**STATEMENT**

REPORT ON KENYAN DOCTORS UNDERGOING TRAINING IN CUBA

**Hon. Speaker:** The Chairperson, Departmental Committee on Health, you are seated in unusual corner today. There must be some conspiracy of sorts.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Speaker, I was consulting with the two Members here: Hon. Soipan and Hon. Mukami.

**Hon. Speaker:** Please, proceed.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Speaker, I rise pursuant to Standing Order No.44 to give a Statement to this House on a matter that has caught attention of the country, the matter of the Kenyan doctors being trained in Cuba.

First, allow me to pass my sincere condolences and the Committee's deepest condolences to the family, friends, and the County of Mombasa for the loss of Dr. Hamisi Ali Juma who was part of the contingent to Cuba. My condolences go further to Hon. Mishi Mboko, who is a Member of this House, and is a sister of the deceased.

Hon. Speaker, the Departmental Committee on Health was seized of allegations of mistreatment of 50 Kenyan doctors taken to Cuba under bilateral agreement for postgraduate studies in Family Medicine. We also received information that we lost one of the doctors in circumstances that remain unclear until today.

The Departmental Committee on Health and this House appropriated an amount of Kshs1 billion for the overall Cuba bilateral programme with a cost of Kshs338.9 million specifically for the Kenyan doctors to be trained in Cuba. This programme was part of the wider scheme towards attainment of one of the Government's Big Four Agenda - the Universal Health Coverage.

Hon. Speaker, when the matter came to light, the Committee immediately wrote to the Ministry of Health inviting them for a meeting that was held today, 21<sup>st</sup> March 2019 to establish more facts around the matter. I confirm that we met with the Ministry and the Principal Secretary this morning. Hon. Speaker, I would like to inform the House that the Government of Kenya entered into a bilateral agreement with the Government of Cuba to tap into advancement of health standards in Cuba towards attainment of universal health coverage in Kenya. The Ministry tabled this agreement before the Committee. Part of this agreement was the component of training 50 Kenyan doctors in Cuba in postgraduate studies in Family Medicine. This was for a period of two years and four months. The Ministry wrote to the Council of Governors (COG) requesting them to nominate 47 doctors, one from each county, who met the criteria that was well stipulated. Therefore, the names of these doctors who were recommended came from the county governments. They are employees of the counties. The doctors were taken through a thorough orientation course at the Kenya School of Government (KSG) before departure. This was done voluntarily. It is key to note that the nomination was subject to these doctors personal acceptance to go to Cuba.

The agreement entails payment of usual salary and allowances in the Kenyan account as per their prevailing terms which we understand that it is a monthly payment between Ksh84,000 to Kshs130,000 depending on the job group of these said doctors. There was also an agreement of a stipend of approximately Ksh36,000. This is according to the State Department of Public Works on the agreement of the students who go on a full scholarship which is paid by the Government. This stipend was exclusive of meals and accommodation which was to be provided by the Cuban Government. We were also informed that they received one-off payment of Kshs75,000 which is an allowance to cater for their research and an allowance of Kshs50,000 to cater for their book allowance. As per the Ministry, these allowances were paid up to the end of March 2019.

The Ministry said that it further revised the agreement to increase the allowance by 28 per cent to exclude meals and accommodation due to several issues that came up from the doctors after the six months they trained on the local language which is Spanish. The students liaised with the Ministry and opted for different accommodation and also provide their meals.

So, the stipend was increased to Kshs50,000 per month from January. This was requested by the doctors. The Attorney-General has a letter on the same communication though he has not given a go-ahead of their earning.

It is also important to note that the doctors also earn allowances as per their terms of engagement which culminate to around Kshs180,000. However, the real amount per doctor will be furnished by Thursday by the Ministry of Health. They were also provided with one-way ticket to Cuba, a return ticket after one year and a final one-way ticket. They have been in Cuba for six months. The Ministry also informed us that only one doctor who was not feeling well requested them to come back. Upon consultation with the personal doctor and parents, they agreed that the said student will not go back to Cuba. We do not have 50 students currently. We had 49 doctors and now minus one. So, we have 48 doctors in Cuba.

The late Dr. Hamisi was found dead on 17<sup>th</sup> March 2019 inside his hostel in the morning at 9 a.m. There were indications that he committed suicide but the authorities in Cuba have asked the Government to give them time to conduct investigation to rule out homicide possibilities. An official from the embassy has already accompanied the body enroute to Kenya. It is expected to arrive on 22<sup>nd</sup> March 2019 via the KLM flight. The family is in constant communication with the Ministry. As per the Ministry, Dr. Hamisi had not expressed any frustrations to the authorities, the embassy or his colleagues prior to his untimely demise. Investigations will show whether the family had communicated any information to the Ministry. The doctors in Cuba are informed. They have access to the embassy where there is one officer, Mr. Munari, who is the contact person. We also have Mr. Bashir at the Ministry who acts as the link to the Ministry. We were also informed that the doctors have internet. If they have any urgent information they would like to rely to the Ministry, they can communicate directly to them.

The doctors are studying out of their own will and have not expressed any frustration officially. The Ministry indicated that anyone who would request to return on medical reasons or any other reason is free to do so. Anyone else who desires to abandon studies will not be stopped. The doctors are living currently in a hostel where they are provided with meals. Initially, they were three in a room but it was revised. Special treatment is given to the Kenyan students to be two in a room. They are now proceeding to go to specific facilities where they will be trained and there is a revision of the allowance. Instead of receiving the monthly allowance of Kshs50,000, there is a request that they will be given a full allowance of USD1440, so that they can seek their own accommodation and cater for their meals, without them being provided by the Cuban authority.

The Ministry has dispatched the Chief Administrative Secretary (CAS) and other senior Ministry officials who include a psychiatrist to go and establish the facts, and meet with the team of the 48 doctors who are in Cuba. They will furnish the Committee with any further information. Therefore, the Committee will await this report and will inform the House accordingly. As a way forward, we have communicated to the Ministry that the Attorney-General immediately advises them and gives them a go-ahead on the addendum on the agreement to review the allowances upward, as requested by the doctors and agreed with the Ministry. The Ministry on Thursday, 28<sup>th</sup> March will furnish the Committee with the full breakdown of all payments submitted to each doctor up to date. They will also present an autopsy report and preliminary report of its team that has gone to Cuba. If it is possible, we request the Members of the Departmental Committee on Health to be given an opportunity to go

to Cuba and visit this team and establish the facts on the ground from these students on their living conditions, as well as see the experience of the training because this House committed money. We would like to see whether this money is worthwhile.

Finally, the Committee will, within two weeks, furnish the House with comprehensive report. I thank you, Hon. Speaker.

**Hon. Speaker:** The Majority Whip will present a Statement on behalf of the House Business Committee (HBC). Before you give your Statement, allow me to recognise the presence, in the Speaker's Gallery, of students from Tangaza University College, Lang'ata Constituency, Nairobi County. They are welcome to observe the proceedings in the House.

Proceed, Majority Whip.

*(Applause)*

BUSINESS FOR THE WEEK COMMENCING 26<sup>TH</sup> TO 28<sup>TH</sup> MARCH 2019

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give a Statement on the business appearing before the House for the week beginning Tuesday, 26<sup>th</sup> March 2019, on behalf of the HBC. With your permission, I seek the attention and patience of Members because the Statement is a bit lengthy and detailed.

On Tuesday next week, the House will consider a Motion on Alteration of the 2019 Calendar of the National Assembly (Regular Sessions), pursuant to the provisions of Standing Order No.28(4). The House will also consider Motions on Senate Amendments to the following two National Assembly Bills: The Physical Planning Bill (National Assembly Bill No.34 of 2017) and the Land Value Index Laws (Amendment) Bill (National Assembly No. 3 of 2018). Should the House conclude debate on the Motions, we shall proceed to Committee of the whole House on the two Bills together with the Sports (Amendment) Bill, National Assembly Bill No.25 of 2018.

Hon. Speaker, we will also consider various Committee reports throughout the week including:

1. The Report on the Examination of the Financial Statements of the Independent Electoral and Boundaries Commission.
2. The Report on Improvement of Members' Services and Facilities.
3. The Report on Inspection Visit to the Namanga One Stop Border Post in Kajiado County.
4. The Progress Report on the Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport by Kenya Airways.

Should we conclude the business, we will consider the following Bills at Second Reading:

1. The County Statistics Bill, Senate Bill No.9 of 2018.
2. The Salaries and Remuneration Commission (Amendment) Bill, Senate Bill No.12 of 2018.

I encourage the Chairperson of the relevant Committee to expedite the tabling of reports on these Bills, if not already done. Members should acquaint themselves with contents of Bills to enable them have an informed debate.

In accordance with the provisions of Standing Order No.42A (5) and (6), I wish to convey that the following Cabinet Secretaries are scheduled to appear before Departmental Committees next week as follows:

1. Cabinet Secretary for Education will appear before the Departmental Committee on Education and Research on Thursday, 28<sup>th</sup> March 2019 to answer Question No.002/2019 from Hon. Florence Mutua, MP, Question No.009/2019 from Hon. Emmanuel Wangwe, MP, Question No.030/2019 from Hon. Robert Mbui, MP, Question No.073/2019 from Hon. John Munene Wambugu, MP, Question No.074/2019 from Hon. Irene Kasalu, MP, Question No.078/2019 from Hon. Nelson Koech and Question No.094/2019 from Hon. Geoffrey Makokha Odanga, MP.
2. The Cabinet Secretary for Environment and Forestry will appear before the Departmental Committee on Environment and Natural Resources on Tuesday, 26<sup>th</sup> March 2019 to answer Question No.103/2019 from Hon. Kipsengeret Koros, MP.
3. Cabinet Secretary for Interior and Coordination of National Government will appear before the Departmental Committee on Administration and National Security on Tuesday, 26<sup>th</sup> March 2019 to answer Question No.049/2019 from Hon. Capt. Ruweida Obo, MP, Question No.056/2019 from Hon. Yusuf Hassan, MP, Question No.069/2019 from Hon. Joshua Chepyegon Kandie, MP, Question No.070/2019 for Hon. Joseph Tonui, MP and Question No.092/2019 from Hon. Charles Njagua Kanyi, MP.
4. Cabinet Secretary for Information, Communication and Technology will appear before the Departmental Committee on Communication, Information and Innovation on Thursday, 28<sup>th</sup> March 2019 to answer Question No.102/2019 from Hon. Moses Kuria, MP.

Finally the House Business Committee will convene on Tuesday, 28<sup>th</sup> March 2019 at the rise of the House to consider business for the coming week.

Thank you, Hon. Speaker.

*(Several Hon. Members walked into the Chamber)*

**Hon. Speaker:** Order Members, for those of you who are standing, I promised that there is a long Communication from the Chair. So, if you are standing, you may stand for a very long time.

**COMMUNICATION FROM THE CHAIR****MANDATE OF AUDIT COMMITTEE *VIS-À-VIS* THAT OF DEPARTMENTAL COMMITTEES AND  
THE PLACE OF PROGRESS REPORTS IN INQUIRY PROCESS**

**Hon. Speaker:** Hon. Members, you will recall that on Thursday, 7<sup>th</sup> March 2019, the Leader of the Majority Party rose on a point of order citing Standing Order Nos.83, 206 and 216 and sought guidance of the Speaker on alleged conflict of mandate between the Public Investments Committee and those of Departmental Committees. He also sought guidance on the role of the Auditor-General is so far as special audits are concerned and the place of the progress report of the Public Investments Committee on the inquiry into the proposed takeover of Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ) which was laid on the Table of the House by the Chairperson on Wednesday, 27<sup>th</sup> February 2019. In particular the Leader of the Majority Party invited the Speaker to pronounce himself on two key issues:

- a. whether it will be procedural for a Committee of the House to order stay of progress, or indeed to recommend stay of progress on ongoing government-initiated policy or project which is at infancy stage citing an ongoing inquiry by the House; and,
- b. whether the Auditor-General could carry out an *ex-ante* or anticipatory investigations into a matter to establish adherence to the law and Government policy.

Hon. Members, in his submission, the Leader of the Majority Party observed that the matter of the ongoing arrangements between Kenya Airways and the Kenya Airports Authority is a matter of Government policy and does not fall within the remit of the Public Investments Committee and by extension the Auditor-General.

He further contended that the Constitution gives functions of the Auditor-General as amongst other things, the examination of accounts of the national and county governments; accounts of all funds and authorities, accounts of all courts and the accounts of the National Assembly and the Senate. The Leader of the Majority Party and indeed a section of other Members who spoke, pointed out that the nature of the Auditor-General's work is to great extent post-mortem, that is, limited to expenditure already incurred and that that the Auditor-General should not audit a Government policy particularly at conceptualisation stage.

Hon. Members, you will, indeed, recall that these very weighty procedural issues raised by the Leader of the Majority Party elicited reactions from the Floor, with very valuable input from the Chairperson of Public Investments Committee, the Hon. Abdullswamad Sherriff Nassir; the Chairperson of the Departmental Committee on Transport, Public Works and Housing, the Hon. David Pkosing; the Majority Party Whip, the Hon. Benjamin Washiali; the Minority Party Whip, the Hon. Junet Mohamed, amongst others, who advanced varying positions on the matter.

The Minority Party Whip expressed concern that formulation and implementation of public policy is a function of the Executive arm of the Government and the House has no role, nor does it participate in the formulation and implementation of Government policy. In his view, the involvement of the House at this stage would amount to pre-emption, interference and abuse of the doctrine of separation of powers. A section of the House supported the need for the House

and its committees to get to the bottom of the matter, irrespective of the stage at which the policy is.

Hon. Members, may I also, at this point, inform the House that the Chairpersons of the Departmental Committee on Transport, Public Works and Housing and the Departmental Committee on Finance and National Planning had also separately written to the Speaker on 20<sup>th</sup> and 21<sup>st</sup> February 2019, respectively, claiming exclusive jurisdiction of their respective committees to examine the same matter. In this regard, my Office did respond to the letter from the Chairperson of the Departmental Committee on Transport, Public Works and Housing, outlining broadly the issues in question which I will similarly address shortly.

Hon. Members, having reviewed the content and substance of the submissions by the Leader of the Majority Party and the procedural arguments by other Members who spoke to the Point of Order on 7<sup>th</sup> March, 2019, I have identified the following as the primary issues to address myself to and provide guidance to the House:

- (i) what is the nature and at what stage is the arrangement between Kenya Airports Authority (KAA) and Kenya Airways (KQ) regarding the management of the Jomo Kenyatta International Airport, and what is the applicable legal framework to the proposed management of the Airport by Kenya Airways?
- (ii) whether the proposed commercial arrangement between Kenya Airports Authority and Kenya Airways regarding the management of the Jomo Kenyatta International Airport is a matter falling under the mandate of the Public Investments Committee or the relevant Departmental Committee;
- (iii) whether the Auditor General can audit the merits or demerits of a Government policy;
- (iv) the procedure for requesting a special Audit of a Government project;
- (v) whether the Committee could submit a progress report to the House and, if so, what the House is expected to do with such a report; and
- (vi) in view of the motion for adoption of the Progress Report of the Public Investments Committee on the Inquiry into the Proposed Takeover of Jomo Kenyatta International Airport by Kenya Airways, laid on the Table of the House on Wednesday, 27<sup>th</sup> February, 2019, whether it would be procedurally in order for a motion on an interim report to be moved in the House and for the House to proceed to debate it.

Hon. Members, the first issue that calls for my determination is the question of what is the nature and at what stage is the arrangement between Kenya Airports Authority and Kenya Airways, regarding the management of the Jomo Kenyatta International Airport? What is the applicable legal framework to the proposed management of Jomo Kenyatta International Airport by Kenya Airways?

Hon. Members, I will resume my seat to allow the Hon. Members to make their way in. Please do it quickly.

*(Hon. Members entered the Chamber)*

Just make your way in, stop shaking hands.

To address this question, it is important to first determine whether the House is properly seized of the said Policy or issues. Obviously, the actual Policy itself is not before the House or its committees. Indeed, it is clear that the House is seized of the matter only in so far as the



parallel inquiries of the Public Investments Committee and the Departmental Committee on Transport, Public Works and Housing are concerned. You will note that the two Committees, separately and rightly under the authority vested in them by the law and the Standing Orders, instituted inquiries on their own motions, which inquiries I will be addressing later in this Communication.

Hon. Members, as your Speaker, if I am called upon to answer the question of “what is the nature of the commercial arrangement between the Kenya Airports Authority and Kenya Airways?”, I may not be able to respond appropriately. This is because I am not privy to contents of the commercial arrangement between the two entities. However, based on information presented in my chambers by the Chairperson of the Departmental Committee on Transport, Public Works and Housing and the Chairperson of the Public Investment Committee and having read the Special Audit Report of the Auditor-General on the matter, which I will be speaking to at a later stage in this Communication, I am guided that the commercial arrangement between the Kenya Airports Authority and Kenya Airways is a proposed Privately Initiated Investment Proposal (PIIP) within the ambit of the Public Private Partnership Act, 2013.

Hon. Members, a clear reading of section 2 of the Public Private Partnership Act, 2013 defines a “privately initiated investment proposal” as “a proposal that is originated by a private party without the involvement of a contracting authority and may include information that enables a complete evaluation of the proposal as if it were a bid.”

I assume that those Members now desire to come in. Please make your way in quickly.

*(Hon. Members entered the Chamber)*

This definition, in itself, demonstrates the inappropriateness of the application of the term “take over” as used by the two Committees and, indeed, by a section of Members who spoke in the House on the matter.

Consequently, committees and, indeed, this House should restrict themselves to terms used in the evidence adduced so far and the expressions used in the relevant laws. This is in keeping with our Standing Order No.91 on responsibility for statement of facts, which behoves all Members to speak with accuracy based on facts.

Hon. Members, permit me at this point, to refresh your memory on the policy-making process and the nexus between the Executive and the Legislature in this process. By practice, a policy of this magnitude and importance, like many others before or after it, would have to obtain Cabinet consideration. The relevant Cabinet Secretary would then undertake other preliminary processes with the relevant bodies and, at the appropriate stage, submit to the House a Sessional Paper. It then follows that the people’s elected representatives would at this point exercise their oversight function by giving their views in considering the particular Sessional Paper. In noting the Paper, the House may make reservations, comments or acquiesce to it unconditionally.

As regards the legal framework that underlies the proposed management of JKIA operations by the Kenya Airways, the question that now begs is as follows: “Is the proposed commercial arrangement an arrangement under the Public Private Partnerships Act, No. 15 of 2013, or the Privatisation Act, No. 2 of 2005?”

Hon. Members, the proposed commercial arrangement is to be governed by the Public Private Partnerships Act, No.15 of 2013. The Act provides for the procedure for entering into a public private partnership agreement. It contemplates an elaborate process, including preparation of the privately initiated investment proposal, consideration by the target public entity, submission of the initiative to the public private partnership unit established in the National Treasury and approval for the parties to enter into negotiations. The law also contemplates that the said unit shall submit a project report, a financial risk assessment report, and its recommendations to the Public Private Partnership Committee for consideration.

Section 54(3) of the Act provides that the Cabinet Secretary for Finance and the Cabinet Secretary in the State Department responsible for the implementation of the project shall prepare a joint cabinet memorandum based on the recommendations of the Public Private Partnership Committee and submit the memorandum to the Cabinet for approval before any execution.

Section 55 of the Act provides for the only instance in which parliamentary approval may be sought in respect of public private partnerships, and that is where the partnership is for the exploitation of natural resources under Article 71 of the Constitution. This approval would be made through a ratification process. Parliament, in its wisdom, during the legislative process leading up to the enactment of the Public Private Partnerships Act, No.15 of 2013, removed itself from the requirement of parliamentary approval of public private partnerships.

Hon. Members, irrespective of the absence of the requirement of parliamentary approval in the Act, as your Speaker I ask myself: "Is it possible for the Kenya Airways Privately Initiated Investment Proposal to be complete without Parliament's knowledge? In my view, the realistic implementation of the proposal, if and when approved by the Cabinet, would require various legislative interventions, including amendments to various statutes. Ultimately, there may be need to amend different statutes, including the Kenya Airports Authority Act (No.3 of 1991), the Labour Relations Act (No.14 of 2007), the Air Passenger Service Charge Act (Cap. 475) and possibly taxation-related laws amongst others. As you are all aware, an amendment to any of these statutes is a matter which squarely falls within the legislative mandate of Parliament.

It is important to note that Article 95(2) of the Constitution provides that one of the roles of the National Assembly is to deliberate on and resolve issues of concern to the people. Whereas the Kenya Airports Authority is a state corporation fully owned by the Government of Kenya, the Kenya Airways is a company in which the Government of Kenya has a 48.9% stake in terms of shareholding. Kenya Airways is, therefore, a company in which the government has substantial shareholding both for strategic and national interest.

Hon. Members, you will also agree with me that, Kenya Airways, being a listed company at the Nairobi Securities Exchange, cannot be devoid of public scrutiny in as far as its operations are concerned. Any major restructuring or re-organisation of the Kenya Airways will, therefore, attract deserved attention of the people of Kenya, particularly through their representatives.

*(Applause)*

On the other hand, Hon. Members, should the Kenya Airways proposal fall under the purview of the Privatization Act, No.2 of 2005, Section 23(3) of the Act provides-

(i) The Cabinet Secretary shall submit a report in form of a Sessional Paper on a privatization proposal approved by the Cabinet to the National Assembly for consideration.

(ii) Upon laying before the National Assembly, a report under subsection (3) shall stand referred to the relevant committee.

It is clear from the foregoing that Parliament's involvement in the conclusion of the Kenya Airways proposal cannot be overlooked, irrespective of the nature of the commercial arrangement.

*(Applause)*

It is, therefore, not a matter of "if Parliament will be involved"; rather it is: When is the right stage for Parliament to be involved? It is inconceivable, in parliamentary parlance that the House or its Committees would become part of policy execution, as that may prejudice the oversight function of the House as enshrined in Article 95(5)(b) of our Constitution. It is for this reason that I found it inappropriate for the Departmental Committee on Transport, Housing and Public Works to attempt to undertake what it termed as "public participation" of the Privately Initiated Investment Proposal between KQ and KAA at this infancy stage.

Let me allow these Members to make their way in.

*(Several Members entered the Chamber)*

I resume.

At this stage, that exercise is an obligation of the Kenya Airports Authority and/or the relevant state department, which are expected to thereafter apprise the House on the progress of the initiative through the said Departmental Committee.

Hon. Members, let me now turn my focus to the second issue requiring my determination, namely, whether or not the proposed PIIP between the Kenya Airports Authority and Kenya Airways is a matter under the purview of Public Investments Committee or Departmental Committees. In doing so, permit me to refer the House to the ruling made by the Speaker on 5th December, 2013. Then, as now, the question arose, in similar framing, as to the delineation of the mandates of the watchdog committees of the House, namely the Public Investments and the Public Accounts Committees on the one hand, and Departmental Committees on the other. In total, the Speaker then guided that, indeed, the mandates of Departmental Committees were clearly distinct from those of the Public Accounts Committee and the Public Investments Committee. As a matter of fact, PAC or PIC ought not to delve into such matters as review of legislation, vetting of appointments and matters of administration of ministries or State corporations. This finding was on the basis of Standing Orders 205 and 206, which preclude the Public Investments Committee from examining matters of day-to-day administration of State corporations.

In the same vein, the Speaker did then caution Departmental Committees from veering into the province of the Public Accounts Committee and the Public Investments Committee, save for the manner contemplated under Standing Order 216. Hon. Members, for avoidance of doubt, the said Standing Order No.216 under Paragraph (5) provides that the functions of a Departmental Committee shall be to:

- (a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments.
- (b) Study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) 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.

On the other hand, Standing Order 206(2) provides that “the Public Investments Committee shall be responsible for the examination of the working of the public investments on the basis of their audited reports and accounts.”

Hon. Members, additional functions of the Public Investments Committee as highlighted under Standing Order 206(6), include:

- (a) to examine the reports and accounts of the public investments;
- (b) to examine the reports, if any, of the Auditor-General on the public investments; and
- (c) to examine, in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

Under Standing Order 206(7), the Public Investments Committee is prohibited from examining any of the following:

- (a) matters of major Government policy as distinct from business or commercial functions of the public investments.
- (b) matters of day-to-day administration; and,
- (c) matters for the consideration of which machinery is established by any special statute under which a particular public investment is established.

Hon. Members, in this regard, I find that, when examined in totality, the matter in question at this point falls into two categories. On one hand, the Kenya Airports Authority is a State corporation that is 100 percent owned by the Government. The PIC, is therefore, at liberty to procedurally invoke the provisions of Standing Order 206(6)(c) and examine whether the affairs of the Public Investments Committee made or being made by the KAA and whether they are being managed in accordance with sound financial, business principles and prudent commercial practices.

However, in doing so, the Committee ought to follow the usual procedure, particularly as guided in my Communication of 5<sup>th</sup> December 2013. In that Communication, I did guide that, and I quote: “Should the Committee intend to examine matters of procurement, I would expect them to order a special audit by the Auditor-General after being satisfied that the matter requires a special audit”. This means that, whenever the Committee requests for a special audit, the examination of the matters before the Committee is discontinued, until the special audit is undertaken and tabled in the House. This is informed by the universal dictum that, when a party asks another party to carry out forensic inspection or any other specialised task, then the work of the first party becomes *functus officio*. This means that, any further examination or even debate in the Committee on the same matters for which a special audit has been requested may vitiate or injure the process of the special audit.

In addition, it would be important to note that the PIC may also examine this matter if it was an audit issue or query arising from the examination of audited reports and accounts of the KAA or a special audit.

The second aspect of this matter regards the contention that, the policy aspects of the inquiry fall within the mandate of the Departmental Committee on Transport, Public Works and Housing. In view of the provisions of Standing Order 216(5) as enumerated earlier, the Departmental Committee on Transport, Public Works and Housing is at liberty to proceed and inquire into the policy aspects of the commercial arrangement between KAA and KQ.

Hon. Members, may I, at this juncture, inform the House that the Auditor-General has since submitted to me a report titled “Special Audit Report on the Proposed Privately Initiated Proposal (PIIP) Between Kenya Airports Authority (KAA) and Kenya Airways (KQ)”. The particular report was received in my office on 14<sup>th</sup> March, 2019, and I will be asking the Leader of the Majority Party to lay that Report on the Table of the House later during this sitting in keeping with the requirements of sections 39 and 49 of the Public Audit Act, 2015. Having perused the Report, it is evident that this matter is still at infancy.

However, the Auditor-General has raised several operational and policy audit issues as well as two financial audit issues. Upon tabling of the Report, the PIC will be at liberty to resume its inquiry on the matter, but the Committee must confine itself to the financial and expenditure aspects of the reservations of the Auditor-General as well as omissions and or commissions on the part of the Kenya Airports Authority. As for the Departmental Committee on Transport, Public Works and Housing, the Committee is also at liberty to proceed with its inquiry. The Departmental Committee must confine itself to matters of policy, human resource, compliance with due process of law and generally addressing any issues of concern to the people as contemplated under Article 95 of the Constitution.

Hon. Members, the third matter requiring my determination is whether the Auditor-General can audit the merits of policy issues of Government. Those who were in the 11<sup>th</sup> Parliament may recall that, this matter was a subject of heated debate during consideration of the Public Audit Bill, 2014 in both Houses, which is today the Public Audit Act (No.34 of 2015). Indeed, when passing the Bill, Parliament did include section 42, which provided that, and I quote:-

s.42. “Notwithstanding the provisions of this Act, in an examination under this Act, the Auditor-General shall not question the merits of a policy objective of the National Government or county government or any other public entity.”

The foregoing was the prevailing position in law until 16<sup>th</sup> February, 2018, when the High Court did make a pronouncement in so far as the application of that section was concerned.

Hon. Members, in Petition No.388 of 2016 (Transparency International Kenya vs The Attorney-General and Two others) the learned Judge, Hon. E. Chacha Mwita, in his judgment held that, a statute could not impose conditions on the performance of the Auditor-General's functions where the Constitution did not impose them. Section 42 of the Public Audit Act, 2015 was, therefore, declared a violation of Article 10 of the Constitution which provides for national values and principles of governance which include integrity, transparency and accountability and also Article 201 of the Constitution which provides for financial openness. This decision has implication on the business of the House and its Committees, in so far as the scope of requests for special audit is concerned.

In this regard, based on this finding by the Hon. Judge, I need not dwell on the question as to “whether the Auditor-General is excluded by law from examining a government policy” any further. I nonetheless remind the House that, in the last two years, the Auditor-General has submitted several audit reports to this House touching on performance and policy issues. These reports include the following-

- (a) Performance Audit Report from the Office of the Auditor-General on the provision of Mental Healthcare Services in Kenya for the period December, 2017.
- (b) Performance Audit Report on the implementation of the National School Upgrading Programme by the Ministry of Education, Science and Technology for the period, March, 2018.
- (c) Performance Audit Report on Effectiveness of Measures put in place by Kenya Wildlife Services in Protecting Wildlife by the Ministry of Tourism and Wildlife for the period, June, 2018, and;
- (d) Performance Audit Report on Provision of Housing to Prison Officers in Kenya.

These reports, having been tabled, are now before the respective Departmental Committees for examination and consideration by the House. It, therefore, means that the Auditor-General is not precluded from dealing with matters of policy.

Hon. Members, I will now turn to the fourth issue of my consideration, which regards the procedure for requesting for a special audit from the Auditor-General. To address this issue, it is important that we revisit the core mandate of the Public Investments Committee as enumerated under Standing Order 206(6)(b), which is to examine the reports, if any, of the Auditor-General on public investments. Hon. Members, once again, I resume my seat to allow those Members to make their way in.

*(Several Hon. Members entered the Chamber)*

I resumed my seat to allow Members to come in but instead, they are just crowding at the door. You can do those things later, Hon. Members. I resume.

As we all know, the Auditor-General invariably submits audit reports on an annual basis. These reports are mostly post-mortem reports on a range of subject areas under which public funds have been spent. Nonetheless, Committees are not precluded from requesting the Auditor-General to undertake a special audit and submit reports thereof to the committees, as and when need arises. Indeed, the Public Investments Committees of successive Parliaments have always been alive to this reality and have carefully navigated the path of getting seized of investigation into allegations of misuse of public funds before the release of the reports on audited accounts.

Hon. Members, the established practice of the House is that a Committee may resolve to request the Auditor General to carry out a special audit and furnish a report to the Committee before the said Committee carries out further examination. Indeed, I have had the benefit of perusing the confirmed minutes of the 6<sup>th</sup> sitting of the PIC, which was held on 19<sup>th</sup> February, 2019, during which the Committee resolved as follows:

“The Office of the Auditor-General should conduct a special audit on the proposed concession arrangement with a view to establishing adherence to the relevant laws, the risks that KAA and the public face, if the takeover is

implemented and the procurement process for the services of the transaction advisor”.

Hon. Members, it is evident from the foregoing that the Committee did fairly follow the procedure in requesting for the special audit. However, whereas we applaud the PIC for bringing this matter to the attention of the House by way of a progress report, it is important that I also address the basis of any future requests for special audits, going forward.

Hon. Members, as you are aware, Article 229 of the Constitution establishes the Office of the Auditor-General as an independent office subject only to the Constitution and law and not subject to direction or control by any person or authority. In light of this Article, as read together with Article 249(2) as well as the reasoning of the court in declaring Section 42 of the Public Audit Act 2015 unconstitutional, whenever Committees desire to benefit from the specialised expertise of the Auditor-General by way of special audits, they must be conscious that they cannot order or compel the Auditor-General to do so. What steps, therefore, should a committee follow to seek for a special audit from the Auditor General? In absence of parameters in the Public Audit Act, 2015 and our Standings Orders, as your Speaker, I will resort to invoking the provisions of Standing Order No.1, which provides as follows:

“In all cases where matters are not expressly provided for by these Standing Orders or by other orders of the House, any procedural question shall be decided by the Speaker.”

Hon. Members, I therefore give the following guidance with respect to the manner of requesting for special audits:

A committee wishing to request for special audits from the Auditor-General shall-

- (a) indicate how the matter came before the Committee. This is to be supported by, amongst others, the agenda and the minutes of the Committee;
- (b) indicate any preliminary information or evidence adduced before the Committee on the matter to justify the request and outline the compelling issues that have necessitated request for a special audit;
- (c) indicate whether the Committee has confirmed the absence of any other audit report on the same matter and absence of an ongoing one;
- (d) state the nature of the audit requested, e.g. compliance audit, financial or value for money audit, operational audit, ordinary investigative audit;
- (e) state the specific matters to be covered in the audit requested. The Committee is to be specific and accurate where there are names of people, places, projects or programmes; and finally,
- (f) state the preferred timeline within which the report is required by the Committee.

Hon. Members, in keeping with the provisions of Standing Order 206(7)(c), a special audit shall not be sought on any matter for which machinery is established by any special statute.

Further, it is inconceivable that the attention of the Speaker on a special audit by a Committee of the House would only be drawn at the point of tabling of its report. The Clerk is henceforth required to satisfy himself without exception that any request for a special audit complies with these guidelines before conveying the request to the Auditor-General. Thereafter, the particular Committee shall not be properly seized of the matter until the special audit is tabled before the House, unless the House is in recess, in which case the Speaker may refer the report to the Committee and inform the House upon resumption. May I hasten to add that, the

nature of the final report of the Auditor-General shall determine the Committee to which the report is to be referred to, notwithstanding that a particular committee made the request. These guidelines take effect immediately.

Hon. Members, the fifth matter requiring my determination is whether the Committee is at fault to make a progress report to the House and what is the House expected to do with such a report. I will address this issue together with the question requiring my attention, which is whether it would be procedurally in order for the House to be moved on a motion to debate the particular Progress Report of the PIC as laid on the Table of the House on Wednesday, February 27, 2019, given that the report is interim.

Hon. Members, the progress report of the PIC on inquiry into the proposed takeover of Jomo Kenyatta International Airport (JKIA) by Kenya Airways (KQ), which was laid on the Table of the House by the Chairperson on Wednesday, 27<sup>th</sup> February 2019 was meant to inform the House that, among other issues, the Committee was seized of the matter and that it had requested for a special audit. The widely held meaning of a progress report is “an interim report on progress made to date on a job, project, etc”.

Indeed, a progress report is an information report, usually prepared for several purposes, amongst them being to inform the House on salient issues awaiting completion of an inquiry and to keep the public updated on what is before a committee or schedule of activities so as to avoid speculation on a matter. Can we fault the Committee for informing the House at this stage? Certainly not.

According to Rule 177 of The Rules of Procedure and Conduct of Business of the Legislative Assembly of National Capital Territory of Delhi, “A Committee may, if it thinks fit, make a special report to the House on any matter that arises or comes to light in the course of its working, which it may consider necessary to bring to the notice of the Speaker or the House, notwithstanding that such matter is not directly connected with, or does not fall within or is not incidental to, its terms of reference.” This authority is further amplified by David McGee in the Third Edition of the Parliamentary Practice in New Zealand, which provides that “a committee has used a special report to the House to announce that it had initiated a major inquiry”. What is the House then supposed to do with such a progress report? Hon. Members, in discussing interim or progress reports, the Fifth Edition of the Australia House of Representatives Practice notes the following:

“This procedure – of interim report – provides a cost and time-effective way for a committee’s views to be placed before Parliament, but should be used with care, as the committee could leave itself open to criticism that some community, government, or interest groups have been excluded from the process. In addition, the committee runs the risk that its conclusions and recommendations could be based on incomplete or incorrect information.”

Hon. Members, further, Robert’s Rules of Order, an authority in Parliamentary Procedure applied in State Assemblies in the United States of America (USA) states the following with respect to a report containing only information which is essentially a progress report:

“Even if a report contains only an account of work done or a statement of facts or opinion for the assembly’s information, it should be in writing. However, apart from filing such report, no action on it is necessary and usually none should be taken.”

In addition, the Canadian House of Commons Procedure and Practice notes that:



"Since the early 1990s, a number of take-note Motions have been debated in the House or in Committee of the Whole. These debates solicit the views of Members on some aspect of government policy and allow Members to participate in policy development, making their views known before the government makes a decision. "

In our case, take-note Motions are similar to the usual Motions for noting.

Hon. Members, you will indeed recall that last year on 5<sup>th</sup> July 2018, I allowed the Departmental Committees on Trade, Industry and Cooperatives and that of Agriculture and Livestock to present a progress or interim report on their Inquiry into the Alleged Importation of Illegal and Contaminated Sugar in the Country.

However, that particular progress report was made through a Statement to the House- and rightly so. The progress report was not debated by the House. Nonetheless, I allowed a few Members to make comments on it and thereafter allowed the Committee to resume its work with an extended deadline. In the same vein, the Public Investments Committee (PIC) will automatically be granted Committee leave to resume its sittings and consideration of the subject matter, once the special audit report of the Auditor- General is tabled in the House as directed by the Majority Whip.

As cited from the three legislative authorities, a progress report is seldom discussed. If so, it has to be debated without calling the House to make a resolution, give orders or directions. A resolution based on an interim report may certainly prejudice the outcome of the actual inquiry. Moreover, it should not be lost to the House that, a Motion governed by Part XII of our Standing Orders and which seeks a resolution of the House ultimately ends with a question being put, the result of which may be that "Ayes" or the "Nays" have it. This begs the question: What would be the procedural implication if the "Nays" had it (for instance), meaning that the progress report is rejected? Obviously, such a decision, which is probable in a parliamentary set up would render worthless the incomplete work of the Committee and any related special audit. It is for these reasons that most Commonwealth legislatures have resorted to only allowing comments on progress reports or statements, instead of debate upon a Motion. Allowing comments is meant to accord the Committee an opportunity to inform the House on the progress of the inquiry before it, while cushioning the remaining work from possible criticism, prejudices and binding directive that would arise, if the House was to debate the report by way of an ordinary Motion.

In summary, Hon. Members, I wish to guide the House as follows:

(1) That, I have established that the commercial arrangement between the Kenya Airports Authority and Kenya Airways regarding the Jomo Kenyatta International Airport is a privately initiated investment proposal under the Public Private Partnership Act, 2013 which is still at the initiation stage. This is evidenced from the information provided by the Chairpersons of the PIC and Departmental Committee on Transport, Public Works and Housing, as well as the Report of the Auditor-General submitted to my office on 14<sup>th</sup> March, 2019.

(2) That, the Leader of the Majority Party or another Member designated by the House Business Committee (HBC) may hereupon proceed to lay the Report of the Auditor- General titled "Special Audit Report on the Proposed Privately Initiated Proposal (PIIP) between KAA and KQ", which was submitted to my office on 14<sup>th</sup> March, 2019. Upon tabling, the Report will stand referred to the PIC which shall, in its examination of the matters contained therein, confine itself to the financial and expenditure aspects of the reservations of the Auditor-General, as well as omissions and/ or commissions on the part of the KAA.

(3) That, as for the Departmental Committee on Transport, Public Works and Housing, it is at liberty to proceed with its inquiry. However, the Committee will confine itself to matters of policy, human resource, compliance with due process and the law, benefits to the society and the nation and generally addressing any issues of concern to the people of Kenya as contemplated under Article 95(2) of the Constitution.

*(Applause)*

The Committee is expected to offer oversight on the stages of implementation contemplated to complete the process and be apprising the House on the progress of the matter, should it proceed as initiated. This is also in tandem with my letter on 21<sup>st</sup> February 2019 to the Chairperson of the Committee;

(4) That, since the investment proposal is at its infancy, it may in due course, become inevitable for Parliament to be involved, particularly if there are any legislative interventions required as part of the process. In this regard, the House ought to exercise restraint at the current initial stages, so as not to become prejudiced should the legislative intervention stage become inevitable.

(5) That, henceforth, any Committee of the House which is desirous of benefiting from the specialised expertise of the Office of the Auditor-General by way of requests for special audits must comply with the parameters contained in this Communication. The Auditor-General, in considering the request, may accede to the request, based on his reasoned judgment and inform the Committee through the established channels.

(6) That, notwithstanding my earlier approval of the Notice of Motion in respect of the Adoption of the progress Report of the PIC on The Inquiry into the Proposed Takeover of JKIA by KQ, laid on the table of the House by the Chairperson on Wednesday, 27<sup>th</sup> February, 2019 I am constrained not to allow the Motion to proceed. This is because, by doing so, the House will be offending its own established practice and indeed the practice in many other comparative jurisdictions regarding treatment of progress reports. I will however allow the Chairperson of the Committee to present his Report to the House by way of a Statement as contemplated under Standing Order 44. In so doing, he is expected to speak to the progress of the matter before the Committee, which is essentially the substance of the said Report.

(7) That, following the Statement of the Chairperson of the PIC, I will allow other Members of the House to make comments on the progress Report.

*(Applause)*

This is in keeping with the precedent set by the House on Thursday, 5<sup>th</sup> July, 2018, when the Chairperson of the Departmental Committee on Agriculture and Livestock and the Chairperson of the Departmental Committee on Trade, Industry and Cooperatives presented a joint progress Report on the Inquiry into Alleged Importation of Illegal and Contaminated Sugar in the Country, which was an active matter before the joint Committee. This practice is, however, distinct from the procedure contemplated under Standing Order 200 providing for the half-yearly progress reports which are to be submitted to the Liaison Committee and thereafter tabled in the House.

(8) Since a progress report is intended for information and to elicit comments without resolution, and may not be amended, the proposed amendment by the Chairperson of the Departmental Committee on Transport, Public Works and Housing to the subject progress report is also inadmissible.

Finally, I wish to laud the Public Investments Committee for bringing the matter to the attention of the House and the country. Nevertheless, even as the two Committees resume the examination and the House makes comments on the progress report, may I caution the two Committees and the House that in examining this investment proposal, you must be conscious that it is at its infancy stage. All of us must uphold high standards, be mindful of the strategic interests of the nation and the welfare of the present and future generations. It behoves all of us to exercise sobriety, patriotism, and reasonable confidentiality as servant who have been called to the performance trust in this Republic.

The House is accordingly guided. Thank you, Hon. Members.

*(Applause)*

I will allow the Whip of the Majority Party, at this stage, to table the Paper.

### PAPER LAID

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Speaker. Allow me to thank you for the elaborate Communication to the House.

Hon. Speaker, on behalf of the Leader of the Majority Party, and in consultation with the Deputy Leader of the Majority Party, I beg to lay the following Paper on the Table of the House today Thursday, 21<sup>st</sup> March 2019:

Special Audit Report of the Auditor-General on the proposed privately initiated investment proposal between Kenya Airports Authority and Kenya Airways.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, let us proceed to the next order. It is something simple which requires to be done very quickly.

### BILL

#### *Second Reading*

#### THE DIVISION OF REVENUE BILL

*(Hon. Kimani Ichung'wah on 20.3.2019 - Afternoon Sitting)*

*(Debate concluded on 20.3.2019 – Afternoon Sitting)*

**Hon. Speaker:** Hon. Tuwei, you do not do that. The Member for Tiaty is an expert. Debate on this Bill was concluded yesterday and what remained was putting of the Question. Since the House has quorum, I proceed to put the Question.

*(Question put and agreed to)*

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

**Hon. Speaker:** Next order!

## MOTIONS

### INQUIRY INTO THE KENYA-SOMALIA BORDER SECURITISATION PROJECT

THAT, this House notes the Report of the Departmental Committee on Defence and Foreign Relations on the Status of the Kenya-Somalia Border Securitization Project, laid on the Table of the House on Tuesday, November 20, 2018.

*(Hon. Major (Rtd) Bashir S. Abdullaih on 12.3.2019)  
(Debate concluded on 19.3.2019)*

**Hon. Speaker:** Hon. Members, debate on this Motion was concluded, and I proceed to put the Question.

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Members, before we move to the next Order, allow me to recognise the presence, in the Public Gallery, of students from Nyakoiba Secondary School, Bomachoge Chache Constituency, Kisii County. They are welcome to observe proceedings of the House. Let us proceed.

### ADOPTION OF REPORT ON IMPROVEMENT OF MEMBERS' SERVICES/FACILITIES

THAT, this House adopts the Sixth Report of the Select Committee on Members' Services and Facilities on Improvement of Members' Services and Facilities, laid on the Table of the House on Tuesday, March 19<sup>th</sup> 2019.

**Hon. Speaker:** Hon. Members, upon consultation with the Chair of the Committee and the leadership of the House, the business appearing on the Order Paper as No.12 is dropped from the Order Paper until further notice.

*(Motion withdrawn)*

*(Loud consultations)*

Consult the Chair of the Committee and the leadership. The Business is taken out of the Order Paper in the interest of the House.

Proceed, Hon. Members.

**COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

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

**IN THE COMMITTEE**

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

**THE DIVISION OF REVENUE BILL**

**Hon. Chairman:** Order Members! You need to be around because we need the quorum. Kindly, let us stay in the House. This will take very few minutes.

*(Clauses 3, 4 and 5 agreed to)*

*(Schedule agreed to)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Chairman:** That marks the end of this Bill. I call upon the Mover to move reporting.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, I beg to move that the Committee do report to the House its consideration of the Division of Revenue Bill, National Assembly Bill No.11 of 2019 and its approval thereof without amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House Resumed)*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Soipan Tuya) in the chair]*

**REPORT**

## THE DIVISION OF REVENUE BILL

**Hon. Moses Cheboi** (Kuresoi North, JP): Hon. Speaker, I beg to report that a Committee of the whole House has considered the Division of Revenue Bill (National Assembly Bill No.11 of 2019) and approved the same without amendments.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Mover.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the said Report.

I request Hon. Lessonet to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I will defer putting of the Question on this one until it comes back on the Order Paper.

Next Order.

**MOTIONS**RATIFICATION OF REVISED CONSTITUTION OF THE  
AFRICAN CIVIL AVIATION COMMISSION

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Is that you?

**Hon. David Pkosing** (Pokot South, JP): Yes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): On what grounds?

**Hon. David Pkosing** (Pokot South, JP): Since I am on record, I do not want to state the grounds because I am wearing a different cap.

Thank you for giving me this opportunity.

I beg to move the following Motion:

THAT, this House adopts the Report of Departmental Committee on Transport, Public Works and Housing on its consideration of the Revised Constitution of the African Civil Aviation Commission (AFCAC) for Ratification, laid on the Table of House on Tuesday, 12<sup>th</sup> March 2019, and pursuant to section 8 of the Treaty Making and Ratification Act, 2012 approves the Ratification of the Revised Constitution of the African Civil Aviation Commission.

As I move, I would like to mention that the constitution, which we are being asked to approve, has been structured in four sections.

Section one has the following Articles: Article 1, which deals with definitions and what you may call prescriptions. Article 2 deals with establishment of AFCAC. The AFCAC was established in 1969. It is relatively an old institution. Article 3 deals with objectives, which I will go deeper into in a short while. Article 4 deals with the functions of the AFCAC, but I will

delve into the details in a short while. Article 5 deals with membership. It is very important at this level to mention that the membership of the AFCAC is open to all African states. Each member state shall enjoy equal rights. So, there is no state which is bigger than the other in terms of this aviation institution.

Article 6 deals with legal capacity of the institution and article 7 deals with the privileges of the institution. Article 8 tells you where the headquarters is. It will be good for me to say that AFCAC headquarters is in Dakar, Senegal. Being an offshoot or a subset of the African Union (AU) whose headquarters is in East Africa, Ethiopia, it is good that AFCAC headquarters be in Dakar, Senegal.

Section 2 of the Constitution gives you a number of things. One, it talks about the organ of the AFCAC. How is AFCAC structured to work? It works in three sections. One is the plenary. Plenary is for the member states, just like this House works. Two, it has a bureau, which is something like a board that will guide the work of the institution. Then it has a secretariat. Those are the people who run the day-to-day activities.

This section has the following sections: Article 10 gives you the details in terms of the plenary, bureau and the secretariat and Article 12 gives you the details of the bureau, which I have just summarised. Article 13 gives the functions of the bureau in details as you move forward. Article 14 talks about the secretariat and Article 15 deals with reports of the subcommittees of the air transport where AFCAC reports.

Section 3 of the constitution deals with international relations. It, therefore, means that AFCAC must work with other international organisations, not only in Africa, but all over the world. The details of that section are in Article 16, which deals with cooperation with other organisations.

Section 4 deals with financial matters. This is found in Article 17. It gives you the source of financial resources. This is from contributions from the member states to make it work. Article 18 will give you sanctions. If countries do not subscribe or fail to pay, they will miss the voting rights when it comes to that institution.

Article 19 gives you the details of how signatures of associations are entered into. Article 20 deals with transitions. Articles 21 and 22 deal with amendments.

In summary, that is the constitution of AFCAC, which this Parliament is being asked to approve.

The AFCAC is the African Union specialised agency mandated with coordinating civil aviation matters in Africa in cooperation with the International Civil Aviation Organisation and other relevant organisations and bodies involved in promotion and development of aviation. This is a much-regulated industry. It is a security industry and, therefore, in that regulation, you require an institution like AFCAC to deal with the industry carefully and specifically. It was established in 1969, but the process of establishing the constitution, amendment of the constitution and lobbying other countries to adopt it was lengthy.

The Commission at the present is governed by the constitution of 1969 when it was established, which does not satisfy continental realities of today. You know what we had in 1969. There are more planes at the moment in Africa and particularly in Kenya. We have more airports than before. Technology has changed and we have other corporations making the constitution of 1969 a little bit obsolete. That is why we are recommending that we change that constitution and use this new one.

The main objective of AFCAC is to foster compliance with international civil aviation organisation standards and recommended practices of the safety, security and environmental protection in civil aviation in Africa. This is very fundamental. When you look at aviation, there are no borders on air. That is why you require an institution that looks at Africa as one airspace. That is why AFCAC is fundamental for Africa and our country.

The second objective is to promote understanding on policy matters between the African Union, member states and states in other parts of the world. Other countries have their own equivalent of AFCAC. Therefore, in terms of air travel, it is important that we have our own institution as Africa that will be able to deal with other organisations all over the world. The world is becoming one and therefore we require this institution to take care of Africa in terms of airspace.

The third objective is to promote understanding on policy matters between the African Union member states and states of other parts of the world.

The other objective is to enhance efficiency and regularise transport industry among African states and the fourth objective is to formulate and enforce appropriate rules and regulations that give fair and equal opportunities to all stakeholders and promote fair competition. As I said earlier, this is a much-regulated industry. Therefore, for Kenya to have equal rights, you need an institution like AFCAC, which is a one unified African institution to say that the rights that are being given to any other country in Africa are equal to the rights being given to airlines in this country.

The revised constitution of the African Civil Aviation Commission provides for the establishment of AFCAC whose functions include undertaking studies. I talked about the objectives earlier. The functions include undertaking studies on air transport, ensuring compliance with international civil aviation standards, advising member states on civil aviation matters, coordinating the development or plans in the field of aviation infrastructure and encouraging and supporting the creation of autonomous civil aviation entities. Why do you need an autonomous civil aviation entity? It is because of air safety. When it comes to air transport, safety on air comes as number one and you know what happened.

Therefore, AFCAC, mandated to carry out studies, should come up with new technologies and new measures in terms of safety when our people will be travelling all over the world. That is why it is critical that at this stage and time, we reform the requirements of 1969 to the current requirements.

The revised constitution of the African Civil Aviation Commission further provides for the creation of the organs of the Commission that I mentioned earlier, in passing. They include the plenary, the bureau and the secretariat. In terms of the constitution, the plenary shall be composed of dully accredited representatives of the member states responsible for aviation. The bureau shall be responsible for convening the plenary. The plenary is like Parliament that brings one person from every country that is accredited all over Africa. When they meet, they create the bureau. The bureau shall be composed of the president of the Commission and five vice-presidents elected by the plenary in accordance with the African Union geographical representation formulae. What I mean is that you must have somebody from North Africa, West Africa, East Africa, Central Africa and South Africa. That is how the composition of the bureau will be. The bureau, for simple understanding, is like a board that will be running the day-to-day



activities of AFCAC. They will sit in Senegal. This will be done by the plenary of all the countries that will come together.

The bureau will be assisted by the secretariat, which will be the administrative arm of the Commission. It shall be headed by a secretary-general and assisted by competent staff for the smooth functioning of the AFCAC. That will be the work of the bureau. It will have its staff that will be headed by a secretary-general. The staff will be the technical people. I am assuming that when we ratify this, as a country, we will also have our own person. We can start campaigning to have somebody from our country to lead AFCAC.

Hon. Temporary Deputy Speaker, the revised constitution that I have presented to you provides for the need for cooperation and collaboration with other international organisations on matters of mutual interest. The revised constitution also provides that the Commission shall be funded by contributions made by the member states in accordance with the scale assessment determined by the plenary. The countries that will come together will agree on how to run AFCAC. Will they run by subscription? If that will be the case, they will have to agree on how much each country will pay for running AFCAC. That will be the source of income for the day-to-day running of the institution.

The revised constitution of the African Civil Aviation Commission states that any member state that fails to honour its financial obligation to the Commission for two years shall forfeit its right to vote at the plenary or to present any candidate to any elective position. There are six elective positions, namely, the president and five vice-presidents. It means that if you will not be up to date with payments, as a member state, you will have no reason to run the institution. That will be a sanction or a way of motivating countries to pay. I am assuming that it will be a responsibility of all countries that are members of AFCAC to pay to run the institution. Air transport is an important subject that has to be considered. It moves people all over the world in a short time. Therefore, that will be a motivation for member states to make their contributions to the Commission.

Finally, the revised constitution of the AFCAC gives allowance for amendments and encourages negotiations as means of dispute resolution. Like any other law, for example the Constitution of Kenya, it must end by giving opportunities and ways of amending it. There is a procedure for amending it. It is provided for in the constitution. The question that comes to us is whether the revised constitution of the AFCAC followed the right procedures in accordance with the Treaty Making and Ratification Act, 2012.

The ministry, in its explanatory memorandum of the submission of the revised constitution of the AFCAC to Parliament, noted that Kenya is already a party to the 1969 constitution of the African Civil Aviation Commission. Therefore, the ratification of the revised constitution is a logical sequence for continuity. The Ministry of Transport, Infrastructure, Housing and Urban Development confirmed to the Committee that the revised constitution did not propose any amendments to our own Constitution, and its objectives promote constitutional values provided for in the Constitution. That is a requirement under the Treaty Making and Ratification Act. You must look at whether the treaty offends any part of our law and particularly our Constitution. This Committee would like to confirm to the House and the people of Kenya that the proposed changes in this constitution are not in contradiction with our own Constitution and laws. That has been confirmed by the memorandum submitted to Parliament by the ministry.

Hon. Speaker, the ministry further noted that the public funds to be incurred in implementation of this revised constitution would be catered for by the Kenya Civil Aviation Authority (KCAA), which has budgeted for this contribution. That is an important area that the people of Kenya and the House would like to know. They would like to know the source of funding. We want to assure the House that the ministry confirmed to us that the budgetary consideration is under the KCAA. We have no problem on that as it is within the provisions in following the Treaty Making and Ratification Act of 2012.

The Committee made a newspaper advertisement on 4<sup>th</sup> December 2018, to facilitate public participation for this revised constitution as it is required in the Constitution. We invited the public to make written submissions on the proposed ratification of the revised constitution. It should go on record that the Committee did not receive any submission. Our understanding was, if we did not receive any adverse memorandum on this revised constitution, then it follows that the people of Kenya agree with the proposed changes. That informed our decision.

Hon. Speaker, the ministry also appeared before the Committee. They are in support of this treaty, particularly the revised constitution. They look forward to its approval by the House as quickly as possible. This is because Kenya is a serious player in the aviation industry. As the Departmental Committee on Transport, Public Works and Housing, we support review and restructure of the aviation sector by the Executive. Kenya is losing out on competitiveness. During the discussion on the aviation industry, which you ruled on earlier, many people were telling us to go for benchmarking in Rwanda. I was shocked that we are now comparing Kenya to Rwanda. How do we benchmark in Rwanda on aviation issues? Our economy is doing well. How then can we go to small countries to benchmark? They should be coming to benchmark in Jomo Kenyatta International Airport (JKIA). There is an area in aviation where we have gone wrong. Reviewing the aviation sector is almost compulsory because we are losing competitiveness to Ethiopian Airlines and the Emirates. People are now looking forward for benchmarking in small countries. That is not a good sign on our side.

This is the right time to review our aviation sector. I want to assure you and the House that my Committee is up to date on these issues. We are happy with your ruling that gave us a clear mandate. There was a bit of confusion between the Public Investments Committee (PIC) and the Departmental Committee on Transport, Public Works and Housing. Your ruling was Solomonic. You rightly put aviation, policy matters, day-to-day administration like the proposed Privately Initiated Investment Proposal (PIIP) between Kenya Airports Authority (KAA) and Kenya Airways (KQ) under the Departmental Committee on Transport, Public Works and Housing. We will deliver to the best of our ability.

Hon. Speaker, part of the review of the aviation sector is this revised constitution that I am presenting. When this revised constitution comes into place, it is going to update the systems. Aviation industry is run by technology. The technology of 1969, when this constitution was coming into effect is obsolete. We are now in 2019. Even this House keeps reviewing its technology. Kenya must lead from the front. If we do not position ourselves in Africa in other sectors, we better do so in the aviation industry. I plead the House to approve the revised constitution of the African Civil Aviation Commission.

As I conclude, I wish to state that the Committee, in its consideration of the revised constitution of the African Civil Aviation Commission, relied on procedure set out in Section 8 of the Treaty Making and Ratification Act No.45 of 2012, which provides for consideration of

treaties by the National Assembly. Therefore, the Committee recommends that the House adopts the report and subsequently approves the ratification of the revised constitution of the African Civil Aviation Commission.

Hon. Speaker, I have very able Members in my Committee. We have moved with speed on this. I want to thank my Committee for giving me an opportunity to make a presentation on their behalf.

I beg to move and ask Hon. Mugambi Rindikiri to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Mugambi Rindikiri.

**Hon. Mugambi Rindikiri** (Buuri, JP): Thank you, Hon. Temporary Deputy Speaker. My chairman has alluded to the deliberation of the Committee, specifically the benefits that Kenya is going to make by being part of the African Civil Aviation Commission. As a result of this, Kenya is going to be part of the International Civil Aviation Organisation. Kenya cannot learn on its own. We must be part of the world decision-making as far as aviation matters are concerned. We must gain from the benefit of the capacity that the International Civil Aviation Organisation has in terms of safety, security and economies that surround air transport. If we do not ratify the revised constitution of the African Civil Aviation Commission, it will be expensive on our part. Similarly, handling aviation matters is expensive, in terms of time and other logistics. Kenya, and Africa at large, do not have capacity to conduct research studies as far as air transport is concerned. Based on this and what the Chairman has said, we stand to gain a lot by ratifying the revised constitution of the African Civil Aviation Commission.

I beg to second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us start with the Whip of the Majority Party, Hon. Washiali.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support and congratulate the Chair of the Departmental Committee on Transport, Public Works and Housing for moving the Report on the ratification of the revised constitution of the African Civil Aviation Commission, which was tabled in the House on 12<sup>th</sup> March 2019 by the Chairperson of the Committee, Hon. David Pkosing.

As the Chair stated, the revised constitution of the African Civil Aviation Commission was developed pursuant to the operational challenges encountered with the application of the Commission's 1969 constitution. The 1969 constitution is the one that we are revising. From 1969, it is 50 years ago. While I was looking at this Report, I think 50 years is a very long period. Maybe some of those who formulated this constitution that we are currently revising may not be existing out of old age. A lot of time has lapsed since the 1969 constitution was ratified and as we all know, advancement in years brings about advancement in technology and infrastructure. It is, therefore, necessary that the constitution of the African Civil Aviation Commission be updated so as to achieve its realistic implementation.

The revised constitution establishes the African Civil Aviation Commission as an organ of the AU. The functions of the Commission include development of collective arrangements to secure the necessary resources for promotion of international civil aviation, to examine specific problems which may hinder development and operation of the African civil aviation industry,

and take corrective measures to coordinate the election of African states into the International Civil Aviation Organisation as well as African experts into the Air Navigation Commission. They also include ensuring advocacy and defence of common positions of member states at international forums relating to civil aviation.

The revised constitution also establishes the structures for the operations of the Commission. Unlike the previous constitution, this revised constitution has a plenary, separate bureau and secretariat, which shall harmonise all functions within the Commission. The constitution further provides that the headquarters of the Commission is currently in Dakar. The previous constitution that we are revising - and this was elaborately alluded to by the Chair - says that the Commission should be in Dakar, Senegal. I think that was very unfair for other member states. That is why the revised constitution gives Kenya and other East African countries an opportunity to host this secretariat.

Hon. Temporary Deputy Speaker, I do not want to speak much. Permit me to conclude by saying that the ratification of the Protocol and its subsequent implementation will ensure that Kenya is at par with the rest of the world in as far as the civil aviation sector is concerned. This is crucial towards the development of infrastructure in the country since air transport is an enabler to achieving economic growth and development. It will also facilitate integration into the global economy and provide vital connectivity on the national, regional and international scale.

I want to end there and urge Members who have had an opportunity to look at this Report to support this Motion by the Chair of the Departmental Committee on Transport, Public Works and Housing.

I, therefore, beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Next is the Member for Suba North, Hon. Odhiambo Akoth.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. I wish to thank the Committee for this Report and also take this opportunity to support. In supporting, I want to say that I am very happy I sponsored the Treaty Making and Ratification Act, which has enabled Members of Parliament to know what treaties the country is getting involved in. Through Parliament, we are then able to know whether the treaties that the country is getting into further our interests as a country.

I wish to indicate that our role as Members of Parliament under the Treaty Making and Ratification Act is to make sure that we are not just conduits for treaties. Sometimes I get very perturbed when I see whenever we deal with international treaties that Members do not have a lot of interest yet we need to interrogate treaties in the same manner that we interrogate other pieces of legislation. Under Article 2(6) of the Constitution, every treaty that has been ratified by Kenya becomes part of the laws of Kenya. So, if we let treaties pass without interrogating them, then it means we are passing laws without interrogating their content. So, sometimes it is a bit disheartening when you see that Members do not really take a lot of interest when dealing with treaties, but we take a lot of interest in other pieces of legislation when actually once they pass here and then they get ratified, they gain the status of law in the country.

One of the things I would have hoped to hear from the Chairman of the Committee, because we are actually benchmarking these treaties against our own Constitution, is on the structure of the bureau, the composition by gender, youth inclusion and inclusion of persons with disabilities. That is a standard that we have placed in our Constitution, so that if you find a treaty

that does not conform to that, then we should be advising Kenya that we ratify, but with reservations. My challenge is that a lot of times the treaties pass and we use this as a conveyor belt. I have never seen a situation where we advise the relevant ministries that some of the treaties are not conforming. We really cannot say that all of them are conforming. The Chair did not speak to that and I would want that he really looks at it, so that if it does not conform in that sense, then we can advise the country to ratify, but with reservations on that specific article.

I am glad the constitution of AFCAC that has been brought is seeking to harmonise civil aviation in Africa. I have travelled in Africa a lot and my challenge is the travel within Africa has always been a big problem.

Hon. Temporary Deputy Speaker, I travel in Africa a lot. My challenge is that traveling within Africa is always a real big problem. For example, I get challenges when I want to go the East Africa and West Africa. If I want to travel to West Africa, I have to go to Europe many times in order to go there. Even though we are one continent, we have not yet embraced each other and liberalised such that we are able to make travelling easy. We have not embraced the culture of Pan Africanism. It is very interesting because language still divides. We are still separated by the concept of colonialism. The people who were colonised by the French relate more with the French and the ones who were colonised by the “English” relate more with the “English”. It replicates itself in everything. Whenever we attend the international women conferences, it gets amazing sometimes. The meeting does not start for almost one hour because we debate whether people will speak in French, English or Arabic.

I find the President of Rwanda very progressive sometimes in the sense that people in Rwanda are now learning French, Kiswahili and English. Why are they doing that? They are doing that so that we can embrace our Pan Africanism. One of the things that I wish to see change in our country is to compel every school to teach French and English. The medium of instructions in our school is mother tongue. I do not know whom I can communicate with in Luo or Kisuba in Zimbabwe where I am married. We need to have progressive minds because these are artificial barriers that affect the way we communicate and engage intra country.

Hon. Temporary Deputy Speaker, I was a Member of the Pan African Parliament (PAP). I can say how I get disappointed with our African ways of doing things. For the five years I was in the PAP, we debated about giving it legislative power. Otherwise, it is basically a talk show now. This kind of Constitution would then find its way to the PAP where we would be setting standards and harmonising laws from an African perspective. Unfortunately, I do not know who bewitched us in Africa that we must waste time in everything. We want to do work that can be done in one minute in four hours.

Before I came to Parliament, my Deputy Director was a lady from Ireland. She used to get so discouraged because whenever we called for a meeting that began at 8.00 a.m, most people would come at 12.00 p. m and they did not apologise. They just said, “Hi, *sasa* or how are you?” as if it is normal to come six hours late. Unfortunately, I have been forced to adopt that culture because I hate waiting. To make her life easier because she used to get so depressed, we told her that in her country the train leaves at 8.21 a.m, but in Kenya the train leaves between 8.00 a.m and 12.00 a.m. We need to start re-thinking. If we want to make a change in Africa, we need to have a paradigm shift. If we want to be serious about change in Africa, we need to start thinking of the train leaving at 8.21 a.m.

I know the Chairman mentioned why Senegal is the capital of the African Civil Aviation Commission. I am lucky to have travelled to Senegal. I am glad that in my many travels in Africa, especially because of the language barrier, Senegal is one of the countries that I travelled to very recently. My perception about some of those countries from a few that I have travelled to in West Africa was that I was expecting some dingy place. Senegal is one of Africa's best kept secret. So, I am not shocked why it is the headquarters of the African Civil Aviation Commission. It is a challenge for us, as Kenya. I am glad the Chairman has said this.

I get embarrassed when I hear people saying that they are going to benchmark in Rwanda. Before the year I joined Parliament in 2006, I used to do consultancy in Rwanda. I used to travel to Rwanda very frequently. It was benchmarking us in virtually everything. I remember that one of the things that they used to do is to copy how we name institutions. When I went to Kigali, I would find that they have Kigali Institute of--- It mirrored Kenya. They looked up to us. When did the story change that we started looking up to Rwanda? Kenya needs to find its path or retrace it. One of the things that make us lose our path is corruption. Unless we deal with the vice in this country, we are headed in the wrong path.

I was joking yesterday when I was doing a pre-recorded programme on NTV. I told them that people are talking about some money that was found in a safe. I said that we always joke in Parliament about gold being in those safes. When I went back in my house, I was shocked that the gold is real. I thought it was propaganda in Parliament. The Director of Criminal Investigations (DCI) has a lot of work to do.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Millie, I will give you a minute to conclude.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. I want to urge that we depoliticise the issue of corruption. For those who, indeed, are found to be corrupt, let us not jump to our tribes. Someone has written online that one of the guys who was found in Barclays Bank, Queensway Branch comes from where my mother comes from. They went to the same school. Somebody told me online that this guy is being targeted because he is a Luo who has some money. He is not my tribe. My tribe is not corruption. If you are corrupt, carry your own cross. There is no tribe called "corruption". If the country does not retrace its path and go back to its correct one, we will find ourselves looking for small countries to emulate.

With those few remarks, I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Kevin Wanyonyi, the Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD – K): Hon. Temporary Deputy Speaker, thank you for giving me the opportunity to contribute. I want to take this opportunity to thank the Committee for highlighting this ratification. Most of the Members here were not born in 1969. Therefore, it is better for us to look at the Constitution of the African Civil Aviation Commission. The structure, as mentioned by the Chair, is very clear. He clarified it. I am, therefore, convinced that I should support the ratification of the Revised Constitution of the African Civil Aviation Commission because 1969 is a bit too far. Many things have changed.

Secondly, while seated here, I was waiting to hear the Chairman talk about the safety of our airspace. We know what happened in our neighbouring State. We lost very many people. I expected that the ratification of the Revised Constitution of the African Civil Aviation

Commission will also go with the Pan African States coming together to look at the safety of our airspace.

The other thing I want to talk about, and Hon. Millie has just mentioned it, is Pan Africanism. This is an opportunity for us, as Africans, to bring together airlines for people to work together. If you go to Jomo Kenyatta International Airport (JKIA) today, you will see very many airlines of other countries which are not in Africa. Most of them are from Europe, the far East and Asia. African airlines do not do business here and yet Nairobi is a business hub. I expect to see many of the African airlines, save the Kenya Airways and Ethiopian Airline. RwandAir is coming up very well but South Africa Airline is not seen around. Ratification of the constitution of this Commission is timely. Therefore, as Kenyans, we should ratify it without any problem so that we can encourage Pan Africanism, as my sister has just mentioned.

I am a very scared person having witnessed what happened in Ethiopia. I want to be assured that the ratification of the constitution of the Commission will go a long way to reassure us that the airspace in this country is safe so that we do not have that kind of thing happening again. It is very painful.

A month or so ago, we saw what happened to a helicopter that was flying at night. It crashed. As I speak, we do not know the fate of the pilot. The body has not been recovered. There is something wrong with the airspace in the country. Therefore, as we ratify this, let us look at some of the things that can make our airspace safe. The safest and fastest means of transport is flying, but most people are scared to fly because they are not sure of the airspace.

This organisation has a very good structure and its constitution is very clear as explained by the Chairman. Please, let us look critically at our airspace and see to it that it is safe. We should pass the Motion on ratification of the revised constitution of AFCAC and hope to align what happens in the airspace. There was a time I missed my flight and the plane crashed in the Aberdares. Some of the aircrafts we have are not safe to fly in bad weather.

Hon. Temporary Deputy Speaker, let us ratify this revised constitution and see the way forward. We should encourage other African States to come together and work as a team to have stronger and better aircrafts to do business.

I support the ratification.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Member for Masinga, Hon. Mwalyo Mbithi.

**Joshua Mwalyo** (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to air my views on the ratification of the revised constitution of AFCAC.

First, I thank the Departmental Committee on Transport, Public Works and Housing for coming up with the Report. It is very important to have a safe airspace. One of my hobbies is flying. I flew to many countries in the world even before I joined Parliament. It is the safest mode of transport. It is also the quickest mode of transport. It should be rectified and harmonised so that African countries can have a treaty of making laws especially on airspace safety, so that they can speak as one voice.

Air transport carries many people at once. It is not like a car that carries five people. If it is made safer according to the rules that will be set in the treaty and the way it is organised to remove old aircrafts, so that we have better ones with better engines to offer better service that

can move easily to eliminate aircrafts that are swayed by wind. It will be safer for those who fly all the time.

I support the Motion on the ratification. We need it like yesterday, so that we can speak in one voice. Kenya is ahead as far as the aviation industry is concerned. If you go to other African countries, you will find just one or two aircrafts at an airport. This is the case and yet here at the Jomo Kenyatta International Airport, especially from 3.00 O'clock, an aeroplane lands after every five minutes. It is very important for Kenya to be part of such a treaty because we have a lot of traffic at our airport. Many African countries and the world in general would like to do business with Kenya, especially if our airspace is a safe.

I support the ratification of the revised constitution of AFCAC. Thank you very much, Hon. Temporary Deputy Speaker.

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us hear the Whip of the Majority Party.

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Temporary Deputy Speaker, I rise under Standing Order No.53(3). Like I have said before, the business of Members of Parliament is not limited to debate in the Chamber. Many Members are involved in the business of the House including writing reports of various committees that eventually end up here. That is why we may not see as many Members in the Chamber as it is supposed to be.

I rise under Standing Order No.53(3) to request that you defer putting the Question on this Motion until another day.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, the request by Hon. Washiali is quite in order, but before we get to that, we will call upon the Mover to reply. Then I will let Hon. Washiali to prosecute the Motion again.

Hon. Chairman, we are calling you to reply because I do not see any more interest in Members to contribute.

**Hon. David Pkosing** (Pokot South East, JP): Thank you, Hon. Temporary Deputy Speaker. That means that they agree with us 100 per cent. I thank the Members for that.

What the Members raised in their contributions is fundamental. I want to follow what Hon. Millie Odhiambo, who is our senior, has said. I found her here. I admired what Millie used to do, but sometimes I did not. I do not want to say why I sometimes did not but what she said is very important. How can we go to benchmark in Rwanda? What has happened? Something has gone wrong in the country. That is why, as a Departmental Committee, on behalf of the House, we say that restructuring and reforming the aviation sector should be done today. In fact, it is long overdue. As we do that, we will also bring Hon. Millie to share beautiful insights to help the industry.



It is true there is a problem in air travel particularly between West Africa and ourselves. Maybe this will be put together in the review. We have looked at it. At this level, that debate cannot come, reason being that we are only creating an institution in the constitution. The institution is called AFCAC which will have a bureau, plenary, and the secretariat. Once the institution is there, employment of people will fall right within the constitution in terms of provision of the gender principles.

It cannot work the other way. Of course, as she said, once we adopt this, it becomes part of our laws, but it will not be different from other requirements of the Constitution. It will be a subset of the Constitution. It is not above the Constitution. So, I want to assure the Members who have those concerns that this will be taken care of.

Above all, I thank the Members who have contributed.

I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Washiali.

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Temporary Deputy Speaker, I beg for your indulgence. I was jumping the gun. I rise under Standing Order No.53(3) to request that we defer putting the Question until the following day. The reasons are very clear. The other day when we were debating the Adjournment Motion and given that debates are on our national television, this House was captured on social media as having very few Members. It is important to let the public know that the business of Members of Parliament is not only limited to the Chambers. There is a lot of parliamentary business going on in committee rooms. There are also other Members who have gone to seek for witnesses in other parts of the country.

As I speak, the Departmental Committee on Environment and Natural Resources in which I am a Member is on its way to Nakuru. The Members of the Committee will spend in Nakuru. In the morning they will visit the two dams that had issues. The issue of the dams was on the newspapers last week and the week before. That helps us to explain that the business of Members is not only limited to debating in the House. Of course, the threshold that we need to have in this House to put a Question is mandatory. That is why I am requesting that you defer the putting of the Question until the following day.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): That is in order. The putting of the Question on this Motion stands deferred until such time that the House Business Committee will bring it up again.

*(Putting of the Question deferred)*

Hon. Members, Order No.12 has also been deferred in an earlier communication. So, let us move on to the next Order.

ADOPTION OF REPORT ON INSPECTION VISIT OF  
THE NAMANGA ONE STOP BORDER POST

THAT, this House adopts the Report of the Committee on Regional Integration on Inspection Visit of the Namanga One Stop Border Post, Kajiado

County Held from 7<sup>th</sup> to 10<sup>th</sup> April 2018 laid on the Table of the House on Tuesday, November 13<sup>th</sup>, 2018.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have the Majority Whip.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. The Chairperson, Committee on Regional Integration has not given a report as far as moving this Report is concerned. I just wish that we step down this Motion until the following week.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Motion stands deferred.

*(Motion deferred)*

The next Order has already been dispensed with in an earlier Communication by the Speaker. So, we will move on to the next Order.

## BILLS

### *Second Readings*

#### THE COUNTY STATISTICS BILL

#### THE SALARIES AND REMUNERATION COMMISSION (AMENDMENT) BILL

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Temporary Deputy Speaker, if you allow me, I wish to speak to Orders No.15 and No.16. On the Report that we were given in the House Business Committee, we mentioned this lot. These two reports are amendments brought by the Senate Bills and the House Business Committee had scheduled the reports for debate next week because there was a report from respective committees that had not reached Table Office.

In the course of this weekend, we hope the relevant committee will finish with the reports because they are just amendments that were brought by the Senate. After that we will debate the two Bills on Tuesday, next week going forward.

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Orders No.15 and No.16 stand deferred until such a time when we will have them on the Order Paper.

*(Bills deferred)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members! The time being 5.36 p.m., this House stands adjourned until Tuesday 26<sup>th</sup> March, 2019 at 2.30 p.m.

The House rose at 5.36 p.m.