

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday, 9<sup>th</sup> May 2019

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

**Hon. Deputy Speaker:** Hon. Members, we do not seem to have the required numbers and therefore I order the bell to be rung.

*(Quorum Bell was rung)*

Order, Hon. Members, I think we have now have the quorum, therefore business will begin.  
Order Hon. Sabina Chege.

PAPERS LAID

**Hon. Deputy Speaker:** Majority Whip

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker, on behalf of the Leader of the Majority Party, I beg to lay the following Papers on the Table of the House:

Annual Public Debt Management Reports for the FY 2015/2016 and FY 2016/2017 from the National Treasury.

The Report of the Auditor-General and Financial Statements of the Kenya Power and Lighting Company Limited-Rural Electrification Scheme for the year ended 30<sup>th</sup> June, 2018 and the certificate therein.

The Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June, 2018 and the certificates therein:

- a) Kiharu.
- b) Runyenjes.
- c) Nyali.
- d) Kisauni.
- e) Buuri.
- f) Saku.
- g) Mbeere.
- h) Samburu West.

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- i) Likuyani.
- j) Bobasi.
- k) Embakasi West.
- l) Kitui Central.
- m) South Imenti, and
- n) Roysambu.

I thank you.

**Hon. Deputy Speaker:** Let us now have the Chairperson Departmental Committee on Health.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Health on the Status of the National Referral Hospitals.

I thank you.

**Hon. Deputy Speaker:** Next Order.

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON STATUS OF NATIONAL REFERRAL HOSPITALS

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Deputy Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Health on the Status of National Referral Hospitals, laid on the Table of the House on Thursday, 9<sup>th</sup> May 2019.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Next order.

### QUESTIONS AND STATEMENTS

**Hon. Deputy Speaker:** Under this particular Order, we do not have statements so we will go straight to Questions. And we will start with the Ordinary Question by the Member for Bonchari, Hon. Oroo Oyioka.

### ORDINARY QUESTIONS

*Question 220/2019*

#### MEASURES TO FACILITATE INTERNSHIP AND ATTACHMENT OPPORTUNITIES FOR KENYANS

**Hon. John Oyioka** (Bonchari, PDP): Thank you, Hon. Deputy Speaker. I rise to ask Question No. 220 of 2019. The Question is posed to the CS for Public Service, Youth and Gender Affairs.

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(i) Could the Cabinet Secretary state how many university and colleges graduates with degrees, diplomas and certificates have secured internship opportunities in the public service since the enactment of the National Employment Authority Act, No.3 of 2016?

(ii) What measures is the Ministry putting in place to facilitate Kenyans in securing internship and attachment opportunities in public service?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That one will be replied to before the Departmental Committee on Administration and National Security. I am just trying to look at whether you are just lucky, Hon. Oroi Oyioka, because you seem to most likely have been going to ask that Question in the afternoon. You are just a lucky one, because I have both the Order Papers. We will go back to what is supposed to be asked this morning. We will go to the Member for Matungu, Hon. Justus Murunga.

*(Hon. Justus Makokha spoke off record)*

Yours is coming up in the afternoon? Why are you having a problem asking it anyway and you are here? Just allow some consultations, Hon. Members.

*(The Deputy Speaker consulted with Clerks-at-the-Table)*

Hon. Murunga, yours is properly supposed to be asked in the morning. The little confusion is because you obviously know we would not have had the morning session today. It is something that came about as a result of a resolution that was made yesterday afternoon. So just ask it, because you have it and it will still be worked on. Hon. Murunga, please use the Dispatch Box microphone. Hon. Members, be assured by the time we come from recess all the mics will be working.

## QUESTION BY PRIVATE NOTICE

*Question 026/2019*

### INCREASED INCIDENTS OF INSECURITY IN MATUNGU CONSTITUENCY

**Hon. Justus Makokha** (Matungu, ANC): Thank you, Hon. Deputy Speaker, for giving me this chance to ask the following Question to the Cabinet Secretary for Interior and Coordination of National Government:

(i) Is the Cabinet Secretary aware of increased incidents of insecurity in Matungu Constituency of Kakamega County in the last few months where more than twelve (12) people have been killed including two students?

(ii) What measures is the Ministry putting in place to end these killings and improve security in Matungu Constituency?

(iii) Is the Cabinet Secretary further aware that Harambee police station in Matungu Constituency does not have a patrol vehicle to transport officers to areas of duty and emergency and that a number of police officers have served in the same station for more than seven years?

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Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Members, again I must clarify that we were not going to have the morning session. So you were actually right Hon. Murunga that your Question would have come in the afternoon. That is to say you are a techno savvy Member of Parliament; you are using your systems properly. All the same, you have lost nothing. In fact, you have gained, because it is going to hit the Committee earlier than it should have happened. That Question will be replied to before the Committee on Administration and National Security.

Now we go back to what is supposed to be for this morning. Member for Bonchari you have dispensed with yours. We will go to the Member for Keiyo North, Hon. (Dr.) James Murgor.

## ORDINARY QUESTIONS

### *Question 227/2019*

#### NON-PAYMENT OF RETIREMENT BENEFITS TO MRS. PHILOMENA CHEBIWOT CHEMITEI

**Hon. James Murgor** (Keiyo North, JP): Thank you, Hon. Deputy Speaker. I would like to ask Question No. 227 of 2019 to the Cabinet Secretary for National Treasury and Planning.

When will the Ministry pay the retirement benefits and gratuity dues to Mrs. Philomena Chebiwot Chemitei, of Personal No. 21617 who retired from Public Service in February 1990 and her last posting was the Ministry of Agriculture where she worked since 1971?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Thank you very much. That one will be replied to before the Departmental Committee on Finance and National Planning. We go to the next one by the Member for Samburu North, Hon. Lentoimaga.

### *Question 228/2019*

#### OPERATIONALISATION OF ADMINISTRATIVE UNITS IN SAMBURU NORTH CONSTITUENCY

**Hon. Alois Lentoimaga** (Samburu North, JP): Thank you so much, Hon. Deputy Speaker, for giving me this opportunity. I rise to ask Question No. 228/2019 to the Cabinet Secretary for Interior and Coordination of National Government.

(i) When will the Ministry operationalise the administrative units of Samburu North Constituency that were gazetted in mid-2017 that included two divisions, seven locations and 13 sub-locations?

(ii) Could the Cabinet Secretary consider urgently putting up the necessary physical infrastructure and fill up the attendant personnel positions including those of chiefs, assistant chiefs and other administration personnel for the said administrative units?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Now I will go to the Member for Yatta, Hon. Mutavi Kilonzo.

**Hon. Charles Kilonzo** (Yatta, Independent): Hon. Deputy Speaker, can I assume we are in the afternoon and go ahead to ask the Question, which I would be very comfortable with?

**Hon. Deputy Speaker:** What assumptions do you intend to have for us to be comfortable?

**Hon. Charles Kilonzo** (Yatta, Independent): Hon. Deputy Speaker, the Question is to appear in the afternoon, but I have no problem asking it now.

**Hon. Deputy Speaker:** You have the opportunity to ask and you are here, so proceed.

*Question No. 229/2019*

IRREGULAR ALLOCATION OF LAND REF. NO.808/ NZUKINI PHASE IV TO PRIVATE DEVELOPER

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Deputy Speaker. I rise to ask the Cabinet Secretary for Lands and Physical Planning the following Question:

(i) Is the Cabinet Secretary aware that a title deed for a parcel of Land Ref. No.808/Nzukini Phase IV was irregularly issued to a private developer despite the area being reserved for public use as part of the Ndalani Settlement Scheme of Ndalani Sub-county, Yatta Constituency, making it impossible for the residents to access the spring that now falls within the private area of the irregularly hived off parcel?

(ii) What action has the Ministry taken to ensure the land reverts back to public use and guarantee the residents of Ndalani lasting access to the natural spring and its water?

**Hon. Deputy Speaker:** Hon. Kilonzo, are you reading your Question from the electronic gadget?

**Hon. Charles Kilonzo** (Yatta, Independent): Yes, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Then I must congratulate you, especially noting that you are a fairly old Member of this House who ordinarily would have been thought not to be techno-savvy. So, let us proceed to the next one that will be replied to before the Departmental Committee on Lands.

We will go to the Member for Kirinyiga County, Hon. Purity Ngirichi.

On this one, ordinarily we would drop the Question but because of the relative confusion on whether Members were to ask the Questions in the morning or afternoon, we will slot it for the afternoon. So, she should be informed that her Question will be coming in the afternoon.

Let us go to Hon. Elisha Ochieng' Odhiambo, Member for Gem.

*Question No. 231/2019*

INCREASE OF TELEPHONE CHARGES BY SAFARICOM PLC

**Hon. Elisha Odhiambo** (Gem, ODM): Thank you, Hon. Deputy Speaker. I rise to ask the Cabinet Secretary for Information, Communication and Technology the following Question:

(i) Is the Cabinet Secretary aware of the recent sudden increase of local telephone call charges from Kshs4.00 per minute to Kshs7.00 per minute charged by Safaricom PLC?

(ii) Could the Cabinet Secretary clarify the criteria used by telecommunication companies in charging mobile data given the recent complaints by a section of Safaricom subscribers regarding the mobile data charges?

(iii) Could the Cabinet Secretary outline mechanisms put in place by the Ministry to protect unsuspecting subscribers from manipulation by such telecommunication service providers?

**Hon. Deputy Speaker:** We will go to the Next Order.

### REPORT AND THIRD READING

COMMITTEE OF THE WHOLE HOUSE ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS)  
(NO.2) BILL (NATIONAL ASSEMBLY BILL NO.13 OF 2018)

**Hon. Deputy Speaker:** Hon. Members, I confirm that we have the required number of Members for me to put the Question.

*(Question put and agreed to)*

**Hon. Deputy Speaker:** Let us have the Mover to move Third Reading please.

**Hon. Benjamin Washiali** (Mumias East, JP): Hon. Deputy Speaker, I beg to move that the Statute Law (Miscellaneous Amendments) (No.2) Bill (National Assembly Bill No.13 of 2018) be now read a Third Time.

I request Hon. Mbadi to second.

**Hon. John Mbadi** (Suba South, ODM) seconded.

**Hon. Deputy Speaker:** Hon. Members, order!

*(Question proposed)*

**Hon. Deputy Speaker:** I see no major interests. What is it Hon. T.J?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Deputy Speaker, let me go on record to thank the Government for bringing this Bill. However, I think we need to seriously discuss the use of Statute Law (Miscellaneous Amendments) Bills. Kenyans will suffer if we are going to go this direction with legislation. This is because we saw some heavy stuff introduced to the Gaming Act and the procurement law through this legislation. Some of these things need policy papers to guide us on where the country is going on some of the issues that have huge implications. For example, on punitive laws, some Cabinet Secretary wakes up one morning and proposes a Kshs10 million fine or 20 years imprisonment. You do not know what kind of statistics or penalty philosophy that has gone into that decision. They introduce such major changes to the law through Statute Law (Miscellaneous Amendments) Bills. If we are going to go in this direction, I am afraid things will not work. I think it is high time we did a legislation to control the manner in which Government officers propose legislation through the Statute Law (Miscellaneous Amendments) Bills. For example, there is a section we passed – I think it is Section 48 of the Gaming Act – in which one part of legislation is different from the proviso.

What is now on record is that we will have subsection (a), which does not refer completely to subsection 2, therefore, making the entire section not agreeable.

So, whereas I put my voice in complimenting the other side for bringing this legislation, I think we need to agree. Leader of the Majority Party, this is a discussion from the heart of Members. We are tired of complaining about Statute Law (Miscellaneous Amendments) Bills and fighting in this Chamber just because a lot of things come here and surprise us. They have not gone for public participation. If officers from the ministries will bring these pieces of legislation, then let us have a law that will guide them on what can be provided through a Statute Law (Miscellaneous Amendments) Bills and how far a Statute can be amended through such Bills. This is so that it gives us more time to do the work which we are here for.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Yes, Leader of Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): I agree with Hon. T.J. Kajwang'. The first problem is that the committees have submitted reports. The problem is not even government. When government brings a Statute Law (Miscellaneous Amendments) Bill to deal with minor amendments, committees take advantage of the Bill to introduce many other amendments.

As you can see most of the amendments were from Members and Committees and this made the whole process to look very substantial. In the Bill, there is just "delete this". But, the moment they get an avenue to ride on Members and Committee Chairs bring amendments until it goes to what Hon. T. J. is saying, it becomes a serious legislation taking place.

I think the Clerk's Office and the Speaker's Office need to guide us on what stage and scope you amend something. I want to go on record and that is why I came early this morning. Hon. T.J. and most Members were not here but a few were here. There is a trend which is developing here and if you were following the last few days when we were dealing with the Statute Law (Miscellaneous Amendments) Bill, in every critical area there are certain vested interests.

When we were dealing with the betting issue there were people whose business was only to protect the betting industry and they were rejecting the heavy penalties. The moment we finished with it they left the Chamber. Then, we went to the Health Laws and when we were on National Hospital Insurance Fund (NHIF) all the Members who were representing unions and those with interests were here. The moment we finished the NHIF sections they left. Then, yesterday we were taken hostage by the contractors. The moment we reached people who were representing... Hon. Mbadi was not here yesterday.

**Hon. John Mbadi** (Suba South, ODM): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** The Leader of the Majority Party is not on a point of order, so he is perfectly in order to raise that. What is it?

**Hon. John Mbadi** (Suba South, ODM): On a point of order, Hon. Deputy Speaker. Is the Leader of the Majority Party in order to impute improper motive on other MPs? We all know that MPs contribute to different sections of Bills as and when they are available. There is nothing wrong with interest unless it is pecuniary interest or any other interest that confers benefit to a Member.

So, he is trying to scandalise Parliament by saying that Members are here to hold brief for others. I do not hold brief for anyone and when I participate in a legislation I do so because it is important. Hon. Deputy Speaker, allow me to raise...

**Hon. Deputy Speaker:** That is extremely dangerous, Leader of the Minority Party. No! Order! This is because if you say you do not have any interest on any particular thing or you do not hold fort for anybody. I think that is fairly dangerous because you are surely here having quite a lot of interest. I mean at the very least for your own constituency.

**Hon. John Mbadi** (Suba South, ODM): Hon. Deputy Speaker, I think you did not get me right. When I started, I said there is nothing wrong with having interest. In my view, representation is not holding brief. The way I understand it, I represent Kenyans and not just Suba South because I am a Member of the National Assembly. I think the Leader of the Majority Party needs to withdraw, unless he has evidence because this idea of just making general statements, scandalises the entire Parliament. If he has evidence of people who have come here to represent some specific interest he should name them.

**Hon. Maoka Maore** (Igembe North, JP): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Before I give the Leader of the Majority Party, let me hear what Hon. Maoka Maore has to say. But, in any case, the Speaker this afternoon will be issuing a comprehensive Statement on what would constitute something that requires a Member to declare interest. So, I think that will almost resolve most of these issues. Let us hear what Hon. Maore has to say.

**Hon. Maoka Maore** (Igembe North, JP): On a point of order, Hon. Deputy Speaker. I also want to express the same reservations. That the Leader of the Majority Party has a serious observation that he has stated about the general trend. If you can remember last year, the Speaker gave an equally comprehensive statement about the issue. The same Member was very persistent in defending the sugar cartels which were infiltrating this House and did not see anything wrong. So, even now he wants to pretend that he does not see or hear any evil when there is a lot of evil flowing freely here in the House.

**Hon. Deputy Speaker:** Now, you have even gone worse than what the Leader of the Majority Party stated. That is a fairly generalised statement which is not necessary. Probably you are the one who sees those cartels, maybe others do not. So, you sometimes need to name them. But, let us leave that for this afternoon. Leader, proceed with your contribution.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, you know Hon. Mbadi was not here. I am talking from a very practical point of view of last week and two days of this week. The Members who stayed with me like Hon. Nyikal, Hon. T.J and Hon. Millie Odhiambo will agree with me. You know we need to save and there is the element of conflict of interest. There is nothing wrong with it but this was a very unique situation.

There was a group of MPs who left after we finished with NHIF and betting. Yesterday, there were known contractors, MPs who are contractors and they brought amendments which we rejected. So, this is not the way. We do legislation for posterity and for the people of Kenya. We cannot come to the House to legislate for ourselves. That is what I am saying and if I am pushed to the corner, I can provide a list of Members and that is why I am a Leader.

I am not saying it is all MPs but I think the Standing Order is very clear even in a Committee where you are sitting before deliberations begin, you must declare your interests so that it is recorded. So, Hon. Mbadi you were not here yesterday evening to hear the kind of amendments we had. For your information, there was one which was saying that contractors must be paid within 30 days. We asked ourselves, Government collects money at the end of the



month, after 30 days. So, they will be collecting money after 30 days to pay you. So, how do they pay you every 30 days?

Then, there was an issue which passed of issuing promissory notes. Promissory notes were discarded by Government after Anglo-Leasing. This is because the moment you hold a promissory note against Government, whether you have supplied hot air or other goods, that means you can sue Government after 20 years. Those were the kind of amendments which were brought on the Floor of the House by Members.

I am happy and I want to ask Members to participate in the Committee of the whole House because that is where the law-making takes place. The Second Reading is just debate, but let us specifically begin this morning when the Chair of the National Cohesion and Equal Opportunity Committee brings his Bill, and even the Division of Revenue Bill. Let us create more time. I want to thank Members because yesterday we concluded despite the issue raised by Hon. T.J. which I think is varied and we will look at how to resolve that matter. It is varied and a contradiction, in fact. I beg to support.

**Hon. Alois Lentoimaga** (Samburu North, JP): On a point of order, Hon. Deputy Speaker, I think the Leader of the Majority Party is being unfair because I was here yesterday evening when we discussed about...

**Hon. Deputy Speaker:** Now, are you raising a point of order or contributing?

**Hon. Alois Lentoimaga** (Samburu South, JP): Yes, I am on a point of order. Yesterday, I was here and I am not a contractor but I contributed on the issue concerning women and youth. So, not all who were here yesterday were contractors. We were just deliberating and making laws which can assist our people to be able to do business with Government, specifically women and youth.

**Hon. Omboko Milemba** (Emuhaya, ODM): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay, Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ODM): On a point of order, Hon. Deputy Speaker. I think the issues raised by Hon. T.J. Kajwang' were very strong. Without losing the spirit he had my feeling is that we should retain what he had whether we have interest or not. But, interest is a must for everybody who is in Parliament. Members have to contribute to issues they have researched on and are very knowledgeable about and may leave those they have not researched on.

But, back to Hon. T. J. Kajwang's argument, the Statute Law (Miscellaneous Amendments) Bill brings very substantive amendments or changes in law. The House Business Committee has indicated that it is actually ourselves who exacerbate these amendments once they arise in the form they come from Government. The trend currently of following the Statute Law (Miscellaneous Amendment) Bills, with a little bit more consciousness at the expense of the other serious businesses that we should be handling... It is not that this is not serious. This is because they are being used as conduits to bring real structural changes in law. Therefore, keeping the spirit of Hon. T.J. Kajwang', we should have legislation that limits the extent to which these Statute Law (Miscellaneous Amendments) Bills can actually change the law. The Leader of the House should actually support that aspect.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Omboko Milemba, I thought the Leader of the Majority Party actually supported that position with another rider on the one hand. Whereas we are saying

that there should be no major legislative changes in a Statute Law (Miscellaneous Amendment) Bill, he is also saying Members sometimes add to this by proposing more changes. However, I think all the Members make quite some sense. I can see the issue of quorum is going to be a problem, let me put the Question.

I put the Question, of course, having confirmed that we have the requisite quorum.

*(Question put and agreed to)*

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

## MOTIONS

### APPROVAL OF NOMINEES TO EMBAKASI SOUTH CONSTITUENCY COMMITTEE OF THE NATIONAL GOVERNMENT-CONSTITUENCIES DEVELOPMENT FUND

**Hon. Deputy Speaker:** Let us have the Chair of the Committee on the National Government Constituencies Development Fund (NGCDF).

**Hon. Maoka Maore** (Igembe North, JP): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of Section 43(4) of the National Government Constituency Development Fund Act, 2015 and paragraph 5 (9 and 10) of the National Government Constituency Development Fund Regulations, 2016, this House approves the following nominees for appointment to the Embakasi South Constituency Committee of the National Government Constituency Development Fund, laid on the Table of the House on Wednesday, 8<sup>th</sup> May 2019:

- |                            |   |   |
|----------------------------|---|---|
| a) Stephen Omari Odera     | - | Male Youth Representative.                        |
| b) Dancan Mulwa Nduva      | - | Male Adult Representative.                        |
| c) Sabina Warukira Wanjohi | - | Female Youth Representative.                      |
| d) Linet Mugasiali Madete  | - | Female Adult Representative.                      |
| e) Vincent Odongo Bunde    | - | Representative of Persons living with Disability. |
| f) Urbanus Mwikya Musau    | - | Nominee of the Constituency Office (Male).        |
| g) Lydia Kwamboka Obwogi   | - | Nominee of the Constituency Office (Female).      |

Hon. Deputy Speaker, you will notice that Embakasi South has had a by-election and it is necessary for us to allow these nominees for purpose of the Member and the constituents to be able to utilise the NG-CDF disbursements that come from the board. The fact that we are going on recess sometime later, it is necessary that we do let the Member have this committee so that he is able to conduct business. It may not be feasible for us to hold the names. Now that he has brought the names, the House feels it is necessary to tell the Member and the nominees that they are ready to work; they have gone through the legal department of the board, so they all meet the criteria and we are just doing our duty as the National Assembly to approve the nominees.

We need to understand that this is not a very complicated Motion.

I beg to move and ask Hon. Pukose to second.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Deputy Speaker. I stand to second this Motion that the nominees appointed to the Embakasi South Constituency NG-CDF be approved by the House. I thank the people of Embakasi for having put their faith in Hon. Mawathe and despite going to a by-election, they were able to return him with a landslide. This shows the confidence the people of Embakasi South have in Hon. Mawathe for his work that he has shown for the short time he had been in Parliament.

Hon. Mawathe also happens to have been an active member of the Departmental Committee on Energy. I thank the Leader of the Minority Party and the Chairman of the Committee on Selection for having returned Hon. Mawathe back to the Committee on Energy. He is a very active Member and this also shows the maturity in the leadership of the Minority that they were not able to discriminate against him.

**Hon. Deputy Speaker:** Hon. Pukose, you have been given an opportunity to second, but instead you decided to...

**Hon. (Dr.) Robert Pukose** (Endebess, JP): I am seconding, Hon. Deputy Speaker. I am also thanking him because the Leader of the Minority Party has done it.

**Hon. Deputy Speaker:** Maybe you should be thanking Hon. Mawathe for retaining the Members.

**Hon. (Dr.) Robert Pukose** (Endebess, JP): I have thanked him already, but the Leader of the Minority Party has also returned him to our Committee. So, he deserves credit.

With those few remarks, I second.

*(Question proposed)*

**Hon. Deputy Speaker:** We will start with the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Deputy Speaker. Let me also take this opportunity to congratulate the MP for Embakasi South for winning back his seat. Even though he defeated a candidate from my party, I congratulate him. I know how frustrating it is to serve for just a short period and then leave Parliament.

Looking at the list, it is impressive. I do not know these ladies and gentlemen, but being a Member of Parliament who represents a cosmopolitan constituency, the names give some indication. I hear the Leader of the Majority Party is complaining that Muslims have been left out. That is something that needs to be looked into later. It should be understood that most of the NG-CDF committee members are elected nowadays. Just a few are nominated like the ones from the constituency office.

As I sit down in support of this Motion, I want to speak to the NG-CDF Board and the Committee that we need to sell NG-CDF. If you look at the Auditor-General's Report, the only fund that had the lowest wastage percentage was NG-CDF at 2.6 per cent. We are looking at a country where it is said that we are wasting 30 per cent of our Budget to corruption, yet there is this fund that some people are scandalising and a positive report has come out of it of 2.6 per cent wastage. You can only compare that to some developed countries because corruption is everywhere in the world. Now no one is even speaking about this positive development in the NG-CDF. There are some people who even want it scrapped yet...

**Hon. Deputy Speaker:** Leader of the Minority Party, are you suggesting that 2.6 is within the marginal error?

**Hon. John Mbadi** (Suba South, ODM): Hon. Deputy Speaker, I am not justifying wastage of even a shilling.

**Hon. Deputy Speaker:** Normally, I see mathematicians...It could be the marginal error.

**Hon. John Mbadi** (Suba South, ODM): It could have been the marginal error. I did not know you are a mathematician. I thought I am. I have always imagined and believed that you are just a lawyer and that is it. Probably, during your lower levels of education, you must have done some maths. What I meant to say is that this is the only fund that has received a positive verdict. You can even see the results of NG-CDF across the country.

As I conclude, there is a trick as to why NG-CDF is successful. The trick is that this is the only fund which is budgeted directly to projects. It is high time as a country we started thinking of how we link the budget direct to specific projects so that implementation is direct and easy. Giving a budget to people to play around with is the reason you see cases of templates being introduced with budget lines that do not exist in counties and then reports are brought all the way to the Senate. For the report to reach Parliament, it must have gone through a lot of processes. We are seeing reports in the Senate which do not make sense. That is because as a country, we have not thought seriously on how to link our budget to specific projects for implementation. In fact, we changed our budgeting to programme-based. This is not the right time for me to engage because I have a lot to say on this. In a nutshell, we need to seriously think of how to link the funding direct to projects to lower possibility of misuse.

**Hon. Deputy Speaker:** Let us have Momoima Onyonka.

**Hon. Richard Onyonka** (Kitutu Chache South, FORD – K): Asante, Bwana Naibu Spika kwa kunipa nafasi hii nizingumzie jambo hili la muhimu sana katika nchi yetu ya Kenya. Pesa za NG-CDF zimeleta maendeleo Kenya. Kwa wale ndugu zangu wako hapa Wabunge, mimi nimechaguliwa kutoka eneo wakilishi la Kitutu Chache Kusini kwa sababu kazi ambayo hela zetu za NG-CDF zinafanya zinawaridhisha wananchi kunipigia kura mara tatu mfululizo. Nitawapa heshima sana wazee walioanzisha kazi hii kama Mzee Jimmy Angwenyi na wale Wabunge wengine ambao walishika doria na kuuliza Rais Kibaki kuhakikisha kuwa hizi hela ambazo zimeenda mashinani zilianza kufanya hivyo miaka kumi liyopita. Hela hizo zimefanya kazi.

Vile ndugu yangu, Mheshimiwa Mbadi amesema, ingekuwa vizuri kwanza kama tungeongezewa hela hizi za NG-CDF. Asilimia 2.5 haitoshi. Kazi ambayo inafanyika wakati huu ni kazi ya kujenga mashule.

Serikali imeleta nia na njia ya kuhakikisha kuwa wanafunzi wote ambao wamemaliza darasa la nane wanaenda kidato cha kwanza. Inaonekana kuwa lazima tuanze kujenga mashule mengi na kuhakikisha wanafunzi hao wanaenda shule vilivyo.

Kwa kumalizia, Wabunge walio hapa, tafadhali mhakikishe kuwa mwaka ujao tuongeze hela za NG-CDF zifike asilimia tano ili hizi pesa ziendeele kusaidia wananchi wa kawaida. Vile Mhe. Mbadi amesema, huwa hatuoni ni kitu gani serikali za kaunti zinafanya na mabilioni ya pesa zinazopata. Ukiangalia pesa ambazo Mbunge anapewa, hazizidi Kshs75 milioni, lakini zinafanya kazi nzuri na wananchi wanaridhika.

Namshukuru Mhe. Mawathe ambaye nilimfanyia kampeni kule Embakasi. Kitu ambacho kilinishtua kule Embakasi ni hiki: Wakati Mawathe alikuwa Mbunge kabla ya kura zake kuja,

aliendeleza vitongoji duni kule Embakasi Kusini. Ukiangalia ile kazi ambayo ilifanywa hata mimi nilishtuka. Kwa hivyo ningependa kumsihi ndugu Mawathe aendeleo kuwasaidia wananchi wake.

Ukiangalia yale majina ameyatoa hapa ambayo yatapitishwa na hili Bunge ni wananchi kutoka makabila mbali mbali hapa Kenya. Inaonyesha kuwa ndugu Mawathe kama Mbunge wa Embakasi Kusini si mkabila ila ni Mkenya halisi.

**Hon. Deputy Speaker:** I will give an opportunity to two more Members, but very briefly starting with Hon. Gikaria.

**Hon. David Gikaria** (Nakuru Town East, JP): Thank you, Hon. Deputy Speaker. I congratulate Hon. Mawathe who is in our Committee for having been re-elected as the Member of Parliament for Embakasi South. Secondly, as Hon. Mbadi had said, the list of names cuts across. Mr. Mawathe, coming from a cosmopolitan constituency has done very well in terms of trying to balance who was picked. I do not know whether it is Mawathe who is supposed to do the appointment or the NG-CDF Board. These appointments were not done by Mawathe. As per the Act, they have been appointed by the board itself. Much as we praise Hon. Mawathe, the board has done a great job by picking people who cut across different communities.

As we go for recess for a whole month, the NG-CDF disbursement to the constituencies is still at less than 50 per cent with only a month to go. The Committee, led by my brother, Maoka Maore, needs to do something about disbursement of NG-CDF. We had allocated monies at the constituencies level for different projects. They have not even started and with only a month to go, the Committee and the board need to do something and disburse the funds as soon as possible so that as we go on recess, we can have monies to continue with the projects.

**Hon. Deputy Speaker:** Very well. Lastly, I would have given a chance to Hon. Wangwe, but he is all over. So, I will give a chance to someone else. Let us have Hon. Wangwe. You must be ready.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Deputy Speaker. I must thank you so much for giving me opportunity this time. First and foremost, allow me to congratulate Hon. Mawathe upon his re-election. He is my good colleague. He helped me to keep fit on the beach when we were doing our morning run-arounds. I thank him and the people of Embakasi for re-electing him.

Hon. Deputy Speaker, the names are balanced. They represent the face of Kenya. I am happy because we can see that the names are represented well across the country. Whereas we are approving the nominees, do we have the money for Embakasi South Constituency, so that the members of the committee can start working after we approve them today? We do not have it. Let the NG-CDF Board give Members their money on time. As we talk now, most of the constituencies have received 50 per cent of the NG-CDF and we just have one month to the end of the year. What will be the absorption capacity of the constituencies when it comes to the end of the year?

**Hon. Deputy Speaker:** What is your point of order, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, my very good friend, Hon. Wangwe, is a Member of the NG-CDF Committee. We sent him to go and look for money for us. He cannot come and lament in the House. Is he in order? This is the person whom we sent to deal with the NG-CDF Board and now he is complaining. His Chairman is seated behind me here. He is the one who should tell us why we are not getting money.

**Hon. Deputy Speaker:** Chairperson, Committee on Selection, this is something that you need to look at. Honestly, Hon. Wangwe, as a Member of that Committee, you do not need to lament.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Deputy Speaker.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** What is it Hon. Jimmy? It is not normal for you to...

*(Laughter)*

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Hon. Deputy Speaker, although the speaker is a Member of the Committee, he represents his people in this Parliament but not in the Committee. So, he has the mandate to express himself on behalf of his people and some of us. That Committee allowed the Government to reduce the amount of money they allocate for NG-CDF to below 2.5 per cent.

**Hon. Deputy Speaker:** Hon. Jimmy, you have been a trade unionist for a long time. There are two issues that you should be very clear about. One, it was the Leader of the Majority Party who rose on a point of order and you are his immediate Deputy. Ordinarily, a deputy does not contradict the boss. However, you did that. Let us hear what Hon. Wangwe has to say.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Hon. Deputy Speaker, I made that point very clearly considering that I am a Member of the NG-CDF Committee in the National Assembly. My revelation is just part of the discussions that we are putting through in the Committee. Therefore, it is not a complaint.

*(Hon. Caleb Kositany consulted loudly)*

**Hon. Deputy Speaker:** Order, Hon. Kositany. Proceed.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Deputy Speaker. As the Leader of the Majority said, it is not a complaint. I am only trying to push it to the Members on the Floor of the House, so that they can be aware that most of the constituencies have received 50 per cent of the NG-CDF into their account. That is a situation which should worry everybody. Therefore, with that in mind, I beg to support the Motion.

**Hon. Deputy Speaker:** That marks the end of it. Hon. Members, we will not put the Question for obvious reasons. It will be done in the next Sitting in the afternoon.

Next Order. Sorry. Before we contemplate of putting the Question in case we get the quorum in due course, let the Mover reply, please.

**Hon. Maoka Maore** (Igembe North, JP): Hon. Deputy Speaker, I wish to thank Members who have contributed to this Motion. As we wait for the approval of the members to the Embakasi South Constituency Committee of the NG-CDF, I will clarify what has been flying around about receiving 50 per cent of NG-CDF. Those were the National Treasury disbursements which we expect to be nearly 70 or 80 per cent by now as we are ending the financial year. What they disbursed this week and last week and what they will disburse two weeks before the end of May will reach nearly 80 per cent before 30<sup>th</sup> June.

With those remarks, I beg to reply.

**Hon. Deputy Speaker:** Thank you very much. The position remains the same. We will not put the Question now until in the afternoon. Next Order.

*(Putting of the Question deferred)*

MEDIATED VERSION OF THE WAREHOUSE RECEIPT  
SYSTEM BILL (SENATE BILL NO.10 OF 2017)

**Hon. Deputy Speaker:** Is the Mover the Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Yes.

**Hon. Deputy Speaker:** Okay. Proceed. It is not indicated here.

**Hon. Aden Duale** (Garissa Township, JP): I am the Vice-Chairperson of the Mediation Committee.

**Hon. Deputy Speaker:** I did not expect the Leader of the Majority Party to be a vice-chair anywhere. Proceed.

**Hon. Aden Duale** (Garissa Township, JP): When I met the Senate, they made me the Vice-Chair.

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

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on the Warehouse Receipt System Bill (Senate Bill No. 10 of 2017) laid on the Table of the House on Wednesday, 8<sup>th</sup> May 2019, and approves the mediated version of the Warehouse Receipt System Bill (Senate Bill No.10 of 2017).

I beg to give a brief history. Allow me to give a brief background on this Bill. It seeks to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities, and for this purpose to provide for the establishment of a Warehouse Receipt System Council which will oversee, regulate and implement this system. This Senate Bill was published on 10<sup>th</sup> November 2017 and read for the Second Time.

Let me go to the nitty-gritty of the Bill. The Senate considered the amendments forwarded by the National Assembly and rejected some of them on 14<sup>th</sup> March 2019. That was their Bill.

*(Loud consultations)*

**Hon. Deputy Speaker:** Order. Proceed, Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Members, do not greet Hon. Wanyama with your hand, just wave to him because you will break your hand.

The Senate rejected some of our amendments. Pursuant to Article 113 of the Constitution and National Assembly Standing Order No. 146 and Standing Orders No.161 of the Senate, this Bill was referred to a Mediation Committee with the sole objective of developing a version of the Bill that would be presented to both Houses for approval. I want to thank the Members of the Mediation Committee from our side and that which was led by Senator Njeru Ndwiiga of Embu County. I have never seen a better committee than that. I am sure Hon. T.J. Kajwang' will tell

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me what he went through in the Mediation Committee on Transport and Physical Planning. This was a very good Mediation Committee. I am happy to report that the Committee held fruitful discussions for only two hours and we developed a version of the Bill that was agreed to by both Houses. The Committee held its meeting on 30<sup>th</sup> April 2019 and agreed on everything. We adopted it on 7<sup>th</sup> May 2019.

The Senate Committee on Agriculture, Livestock and Fisheries, through a Report laid on the Table of the House on 14<sup>th</sup> March, rejected Clause 2 on the definition of the term “holder” “warehouse receipt system” and sections: 11, 17, 21(5), 23, 24, 27, 31, 39. All these are in the Report that I tabled yesterday.

The Senate rejected the National Assembly’s amendment to Clauses 2, 3 (3), 3(5), 4, 9, 10, 16, 21(4), 21(8), 30 and 50. The Mediation Committee identified some clauses as being very contentious. On Clause 2, the terms “holder”, “warehouse receipt system”, “owner” and “warehouse operator” were particularly singled out, in addition to a number of other clauses in the Bill that originated from the National Assembly. In the process, the fundamental clauses that were from the National Assembly were agreed on by the Senate. We convinced them as they also convinced us on some clauses originating from their side. We have annexed an extract of the mediated version of the Warehouse Receipt System Bill No.10 on the Report that I tabled yesterday. Members can look at that Report.

Secondly, under Clause 23 of the mediated version of the Bill, the Mediation Committee agreed to include provision establishing the Warehouse Receipts Dispute Resolution Committee in place of the Warehouse Receipts Appeals Committee, so that the committee can receive and make determinations on complaints that might be registered against those who may want to acquire licences. The appeals committee was very limiting. So, we expanded it.

On penalties for various offences, we felt that the offences proposed in the Bill were very punitive. However, under Clause 43 of the mediated version of the Bill, issuance of a fraudulent warehouse receipt will attract imprisonment for a term not exceeding 10 years or a fine not exceeding Kshs10 million. The spirit behind this provision is that warehouses will be keeping goods for farmers and other stakeholders. So, we felt that in case of a fraudulent receipt that leads to loss of goods, the penalty must be very high. We picked this from what is happening in the housing sector. You remember the Kshs10, 000 and three months scenario. So, we felt that the penalty must be very high. The Report is ready. We have agreed with my colleagues who were in the warehouse receipt subcommittee, led by the Chair of the Committee on Agriculture.

Hon. Deputy Speaker, as I conclude, allow me to express my gratitude to Sen. Njeru Ndwiga for ably chairing the Mediation Committee. I also express my gratitude to Hon. Wanyonyi of Kwanza, the Chair of Agriculture; Dr. Mutunga and the Deputy Minority Leader, Hon. Mbui, who is also with us. For the first time, I can report that out of the five Bills that were sent to mediation committees, this one was agreed on. I urge Members to approve the mediated version so that once the Senate approves their version we take it to the President for assent.

With those remarks, I beg to move and ask the Chair of the Departmental Committee on Agriculture, who was a Member of the Mediation Committee, to second the Motion.

**Hon. Deputy Speaker:** Proceed, Hon. Chairperson.

**Hon. Ali Adan** (Mandera South, JP): Thank you, Hon. Speaker. I rise to second but before I proceed, as we mentioned yesterday, this gadget is so short and if I stand upright, Members may not hear me. This is what I was discussing yesterday. My constituents keep on



complaining that I always stoop so much while speaking in this House. So, we should try to help those of us who are vertically endowed.

Hon. Deputy Speaker, the Warehouse Receipt System Bill (Senate Bill No.10 of 2017) was published on 10 November, 2018, as the Leader of the Majority Party said. The Bill is meant to give effect to the Fourth Schedule of the Constitution of Kenya in relation to agriculture and trade by providing a legal framework for regulation and development of the warehousing system for agricultural commodities to cure, among other things, the challenge of marketing cereal produce in the country. The details have already been mentioned by the Leader of the Majority Party, and I do not wish to repeat them. However, legislating on warehousing receipt system is, in short, the best thing that has happened to post-independent Kenya. A warehousing receipt system will enable depositors to leverage on financing against stock commodities. It ensures trade securities in the agricultural sector, and specifically for producers in famers' SACCO societies, traders and processors. This has the effect of reducing post-harvest losses through safe storage of excess grains at harvest time and, therefore, prolonging the sales season and reducing price fluctuations.

Hon. Deputy Speaker, this Bill addresses a number of challenges that Kenyan farmers continue to face. The first one is access to credit through use of agricultural commodities as collateral. Farmers can take their produce or cereals to warehouses for safe deposit where they will pay a little fee. They can then use the receipts obtained as collateral to access financial instruments. The warehouse receipt system also improves post-harvest loss through management of agricultural produce through progressive improvement of the national network of storage facilities. The warehouse receipt system will take over the role of the National Cereals and Produce Board (NCPB) very effectively, if properly managed. The warehouse receipt system will also stabilise agricultural commodity supply and, consequently, price fluctuations as farmers will not have to sell their produce in distress at the harvest time. This is very important because currently farmers have no choice. At times they realise a bumper harvest. As we have been told, in the case of maize, we harvest over 46 million bags but when the quantities hit the market, the price goes down. A warehouse receipt system will enable farmers to take their produce to warehouses for safekeeping and wait for the price to stabilise, so that they can sell it when the price improves. That way, farmers will be able to enjoy profits during the drought period. So, introducing a warehouse receipt system is the best thing that has happened in this country. The system provides a link for structured trade in commodities through linkage with commodity exchanges. This is very important. It is what the market requires. It is time we restructured the NCPB to align it with this Bill.

With those few remarks, I beg to second.

*(Question proposed)*

**Hon. Deputy Speaker:** I will give chance to just a few Members to contribute on this debate, starting with the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Deputy Speaker. I support the Report of the Mediation Committee. I have two things to say. One, the Constitution provides for mediation where both Houses do not agree on the same version of the Bill in the first instance. It is expected that the Mediation Committee that we form represents us fully. We had confidence in

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the Members we put in this Mediation Committee, and if they have sat with the Senators and they have agreed on a version, the best thing to do is to approve so that it is not seen that these differences that come about on versions of Bills are about the differences between this House and the Senate. Bicameral system, especially one starting like the Kenyan case, always would have issues here and there. I see we are trying to portray the disagreement with the Senate as a fight on matters of ego. I do not think so. We are trying to see how to balance and work together.

Finally, I want to just plead with others who have been appointed to other mediation committees that we should go there with open minds. I do not want to agree with what Senator Mutula Kilonzo Jnr. said in the Senate, that when you go to the Mediation Committee, we should go with red eyes. I do not think our Members should go to the Mediation Committee with red eyes on the Division of Revenue Bill, let us go with soft eyes. These are eyes that can convince and are ready to accept where Senators make a strong point. Let us go with our natural eyes and if possible, we can even make our eyes softer.

I support. Thank you.

**Hon. Deputy Speaker:** We shall have Hon. Nyikal. Nyikal has a way of speaking to everything - A jack of many trades.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Deputy Speaker, thank you for the comment and also for giving me the opportunity. This is an extremely important Bill. It is going to change completely the way we handle grain. I have looked at the areas where there were contentions and the decisions reached. They are talking of a holder. I agree with the definition because the receipt will now be equivalent to grain. If you have a receipt worth 10 tonnes it can be sold as 10 tonnes of maize. Therefore, if we say somebody who picks that receipt on the road can go and exchange for the value of 10 tonnes of maize, we will get into trouble. It is good that they have gone on a strict definition.

Enhancing the penalty for having a fake receipt is important. A fake receipt is theft and fraud. As we have said, this is a commodity grain. I am saying I have 10 tonnes of maize and actually, I do not. These receipts will be sold in the market. You do not have to carry them. You simply have to go to the warehouse and with the proof of sale, the commodity is delivered to you. I agree with them on that. Therefore, defining the owner, the holder and the warehouse operator is critical. These are the people who are going to hold our grain. They are not only serving the grain or the commodity holders but they are serving the country. If they mess with them, we have no supplies.

I just wanted to appreciate the work that the Committee has done, understanding the full meaning of this and, therefore, I support.

**Hon. Deputy Speaker:** Nyikal, I want to ask you a straight question. Of course I know you have finished. Was what you are contributing on in the original version or improvements from the mediated version?

**Hon. (Dr.) James Nyikal** (Seme, ODM): These are the improvements they have made. There were definitions but now they have looked at them.

**Hon. Deputy Speaker:** Very well. As a matter of guidance, hon. Members, when we speak on mediated versions of Bills, it should be specifically to what was achieved out of mediation so that we do not go back to the original version. I see there are no many other Members who want to speak to it. I will close it there.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): No!

**Hon. Deputy Speaker:** Hon. Members, we had this before. We have spoken about the warehousing. Briefly, Hon. Wanyonyi. Hon. Vice-Chair, I will not give you the Floor because your Chair has already spoken to it. Hon. Wanyonyi.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I am privileged to have been a Member of the mediation team and I support the mediated Report. As said by my Chairman of Departmental Committee on Agriculture, this is the best thing that has happened in this country. One, because for the first time we will have registered warehouses in various areas. For example, in Uasin Gishu and Trans Nzoia, we will have NCPB being registered as a warehouse. A place like Mwea will have a warehouse that deals with rice. It will be a specialised case. Therefore, I support this system.

There were issues that were raised in this House. In the meeting, we had a very cordial discussion. We were able to agree on some of the issues that were rejected in this House. One is that this reduced post-harvest losses. You find that today because of the prices out there, most farmers are still keeping the harvest of last year plus the previous year. With the passing of this Bill, as explained, the farmers will be able to take their commodities to the warehouse and wait. You can use the receipt to do business. Therefore, this is one of the best things that have happened in this country for us to establish this system.

The other thing is accessibility to the credit facilities. In the past, you had to sell maize or whatever commodity you had to be able to get funds from the bank. Today, you can just have the receipt, which is a legal document, to negotiate whatever you want to do with the funds.

I had a privilege and a chance to visit areas where there are warehouses and the system works very well, for example, India. I went to some of the areas where warehouses have been established. I also had a chance and privilege to go to South Africa and witness the system working. Therefore, I congratulate the Departmental Committee on Agriculture for bringing this system to this country. I can assure the nation that this is going to work very well for our farmers.

With those few remarks, I support the mediation report that we had with the Senate. As explained by the Vice-Chair, it was very cordial. We agreed on virtually all the issues that were raised by the Senate and this House.

**Hon. Deputy Speaker:** Lastly, Hon. Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker. I thank the mediation team for good work done. From the report given by the leader, it was very cordial. That is what we should be able to hear because the intentions of these mediations should be to develop a holistic good law for the country and not to show supremacy battles. I also thank them because what they have come up with is a general policy that affects all farmers worldwide. The economics of Livingstone and Ord talk about fluctuating prices of agricultural products each year. Each time they produce more, the prices go down and the following year, the same happens. So this is a safeguard for the farmers who are producing these agricultural crops.

More importantly, I would want to urge those Members who will be picked for other mediation sessions with the Senate to go there with an open eye. I want to particularly make mention about the Division of Revenue Bill which I was unable to talk about yesterday. When you look at it, you will notice that even the Senate has a point when it talks about adding revenue to the county governments, and so on and so forth. So, our mediators should actually work it out the way this mediation team worked, hearing clearly from the Report from the Leader of the

Majority Party. Let us not behave like the Senators because we are the true representatives of Kenyan people. We must retain our position as the father House of the nation. When we go there, the laws we mediate about should be seen to be of holistic good to Kenyans not to, at any given time, show that we are in any battle fields of supremacy or ego.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Very well. Let us have the Mover to reply.

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

**Hon. Deputy Speaker:** Having done that we, of course, also have an issue with the quorum now. Therefore, we will put the Question at a later opportunity.

*(Putting of the Question deferred)*

Next Order.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Deputy Speaker  
(Hon. Moses Cheboi) left the Chair]*

### IN THE COMMITTEE

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

#### THE NATIONAL COHESION AND INTEGRATION (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are now in the Committee of the whole House. We have just a few clauses. So, this should move fast. It is on the National Cohesion and Integration (Amendment) Bill (National Assembly Bill No. 12 of 2019).

#### *Clause 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, there are amendments on that. Hon. Chair?

**Hon. Maina Kamanda** (Nominated, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 2 of the Bill be amended in the proposed section 17 –

- (a) in subsection (1) by –
- (i) deleting paragraph (c);
- (ii) deleting paragraph (d);
- (iii) deleting paragraph (e).

We are deleting (c), (d) and (e). The reason is that these are other commissions. It was even an oversight last time. These are commissioners who will then be earning salaries in both commissions. So, we have found out that this should not even be part of it.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Yes, Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): I really want to thank Hon. Kamanda for bringing these amendments. There is no way the National Gender and Equality Commission (NGEC) and the Kenya National Human Rights Commission (KNHRC) can sit in another commission. It has never been there. I was even saying it is unconstitutional. So, I really support that we retain the commission as it was.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. The Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): I just want to concur that was an oversight. We should not try to make other commissioners sit in another commission. The picture it is giving is that this other commission is a lower or inferior one compared to the other commission.

Thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Well, that is a fairly straightforward amendment.

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

We have another proposed amendment by Hon. Anthony Oluoch. Hon. Oluoch, I see yours is similar to that of the Chair. Is that right?

**Hon. Anthony Oluoch** (Mathare, ODM): Yes, Hon. Temporary Deputy Chairman. It was similar. I tried to raise an intervention so that I drop the amendments on account of the one that has been moved by the Chair of the Select Committee on National Cohesion and Equal Opportunity. Thank you.

*(Proposed amendments by Hon. Anthony Oluoch dropped)*

*(Clause 2 as amended agreed to)*

*(Clause 3 agreed to)*

*Clause 4*

**Hon. Maina Kamanda** (Nominated, JP): Hon. Temporary Deputy Chairman, in consultation with Members here, even my friend Hon. Oluoch, we have decided to increase the number of the chair's term from five years to 10 years. I beg to move:

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THAT, Clause 4 of the Bill be amended in the proposed section 18 (2) by deleting paragraph (a) and substituting therefor the following new paragraph –

“(a) is a State Officer;”

The Chair of the commission will need to have an experience of at least 10 years.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I have to propose that first, Hon. Oluoch.

*(Question of the amendment proposed)*

Let us give chance to Hon. Oluoch.

**Hon. Anthony Oluoch** (Mathare, ODM): My proposed amendment to this section was to...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No, Hon. Oluoch. We first prosecute the one of the Chair. I thought you will be speaking to that. We will come to yours, Hon. Oluoch. Hon. Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Oluoch needs to be very common in the Committee of the whole House like Dr. Oduor and Hon. Nyikal. We will come to yours. I think I agree with the Chair; the chairman of the National Cohesion and Integration Commission cannot have an experience of five years. Five years means you leave university at 26 years and you are 31 years old after five years. This is a commission that deals with cohesion. So, we need to have somebody with a lot of experience, like the former Speaker or a renowned retired judge. So, we are saying that it should be an experience of a minimum of 10 years. So, we can even go to 20 years.

I really support the Chair that this is not an ordinary commission. We need somebody who is very sober and has experience.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Milemba. We can have one minute each then we put the Question.

**Hon. Omboko Milemba** (Emuhaya, ANC): Just one minute. In fact, I had raised my eyebrow because I thought it was an extension of his term of service. If it is experience for the chair, 10 years is very good. It needs to be a very mature person.

Thank you. I support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Oduor.

**Hon. (Dr.) Christine Ombaka** (Siaya CWR, ODM): Thank you, Hon. Temporary Deputy Chairman.

As I support, I want to indicate that part of our concern as a Committee was that we wanted to include the youth who are competent. We were seeking to balance. I think we are in agreement that five years is a little low and, 10 years would still do justice. So, I support.

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, I am told that there is another part of the amendment by Hon. Chair.

**Hon. Maina Kamanda** (Nominated, JP): Hon. Temporary Deputy Chairman, we are removing the names “Member of Parliament or County Assembly”. Normally Members of Parliament and MCA would want to change those names to “State Officers” so that it does not look as if it is a Member of Parliament or an MCA who should not be included.

**Hon. John Mbadi** (Suba South, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order, the Leader of the Minority Party?

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, I do not have a problem with the amendment being proposed by the Chair. In my contribution I alluded to such amendment, but I am worried by the way the Chair is moving the amendment. This is a House of procedure, I expected the Chair to first read the proposed amendment then he goes ahead to explain. Alternatively, he would say, clearly “as proposed on the Order Paper”. But the Chair has started by explaining to us before moving the amendment. I think too much experience is becoming a problem.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Leader of the Minority Party, are you saying too much experience is becoming a problem? It is not.

Anyway, that is a fair point by Hon. Leader of the Minority Party. The best way to go about it, and you need not read the entire text, is just say “as per the Order Paper”, then give the rationale.

Hon. Members, please note he had proposed an amendment to Section 18(2)

*(Question of the amendment proposed)*

The Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I really want to thank the Chair because this story of putting a Member of Parliament everywhere is becoming a problem in this country. What is so special about a Member of Parliament? We are State officers. We should be treated as State officers. Even those who are not Members of Parliament cannot be members of this Commission.

Secondly, we need to look at different Acts. The Public Service Commission Act says that for you to become a commissioner of the Public Service Commission, you must have served in Parliament 10 years prior. Who says once you lose an election you become useless. This is just stigmatising Members of Parliament even when they voluntarily leave politics. We need to replace everywhere it is written “Member of Parliament” with “State Officer” so that it carries everybody who is a State officer. That is why we are having a problem with our house allowance. Other State officers are given house allowance yet somebody is not giving us a good reason why, we the State Officers, are being discriminated against. We need to tell the world that mortgage is not part of salary. Only 60 per cent of Members of Parliament have taken mortgage, what about the 40 per cent? It is an issue that we need to discuss.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Leader of the Majority Party, maybe the next time you should speak to the next miscellaneous amendments. Hon. Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you so much and thank you Chair of the Committee because the issue of Member of Parliament and MCA, like it has been very well stated by the Leader of the Majority Party, is a stigma. This change is a general one for everybody. I have loved the way the Leader of the Majority Party has talked. In fact, in future, the Leader of the Majority Party you should remember not to stigmatise trade unions so that they also operate in this space.

Hon. Chairman, thank you for this amendment, I hope the Leader of the Majority Party will also proceed to members of trade unions. Do not stigmatise us. We must also be free to operate. This is a very good amendment. Thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Finally, the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Chairman, I wanted to raise something else but I realise that we have not concluded this amendment. I want to say that I am the one who raised this matter of stigmatisation yesterday. You have started to see some of our friends in the civil society wanting to go to court to stop former Members of Parliament from sitting in boards of parastatals. The way I look at you, Hon. Temporary Deputy Chairman, you are still a very young man compared to me. You never know when you can leave Parliament. Politics is so interesting. With this brain that I see in you, I wonder what you would be doing if even being a chair of a board is not allowed. I think it is high time as Members of Parliament we resisted some of this stigmatisation. Just allow me to raise these issues because I have stood. Even as you put this to Question, the amendments by Hon. Anthony Oluoch were two, but one has been cured by the amendment by the Chair, I am wondering...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We will get there.

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Oluoch, you have an amendment but clearly, Section 4 (a) has been dispensed with by the fact that the amendment by Hon. Chair has been carried, but you have Section 4 (b).

**Hon. Anthony Oluoch** (Mathare, ODM): Yes, Hon. Temporary Deputy Chairman, I had consulted with Hon. Kamanda, so I drop my amendment in respect of the first part.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 4 of the Bill be amended in the proposed section 18 (1) in paragraph (b) by –

(b) inserting the word “law” immediately after the word “race”.

With respect to the second part, looking at among other areas, for a person to qualify to be chair, we would be looking at race, ethnicity, human relations, public affairs and now, we



wanted to have the inclusion of the word “law”. General knowledge or expertise in the area of law should be included. So, I beg to move.

*(Question of the amendment proposed)*

**Hon. Maina Kamanda** (Nominated, JP): I am opposing this amendment for one single reason, that we are going to lock out so many potentials. The people who normally deal with cohesion and peace are not necessarily lawyers. We have so many lawyers employed by the National Cohesion and Integration Commission and so, I do not think we need to put any category of any group to be a chair. I therefore oppose the amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Kisang.

**Hon. William Kisang** (Marakwet West, JP): Hon. Temporary Deputy Chairman, I also rise to oppose the amendment by the Member of my Committee. If you look at the current Constitution, lawyers have given themselves a lot of work in many commissions and so this is another opportunity for another lawyer to try and create work for themselves. A chair can be from any profession. You do not have to have knowledge in law because you have expertise within the institution that should be able to guide the chair in this particular area.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Kisang, you must also remember that lawyers are very busy voting the Judicial Service Commission representative today. The Leader of the Minority Party

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, we agree that lawyers are learned friends. That is given to them. But I realised in the 10<sup>th</sup> Parliament, again just the same way we mishandled and stereotyped Members of Parliament we also babysat the lawyers too much. In fact, I think we gave too much space for lawyers. If you look at the pieces of legislation that we passed at that time - that the positions that we created, even in other commissions and bodies where other professions were required - you will find a professional in that profession and a lawyer. Lawyers were put everywhere. So, Hon. Anthony Oluoch wants to still perpetuate this bad habit that we developed in the 10<sup>th</sup> Parliament. We should reject it. In fact, I was telling him not on record but informally in Dholuo that we have refused. This one cannot happen.

Thank you. I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have just two other Members. Is your card in?

*(Hon. Jared Okelo spoke off record)*

No, it is not possible not to sign. I am not sure you have a card, because we want to get the exact names correctly. Just speak but, please, next time you will need to have a card. I cannot see it here.

**Hon. Jared Okelo** (Nyando, ODM): I thank you, Chair. I am on my feet to oppose this amendment by my dear friend, Hon. Anthony Oluoch. It is true that lawyers have a reputation. It is true that some of them do a better job at scrutinising and interrogating matters. But on this matter touching on national cohesion, there is absolutely no reason why we must incorporate lawyers in this. Just as my senior, Hon. Mbadi has said some of the lawyers sitting in various

commissions or committees have really disappointed this nation. If we are going to take that trajectory on such an important commission, then we are going to lose our way. Hence, we must universally object to this kind of move.

Finally, not all Kenyans can be lawyers. We have several cadres. We have people of various disciplines and they have done a tremendous job in their various responsibilities. Therefore, we must widen the scope of our understanding of national cohesion. We must incorporate every Kenyan. Once we have put a requirement of a university degree from a recognised institution that should be enough. Otherwise all those who perhaps went through the university had the potential to be lawyers.

I thank you, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You still do not have a card, Hon. Member. Are you sure it is not working? One minute so that we make progress.

**Hon. Charles Nguna** (Mwingi West, ODM-K): Hon. Temporary Deputy Chairman, I want to oppose the amendment my colleague is trying to move here. Let me say that I have immense respect for lawyers as professionals, but this move would be discriminatory if at all we are going to say lawyers have to be involved in this. Anybody who is competent and God-fearing can do this job, provided he has a degree. So, put the Question and we move forward.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Oduol, please have a minute. I did not want to put you off.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you very much, Hon. Temporary Deputy Chairman, because I feel I also bring the voice of the other gender as we speak, which is good. I stand to strongly oppose this as a Member of the Committee. As we look at the mandate of the Commission, I would like to advise Hon. Anthony Oluoch to see that the kind of knowledge and experience that we would need would really be of public relations, human relations, peace and security and, how to get people to cohere. That is really not the purview and mandate of lawyers. So I oppose.

Thank you, Hon. Temporary Deputy Chairman.

*(Question, that the word to be inserted  
be inserted, put and negated)*

*(Clause 4 as amended agreed to)*

*(Clause 5 agreed to)*

*Clause 6*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There were some amendments by Hon. Oluoch and the Chair. Technically, they have been dispensed with having dealt with Clause 2. In fact, they were dropped technically by the passage of Clause 2. Therefore, I put the Question.

*(Clause 6 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are done with that Bill. Mover, you have the Floor.

**Hon. Maina Kamanda** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the National Cohesion and Integration (Amendment) Bill (National Assembly Bill No. 12 of 2019) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT

### THE NATIONAL COHESION AND INTEGRATION (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we have the Chairperson?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the National Cohesion and Integration (Amendment) Bill (National Assembly Bill No.12 of 2019) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Mover, Hon. Maina Kamanda, you have the Floor.

**Hon. Maina Kamanda** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move that this House doth agree with the Committee in the said Report.

I request Hon. Jacqueline Oduol to second this Motion.

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

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, we will pend putting the Question to a subsequent time.

*(Putting of the Question deferred)*

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Let us move on to the next Order.

## BILL

### *Second Reading*

#### THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Leader of the Majority Party, you have the Floor.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the Statute Law (Miscellaneous Amendments) Bill, 2019 (National Assembly Bill No.21 of 2019) be now read a Second Time.

Hon. Temporary Deputy Speaker, this Bill is very small but has some very important minor amendments to the statutes. It was published on 29<sup>th</sup> March, 2019 and read the First Time on 3<sup>rd</sup> April, 2019. The Bill is in keeping with the practice of consolidating various amendments, which do not merit publication as separate Bills into a Statute Law (Miscellaneous Amendments) Bill. Because we are going on recess, the House Business Committee (HBC) has decided that we do a Second Reading of this Bill today so that when we come back on 4<sup>th</sup> June, we subject it to a Committee of the whole House.

At the outset, I have withdrawn amendments relating to the section on the Micro Finance Act, after receiving a letter from the Governor of the Central Bank of Kenya. He says that he is doing consultation with a view to bring those amendments in a more substantive way through the Finance Bill, 2019. So, the amendment to the Micro Finance Act No.19 of 2006 will not be considered in this Bill.

The other amendments are mainly on four key committees namely the Departmental Committee on Administration and National Security, which will deal with amendments on districts and provinces; the Committee that deals with Alcoholic Drinks Control Act and the Departmental Committee on Sports, Culture and Tourism, which will deal with amendments on tourism. I am sure the Chairman is on his way to give the House his views. There are also amendments relating to the Public Finance Management (PFM) Act as well as on VAT, which will be dealt with by the Finance Committee. I can see that Hon. Limo is here.

This Bill was also referred to the Departmental Committee on Justice and Legal Affairs, whose Chair is here. The amendments on the Alcoholic Drinks Control Act will be presented by Hon. Makali Mulu, who is a Member of the relevant Committee.

Hon. Temporary Deputy Speaker, the Bill proposes to amend the Districts and Provinces Act in order to empower the Cabinet Secretaries to make regulations to give effect to the provisions of the Act and to clear some of the ambiguities currently existing in this Act. Why we are bringing this is that we have a number of areas in our country where we have disputes with even our neighbouring countries. Cases in point include Migingo Island, the Kenya/South Sudan border and the Kenya/Somalia border.

As currently constituted, the Act does not give the responsible Cabinet Secretary powers over those issues. So, we want to give them powers so that they can prepare Cabinet Memoranda

and effect them. We also want to provide appropriate powers so that the responsible state officers can deal with regional disputes that we face as a country. Next is an amendment on the Merchant and Shipping Act. We decided to do the Third Reading of this Bill on 4<sup>th</sup> June because this is a matter that the Departmental Committee on Transport, Public Works and Housing is handling.

Hon. Temporary Deputy Speaker, we have finished Hon. Kamanda's business and now he has started a *kamukunji* despite the fact that he is my good neighbour. On the one on Merchant and Shipping Act, the Chair is conducting public participation. He has gone to Mombasa. He has asked Hon. Speaker to give his Committee more time. So, we have to wait for them. The Bill seeks to amend the Act to exempt Government entities or enterprises from the provision of the Act in furtherance of the public interest of Government policy.

The main idea here is that we have an institution called "Kenya Shipping Line (KSL)", but the Act does not allow this entity to deal with matters relating to operations at the Port of Mombasa. We are making the amendment subject to public participation so that, like other countries that have sea ports, we allow our shipping line to participate in the operations and administration of some of the facilities within the Port of Mombasa. Instead of leasing it to other international shipping lines such as Maersk, we are amending the Act so that KSL can be allowed to undertake any operational business within any of the berths at the Port of Mombasa. The current Act does not allow any shipping line, be it local or international, to engage in any business of operational nature within the Port of Mombasa.

On the amendment relating to the Alcoholic Drinks Control Act, the Bill seeks to align the definition of the term "magistrate" with the one contained in the Magistrate Court Act to provide for more clarity on the matter. I am sure Hon. Makali will deal with it. On the amendments relating to the tourism sector, the Bill seeks to amend the Act to include universities among other institutions offering tourism-related courses. With the existence of the Kenya Utalii College Act, other universities, be they public or private cannot offer tourism-related courses. So, this amendment is opening up the sector so that other universities can also offer tourism-related courses.

The amendment to the PFM Act is from the Parliamentary Service Commission (PSC). The Bill seeks to amend the Act to empower the PSC to designate by resolution additional accounting officers in the PSC, in addition to the two clerks. You remember when we came in 2013 the only Accounting Officer was the Clerk of the Senate, who was the Secretary to the PSC. This situation was untenable because every decision of the National Assembly had to get approval from the Clerk of the Senate. So, in 2013, we amended the PFM Act and made the Clerk of the National Assembly an accounting officer to exclusively deal with matters of the National Assembly.

The PSC is asking, through an amendment, to actualise the resolution made at its 256<sup>th</sup> Meeting held on 14<sup>th</sup> February, 2019 to appoint an accounting officer for the Joint Services Directorate, which provides services to both the National Assembly and the Senate. Currently, the Director-General (DG), who is in charge of the Joint Services Directorate has no powers. He cannot sign a cheque or incur expenditure. This is part of efforts geared towards making Parliament perform better. So, in its 256<sup>th</sup> Meeting held on 14<sup>th</sup> February, 2019, the PSC resolved that the DG shall be an accounting officer to take care of the budgetary votes within the Joint Services Directorate. I am sure the PSC appeared before the Finance Committee and ...

*(Loud consultations)*

I need your help, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is it Hon. Leader of the Majority Party? What kind of help do you need from me?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Kamanda is ...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Kamanda! Earlier on, you pledged to lower your consultation decibels but you have kept on raising them. Consult in low tones.

**Hon. Aden Duale** (Garissa Township, JP): It is a lady who has come. You know he is the leader of a very serious movement. He is looking for members but he should not recruit in the House. He can do that at the lobby.

Hon. Temporary Deputy Speaker, the other amendment that will be withdrawn relates to the Kenya School of Law Act. I am sure that the Chair of the Departmental Committee on Justice and Legal Affairs will speak on it. On the proposed amendments to the Kenya Legal Education Act, the Departmental Committee on Justice and Legal Affairs had their reservations and, therefore, we will deal with it during the Committee of the whole House.

The Bill also seeks to amend the Prevention of Terrorism Act of 2013 to clear some ambiguities currently existing therein. The proposed amendment to this Act, which was passed in 2013, seeks to provide for additional members to the National Counter Terrorism Centre. The proposed amendment also seeks to provide for the term of office for the persons nominated to represent the various agencies in the Centre. It also seeks to provide for responsibility.

So, the one on terrorism is just to expound because of the nature of this element to the threat to our national security. The Counter Terrorism Centre membership is being expanded and the term of office is being defined. The Bill provides that the Centre will have additional responsibility. So, this is just to ensure that the Centre is aligned to international best practice like other centres.

On VAT No.35 of 2013, I am sure Members who were with us in the Leadership Retreat will remember the lady from the KAM who talked about what is exactly in this Bill. The Bill seeks to amend the Act to provide for a taxpayer to apply any withheld tax to his credit to offset any tax liability. So, there is a lot of withholding of VAT remissions by the Government. So, this aspect is just trying to ensure that there is efficiency in dealing with this matter.

On the proposed amendment to the Wildlife Conservation and Management Act, the Bill seeks to amend the Act to remove ambiguities currently existing like small and minor issues which the Departmental Committee on Environment and Natural Resources has proposed. This is another important amendment to the Government. In fact, it is pegged on the World Bank, the National Treasury, the Ministry of East Africa Community and Regional Development. The Ministry of Trade, Industry and Cooperatives are all waiting for this.

As you can remember, we passed the Companies Act in 2015 (No.17 of 2015). So, this Bill seeks to amend this Act to require companies to keep a register of beneficial owners and provide for particulars to be included in the register. This is meant to enable us know who the owners of the company and beneficiaries are in case of anything. This must be kept in the register.

Secondly, on the Companies Act, the Bill further seeks to provide for the convening of an annual general meeting by registered companies in which directors of a company may slot shares in a company or convert shares of a company into security. So, how you allot or convert shares of a company into security is provided for in any registered company.

This section also further seeks to amend the Act to reduce the percentage of shares which may be offered for sale from 90 to 50 per cent. On the proposed amendment to insolvency which I am sure was dealt with by the Departmental Committee on Justice and Legal Affairs. This was a Bill which we passed in 2015 and it seeks to amend the Act by specifying matters which a court may take into consideration and grant an approval for lifting of a moratorium. How do you lift a moratorium and what does the court say? So, this small amendment has been done.

Finally, is the amendment on the Court of Appeal Organisation and Administration Act, 2015. This Bill seeks to amend the Act to provide for the period during which the Court of Appeal will be proceeding on leave and vacation. This must be in law. It must state the vacation for judges in the Court of Appeal. It is not under discretion but just the way we have a calendar ourselves. It should not be at the discretion of the President of the Court of Appeal, the Chief Justice or Judicial Service Commission (JSC). It must state when they go on vacation, so that the public, lawyers and litigants can know.

Hon. Temporary Deputy Speaker, from my submission allow me to conclude by saying the amendments being proposed in this Bill are critical and some of them seek to create clarity in law. The law is always speaking and where there is ambiguity this House has the responsibility. It is only this House and the Senate which have the responsibility of aligning laws to their right form.

Therefore, I urge Members to read the comprehensive Report of the various Departmental Committees on the clauses committed to them in order to fully appreciate and enrich the debate. I further, want to thank Hon. Makali Mulu on behalf of the Departmental Committee on Administration and National Security, Hon. Limo the Chair Departmental Committee on Finance and National Planning, Hon. Cheptumo the Chair of Departmental Committee on Justice and Legal Affairs and Hon. Munyaka the Chair of the Departmental Committee on Sports, Tourism and Culture and the only person I am missing is the Chair of the Departmental Committee on Environment and Natural Resources Hon. Kareke but his was not a major one.

Then, the one on micro finance we will not deal with it based on the letter we received from the Governor of Central Bank of Kenya (CBK) committing that he will do that amendment in the Finance Bill, 2019. With those many remarks, I beg to move and ask the person who compiled the Report of all these Committees, the Chair of the Departmental Committee on Justice and Legal Affairs to second.

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

**Hon. William Cheptumo** (Baringo North, JP): Thank you, Hon. Temporary Deputy Speaker. The Leader of the Majority Party has ably moved this Bill. Mine is just to second and make few comments on it. As rightly said by the Leader of the Majority Party, the Bill seeks to make various wide ranging amendments to various Statutes. Various Departmental Committees reviewed the Bills and Statutes. I just want to mention that the Departmental Committee on Justice and Legal Affairs had seven Statutes to amend, the Departmental Committee on Administration and National Security had three, Departmental Committee on Finance and

National Planning had three, Departmental Committee on Sports, Tourism and Culture one, Departmental Committee on Transport, Public Works and Housing one Statute, Departmental Committee on Environment and Natural Resources one.

So, Departmental Committee on Justice and Legal Affairs had the highest because we had seven statutes to amend. That is why we become the lead Committee. Therefore, we were able to receive Reports from the various Committees and we tabled a compiled Report of those six Departmental Committees. I just want to mention that the Departmental Committee on Justice and Legal Affairs when considering amendments to the seven Statutes found some amendments justified to be undertaken because they are minor. They did not need very serious consideration or comprehensive review and we allowed them. But, there were those we found unnecessary for us to allow at the level of Miscellaneous Amendments.

For example, there was a proposal to amend the Kenya School of Law (KSL) and the Legal Education Act. The ethics of that amendment was to liberalise the training of advocates. Currently, it is the KSL which has that mandate. There is a proposal in the Miscellaneous Amendment that this particular law should be liberalised so that the Council of Legal Education can allow other institutions and universities to train lawyers.

I want the country to know that currently we have a very serious problem at the KSL. Out of 1,000 or 2,000 students we have about 70 or 80 per cent failing exams. Imagine a situation where we have invested in our young people, they have gone through the universities and are now waiting to do the Diploma at KSL for them to qualify as advocates. There is mass failure and this is an issue which came before our Committee earlier on and we raised it. Already, there is a task force headed by the Attorney General's office to look at the entire issue of training of lawyers and get to the root cause of the mass failure. Is it that the admission of the law students' standards has been reduced? What is the course?

A student has gone through university and he/she has done very well and has been able to achieve a good grade in Form IV and university. There is no reason for that student not to go through the Kenya School of Law. During our time, about 25 years ago, you could have one or two students. During our time, I believe you could not have this kind of mass failure. What is the cause of it? We did not want to undertake this kind of amendment at this point because we wanted to receive the comprehensive taskforce report, see the kind of amendments we are introducing so that we undertake a reform in the entire legal profession. If you are to consider liberalising that process of training lawyers to other institutions, then we should be able to have the justification of doing so. We felt that this should not be allowed because we need wide consultations, public participation and all the stakeholders in this sector. We are really concerned about this issue and we are going to deal with it, especially with the report which I am now told is ready. We will consider it shortly.

It has been said by the Leader of the Majority Party here that the Court of Appeal also wanted to change their programme or timetable for their recess during Easter recess, the August recess and during the Christmas holidays. We also noted that they were adding many days. The change or variation of their timetable is such that they were adding themselves another close to 30 days. We have a big backlog of cases in this country and we do not want a situation where we allow the Court of Appeal to have many days apart from their leave days or those other days during those holidays. So, we want to restrict that. We will be proposing a rejection to that proposal so that the Court of Appeal and the High Court should harmonise their vacation dates



and timetable and we do not really spend a lot of time when we have cases of Kenyans remaining outstanding for very long.

Finally, I will add to what the Leader of the Majority Party has said about the amendment to the Companies Act. There are a wide range of proposals to amend that particular law. We considered and allowed most of them. When you talk of allotting shares, one of the proposed amendments is that it is either the Memorandum or Articles of Association which allow the company to allot shares or the directors to make that resolution. So, we felt it was good to give powers to the company. This is because if you want to allot shares and you give that power to the directors alone without the resolution of the majority of the shareholders, you can easily prejudice some of those shareholders in that company. So, we want to allow the owners of that company to be briefed, to pass the resolution and be able to allot shares to whoever they want to allot shares to. Let me say that the rest of the proposed amendments which we have allowed and the ones we did not allow are very clear in our report. For the other committees, the report is in Table Office. I would like to request all Members of this House so that as we do the Second Reading of this Bill and as we go to the Third Reading, to have those reports and relate to the respective statutes, look through them so that we have a very informed debate as we proceed in the Second and the Third Readings when we come back from recess.

I just want to say that we should never use this Statute Law (Miscellaneous Amendments) Bills to sneak in amendments which have material consequences especially to certain laws. We should use the Statute Law (Miscellaneous Amendments) Bills to just go for minor amendments that can realign our laws within the changing times.

With those remarks, I beg to second and request Members to secure copies of these Reports in Table Office so that we have a very informed debate in the House as we go to the Second Reading and Third Reading.

Thank you, Hon. Temporary Deputy Speaker.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall give priority to the chairs of the various committees whose laws under their docket have been referred to in the Bill. Hon. Wamalwa, do not say “not really”. It will be important to hear those chairs because having engaged elaborately on their sections, it will be important that they give guidance to the other Members. We shall start with Hon. Makali Mulu. I am under the impression that you are actually representing the Departmental Committee on Administration and National Security.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. You are right. I am standing in for my Chairman of the Departmental Committee on Administration and National Security, Hon. Koinange, who has requested me to come and stand in for him because he is held up somewhere. I am a Member of that Committee.

If you look at these miscellaneous amendments, you will find that the Departmental Committee on Administration and National Security has three areas which we considered. The first one is the District and Provinces Act of 1992. The second one is the Alcoholic Drinks Control Act, 2010 and the third one which falls under our Committee is the Prevention of Terrorism Act. The Committee has taken time to consider these amendments. We have also invited comments from stakeholders. In some areas, as a Committee, we got comments specific

to these Acts and in some areas we did not have any issues and so no comments were presented to the Committee.

On the District and Provinces Act of 1992, the proposed amendments are actually not major and I think they fit well into this Bill. The only thing we are doing here is we are adding a new section after Section 5 where we are allowing the CS for the Ministry of Interior and Coordination of National Government to prepare regulations. We all know as legislators that regulations are important to operationalise our laws. So what the CS will be expected to do is just to prepare regulations so that we have a smooth operationalisation of the Act. As a Committee, we did not have an issue with this. I urge Hon. Members to support us so that we allow the CS to come up with regulations which will be approved by the Committee on Delegated Legislation.

On the second Act, that is the Alcoholic Drinks Control Act, we got submissions from one stakeholder. The focus on this amendment is making reference to the definition of a magistrate so that that definition of a magistrate in the Act has the same meaning as that in the Magistrates Court Act, 2015. The aim is not to have a difference in the way we define the word magistrate.

The submission which came from the stakeholder was saying that by this kind of definition, what will happen is when it comes to issues of alcoholic drinks, then it will restrict magistrates who can handle these cases to only magistrates who are above what they call the Resident Magistrate or the senior level magistrates.

As a Committee, we took time to debate on this and our agreement was that alcoholic drinks issues need to be handled by magistrates who have a bit of experience. So, we are in agreement with the amendment even though initially the comments from the stakeholders were like we need to open this to all the magistrates. On that note, as a Committee, we still believe we need to restrict this kind of cases to magistrates who have a bit of experience. We will agree with that when it comes to the Third Reading.

The third one is the Prevention of Terrorism Act, 2012. It has three components. The first amendment is bringing in those who will sit on the board of that Centre so that it is clear. We have discussed as a Committee and realised that this Counter Terrorism Centre might not be exhaustive in terms of listing who will sit on that board. Instead of listing everybody, we want to list the main parties and then have a paragraph which states that anybody else who might be relevant might be invited on the basis of the issue being discussed.

We have noted that they have left out a new outfit in this country which is quite important. This is the Coast Guard Service which has just been established. The Coast guards will take care of our territorial waters, more so the area between our land and the ocean which is not taken care of by the Navy. That one is key in ensuring that we also sort out issues of terrorism. We need to include that one because that is part of their work. We are removing others like the Kenya Wildlife Services. We will have a statement which says that on need basis, other institutions can be invited when there is an issue to be discussed. We will be proposing amendments to that, as a Committee, so that we make it clearer and open more room for other specialised bodies to be invited.

The other bit is the issue of the 4C that has generated a lot of interest from the stakeholders. I want to single the non-governmental organisations (NGOs) who are dealing with human rights issues. In addition to them being registered by the body which registers the NGOs, there is a requirement that they need to be approved by this Counter Terrorism Centre. The

argument is that that will cause a lot of bureaucracy. It will be almost impossible to register such bodies. The argument was that we should only register the NGO and then they report to the Counter Terrorism Centre. Looking keenly at this amendment, there is no requirement for official registration. This Centre will need to be aware of all the non-governmental organisations that are involved in counterterrorism activities.

Regularly, they may be requested to report on their activities by the Counter Terrorism Centre. This makes a lot of sense because nobody will vet them. Once you are registered as a body which deals with counterterrorism issues, you will be required to work closely with this Centre for purposes of harmonising the activities and ensuring that information is shared across the board. In that case, we will make sure that we have no issues because we could have some gaps which terrorists would like to take advantage of. This will avoid issues of gaps coming up and people taking advantage.

As a Committee, we have agreed that even though some stakeholders have expressed some reservations with this amendment, we think it is a good amendment and it will help the war against terrorism. We will support this position but we will be very specific that the NGOs dealing with counterterrorism issues will be required to report to the Centre. They may report when need arises, but the Centre can easily write to an NGO and tell them to give a report on a matter so that information is shared.

There is a law that we passed in 2012, the Public Benefit Organisations Act, which has never been operationalised. That law has very many good things which can support this area. A Member should take up that challenge and come up with an amendment so that we make that law operational. It will support this area. That law is important. In terms of the way it is structured, it is better than the current Act and it will help this area in terms of NGOs working closely with the Government to make sure that we have a common goal and achieve better results for Kenyans.

Those are the areas that the Committee considered. I assure the House that when it comes to the Third Reading, the Committee will be presenting those amendments so that we improve those areas. Generally, those are the issues. I do not have much to say. I have looked at other Acts, more so, the Public Finance Management Act. I would have wanted to contribute to it but since I am just standing in for the Chair, I want to stop there so that I do not go beyond the instructions I have from my Chair.

With those comments, I support the Bill and ask Hon. Members to support these amendments to improve the existing laws.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Limo who is the Chair of the Departmental Committee on Finance and National Planning.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Speaker, thank you very much for this chance. As soon as this Bill was tabled in the House and advertised for the public to know that it was being processed, our Committee was tasked to tackle three areas. One of them was the Micro Finance Act which the Leader of the Majority Party has already spoken about. The Central Bank of Kenya has said that they want more time to come up with a more comprehensive amendment to the Micro Finance Act.

The next one was the amendment to the Public Finance Management (PFM) Act. It was to amend Section 2(1) which was touching on accounting officers in the PSC which basically touches on Parliament. The third one was on Section 17(c) of the VAT Act which is on the withholding tax which was introduced for the purpose of intelligence or picking the payment of

taxes by the taxpayers especially on VAT. This has become a problem to the taxpayers because some of them have been continuously accumulating credits. The law does not specify how they will get a refund or an offset.

As soon as those sections were referred to us and advertised, we received some memoranda.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Chair! What is out of order, Hon. Wamalwa?

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD – K): Thank you very much, Hon. Temporary Deputy Speaker. With due respect to Hon. Limo who is an expert on matters of finance, and is the Chair of the Departmental Committee on Finance and National Planning...When it comes to the PFM Act, I expect him to give a justification. I have listened carefully but he needs to give the justification. He has only mentioned that the PFM is just touching on Parliament. He has not given the justification of what is happening here.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order Hon. Wamalwa! He has not finished.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD – K): He has already moved to the VAT Act. He has done very well on that but when it comes to the PFM, he has not given the specifics on this Act.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Wamalwa! That is not a point of order, but it is good guidance to the Chair. You used another route to get further information from Hon. Limo. Hon. Limo, Hon. Wamalwa is guiding you a bit for his benefit and other Members. Anyway, proceed.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Speaker. I respect Hon. Wamalwa but he might have walked in or picked my contribution in the middle. I have planned my work well. Be assured I will come back to it. I was only systematically introducing what the Committee was tasked to do.

I am talking about how public participation came in. I know that you are an academician who is very organised. When I come to the main body, I will give you more details on each of the three areas. When we advertised, we received several memoranda. Our Committee went ahead and planned for stakeholder consultation which was done between 2<sup>nd</sup> and 5<sup>th</sup> May 2019. We called stakeholders who had given us memoranda plus others to come and present to us in details what their memoranda were all about. On 3<sup>rd</sup> and 4<sup>th</sup> May, various organisations presented before us. I want to put it on record that we had a presentation from the Petroleum Institute of East Africa who were accompanied by Ernst and Young. They presented on the Value Added Tax (VAT) Act. They were followed by the Garden City Retail Limited which is the owner of the Garden City Mall. They also came to present on the VAT Act.

The Parliamentary Service Commission (PSC) commissioners accompanied by senior officers from Parliament also came to present on the Public Finance Management (PFM) Act which is an amendment to Section 2(1). We also had a group of power generators companies who came to present on the VAT Act. The Agro-Chemical Association of Kenya and PricewaterhouseCoopers (PWC) also came to present on the VAT Act. We also had a presentation from Klynveld Peat Marwick Goerdeler (KPMG) Audit Services Limited Work and Coulson Harney LLP law firm on VAT Act. The Institute of Certified Public Accountants of Kenya (ICPAK) presented on VAT Act, as well as on the PFM Act. We also had a very big team

which came under the umbrella of Kenya Association of Manufacturers (KAM) comprising of manufacturers and other key players in the market who came to present on VAT Act. The Kenya Revenue Authority (KRA) also came to present on VAT Act. Finally, we had a presentation from Amolo and Kibanya Advocates who presented on the amendment to the PFM Act. We had a closing meeting with the National Treasury. All these are stakeholders who came before us. They showed us how stakeholder consultation is important in line with the Constitution which requires public participation during the law making process.

I now come to the main amendment which was carried. I will start straight away with the PFM Act. The amendment seeks to amend Section 2(1) of the PFM Act, 2012 to re-define what accounting officer means in reference to the PSC. When the Constitution was changed in 2010, it introduced bicameral Parliament which involves the Senate and the National assembly. Currently, we have two accounting officers in Parliament: Clerk of the National Assembly for matters relating to the National Assembly and the Clerk of the Senate who is the accounting officer on matters touching on the Senate, as well as PSC. There is a room in between which is referred to as the Joint Services or common areas which include catering and health services. During the presentation by the PSC, the commissioners, in many instances, said that it was difficult to manage those joint services. If they have to manage them efficiently, they require somebody who is given the responsibility and authority to manage them. Therefore, that particular person will concentrate on those key areas which offer services to the Members. The PSC presented that they require some power to introduce a third or even fourth accounting officer to manage those areas.

There is also another important body which many Members do not know about. There is a training centre in Parliament called the Centre for Parliamentary Studies and Training (CPST) which is in charge of capacity building for Members of Parliament and of county governments. They offer capacity building to county governments, especially county assemblies. Therefore, they still operate under the same situation. No one is squarely responsible but the institution is supposed to be efficient. The PSC feels that they should be given some leeway to give that institution more authority and responsibility. Therefore, they feel that we should support the amendment so that they can run their work efficiently.

There is also an amendment on VAT Act. Since 2017, the National Treasury and KRA introduced withholding tax. When you do some work which attracts VAT at 16 per cent, when you are getting payment, the person who is paying you is required to withhold 6 per cent and only pay 10 per cent. That 6 per cent is withheld and forwarded directly to KRA. That was for intelligence purposes, so that the tax collector will detect that a certain person offered service which attracted VAT. Therefore, if you fail to remit the balance which is 10 per cent, they will remind you that you offered services to a certain person and he remitted the 6 per cent to them and you have not remitted 10 per cent. Over time, the 6 per cent becomes a form of credit to some taxpayers which they are unable to offset. The VAT operates in a different way. When you buy materials, you do it with VAT which is called input tax. When you produce products and then you sell them, you charge output tax.

At the end of the month, when you net-off the two, you either pay KRA or you get into a position where you ask for a refund. However, the introduction of Withholding Tax has reduced 6 per cent on the output tax. So, you can end up being on credit forever. This amendment has been brought to allow for an avenue for either an offset or a refund. When the Withholding Tax

was introduced in the Tax Procedure Act, it did not address the situation of what would happen if you are continuously in credit. This amendment seeks to address that aspect and allow taxpayers to seek for an offset as long as the Commissioner is satisfied that such excess arises from making zero-rated surplus, and also if the Commissioner is satisfied that that credit arises from appointed Withholding Tax Agents. That means the Commissioner still plays a key role. That is the gist of this amendment, which was supported by almost all the stakeholders who appeared before us.

Kenya is one of the countries that heavily depend on taxation to finance her Budget but as much as taxpayers are willing to pay, it is our responsibility to make the tax environment efficient so that it does not cause more pain than the pain that one feels when he pays tax. If this amendment goes through, it will make our tax environment friendly thus making the country friendlier to investors. That would be in line with the Government's agenda of enhancing ease of doing business.

Although the amendment on the Micro Finance Bill has been withdrawn, the intention was to introduce...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Limo, that amendment is no longer in the Bill, is it?

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I stand guided. The amendment has been withdrawn and, therefore, I will not address it. Basically, those were the main areas of focus of the amendments on the Public Finance Management Act and the Value Added Tax Act. Therefore, I hope my contribution will guide Members' contributions on these amendments.

With those remarks, I support and urge Members to support the amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Can we now have Hon. Munyaka Kioko, who is also the Chair of the Committee on Sports, Culture and Tourism?

**Hon. (Dr.) Victor Munyaka** (Machakos Town, JP): Thank you, Hon. Temporary Deputy Speaker. Our Committee was supposed to deal with two proposed amendments with regard to the Tourism Act No.28 of 2011. As the Leader of the Majority Party indicated, the amendments are meant to cure some ambiguities that exist in the Act. In the definition, the word "university" is missing. We know that we have many universities offering tourism and hospitality programmes. Therefore, there is need for including in the definition what "university" means. This is further addressed through another amendment to Section 68(f), where another ambiguity exists. Here, training institutions are mentioned without making reference to university. So, our amendments are matters of definition.

We met two stakeholders who gave their opinions. The first stakeholder was the Tourism Professional Association, whose representatives proposed entrenchment of the association in the Tourism Act. We found that we could not accommodate them in the Statute Law (Miscellaneous Amendments) Bill. We advised them to propose a substantive amendment to the Tourism Act. So, we dropped their proposal for entrenchment of the Association in the existing Act. We also met representatives of the Association of Private Universities in Kenya, who agreed with the Government's proposal that we need a definition of "university" so that they do not appear to be discriminated against by the Tourism Act. Generally, we agreed with them in terms of introducing the term "university" in the Tourism Act. They also came up with other proposals, which we rejected because they are contradictory to the Tourism Act. So, that is what we did.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Chair of the Departmental Committee on Environment is not present. So, I open the Floor to Hon. Members, starting with Hon. Wamalwa, who is top on my list of requests.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity. First and foremost, I want to give the background of Statute Law (Miscellaneous Amendments) Bills. These are Bills which are kind of insignificant as per their objects. Historically, at times people sneak in some amendments which are significant, and this negates the principle of miscellaneous amendments. Going through this Bill, I find that there are some amendments which meet the threshold and some which are significant and, therefore, should not have appeared in this Bill.

First, I salute Hon. Munyaka. The amendments to introduce the word ‘university’ in the Tourism Bill are actually minor. Traditionally, tourism-related training has been offered at certificate and diploma level. However, universities have started offering new courses based on the market. I am aware that Moi University is offering hospitality and tourism courses. Other university colleges are also doing the same. So, these particular amendments are miscellaneous.

The amendment on the VAT Act that Hon. Limo explained very well is actually a minor issue of input and output tax. Of course, the issue of 6 per cent was introduced so that KRA can get a signal that “X” did business with “Y”. So, KRA gets to know that 6 per cent has been submitted and see whether the remaining 10 per cent has also been submitted or not. That way, KRA will tag the timeframe, so that if you go beyond the limit, you are charged a fine. That is very good. It qualifies as a miscellaneous amendment.

However, on the amendment to the Public Finance Management Act, which talks about the Parliamentary Service Commission (PSC), is so significant that it should not have been sneaked into this Bill. Parliament has attempted to introduce this amendment three times but it failed. This amendment is so significant that it should have come on its own. We have been debating the Parliamentary Service Commission (Amendment) Bill but it reached a point where the public thought it was about increasing salaries of Members of Parliament. We heard His Excellency the President comment on it. Maybe, he made that comment because he had not been informed accordingly.

As we speak, the Parliamentary Service Commission (Amendment) Bill is active. We debated it during its Second Reading but it disappeared from the Order Paper. The House Business Committee needs to explain why. Maybe, it was because the temperatures were high. The same objects that are in that Bill have been sneaked into this Statute Law (Miscellaneous Amendments) Bill on the pretence of creating more accounting officers. When you talk of an accounting officer in any institution, it is a significant amendment. That is why I oppose this amendment. If the Parliamentary Service Commission (Amendment) Bill is brought back to the House, we will amend it. You cannot use a statute to amend the Constitution.

The PSC is one of the Chapter 15 commissions which are independent. It is just like the Judicial Service Commission (JSC) and the Teachers Service Commission (TSC). We know very well that the CEO of the Commission, as a practice, is the Accounting Officer. That is clear under Article 127. It says the Chairman of the Parliamentary Service Commission shall be the Speaker of the National Assembly and the Secretary shall be the Clerk of the Senate. This is in the spirit of the bicameral system.

In other words, it is written down here that the Bill is not concerning counties within the meaning of Article 110 of the Constitution but it has an implication on the Senate. This Bill is not being subjected to the Senate particularly because of that section. I was in the leadership in the House Business Committee (HBC) in the other Parliament. This matter came up. We discussed and it was agreed that this import must be discussed by the Senate because it is affecting the Senators. So, we cannot come and sneak it here for purposes of circumventing so that the Senators cannot have a say.

We have a bicameral system and we are here as brothers particularly for purposes of checks and balances. We know that very well. In this organisation, we have been having the Joint Services. The Joint Services means they are being shared between the National Assembly and the Senate. We have been having the Director General who has been heading this and it is true he has not been an accounting officer but we have a secretary in the meaning of Chapter 15 of the Constitution because this is an independent Commission. For consistency, to be like other independent commissions, it should be left to do its job. The Constitution has gone further to specify that the Chair of Parliamentary Service Commission will be none other than the Speaker of the National Assembly. There was a meaning in that. Why did they not say any Speaker? It was specific. It went further to say that the Secretary of that Commission shall be the Clerk of the Senate. It never said the Clerk of the National Assembly. It is very unfortunate that we can use an Act of Parliament to amend what is stipulated in the Constitution. This is very wrong and it is in bad taste. It is important, if this is the motive, to obviously expect the Senate to debate on this matter.

I listened in terms of public participation. Article 118 of the Constitution is clear that we have to involve the public in any Bill or legislation. I am working on a law on public participation which we do not have. We are just using the Constitution. In this case, the Senate is critical in this matter, but in the spirit of Article 110, we are sneaking it out. In public participation, I never heard that any of the leadership of the Senate was represented. This matter has been here before you came to this Parliament. It has been an issue between the two brothers. We can talk of sibling rivalry but it is supposed to have fairness. I am requesting for a ruling. My humble request was for this section to be withdrawn from this Miscellaneous Bill because it is unconstitutional. We cannot use an Act of Parliament to amend the Constitution. This is not fair. We must talk openly. People might have different interests. I know we have been having issues when it comes to Joint Services but why do they not sit down together because we have a Parliamentary Service Commission? Whatever regulations might be there can be resolved. This matter is in bad interest. I am calling for a ruling on this – that this particular section be withdrawn because I have given you the genesis of this. It has been attempted to be in this House three times. The best position for this particular section should be handled under the Parliamentary Service Act.

We know very well many commissions have been operationalised through a statute law. We have commissions and we have operationalised them. The SRC has an SRC Act, TSC has the TSC Act but the Parliamentary Service Commission does not have an Act. This is the time we are trying to resolve this matter under the Parliamentary Service Bill which is on the Floor of this House. It came before the Statute Law. So, I find it mischievous and in bad taste to sneak this section to this Miscellaneous Amendment because it is too significant. Its objective is not



insignificant. So, it should be ruled out. I am humbly requesting for the ruling in terms of its constitutionality.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wamalwa, even before I give Hon. Mutai Kiplangat a chance to speak, I have listened to you. At some point, you said that the amendment that relates to the PSC and the designation of the accounting officer should not come through the Miscellaneous Statute, but the PSC Act should have been in existence. That is what we should be amending. As you came to a close, you said it is unconstitutional, but it was not very clear. I suppose you referred to Article 127 about Parliamentary Service Commission. As I give direction, I do not need to take a lot of time on that.

Article 127 talks about the Parliamentary Service Commission where the Speaker is the Chairperson. I guess you are referring to where the Secretary of the PSC shall be the Clerk of the Senate. I suppose that is where you are referring. If you look at the statute law itself, the one we are dealing with, on the face of it, it does not seem to touch Article 127(3). It does not seem to dispute Article 127(3) at all. It is about the designation Accounting Officer.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): There must be consistency when it comes to these independent commissions. I gave an example. It is like the Judicial Service Commission where the secretaries of those commissions are the accounting officers. So, for purposes of consistency, since the Parliamentary Service is also there, we cannot purport to create extras because it is stipulated there. So, the Clerk of the Senate is the one who is supposed to be the Accounting Officer. This will be in line with other independent Commissions. We are trying to change the meaning of Article 127 to start creating other accounting officers. In the PSC, the Accounting Officer should be the Secretary just like other independent commissions. The Secretary is the Clerk of the Senate. So, for purposes of consistency, that is my argument.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wamalwa, I find what you are raising quite straightforward. I will give direction on it. But what is it Hon. Limo?

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Speaker, as much as we want to give Hon. Chris Wamalwa the respect he deserves, we have to also make it clear that this amendment does not amend the Constitution as you have rightly said. I want to clarify one point which he has stated that there was no leadership from the Senate which was represented. I confirm that during stakeholder consultation, the PSC was accompanied by senior officers from both Houses of Parliament.

The National Assembly was represented by the Clerk and the Senate was represented by the Deputy Clerk of the Senate. On the issue of contradicting the Constitution, the PFM law under Section 67 talks about designation of accounting officers for the national Government. The PFM Act under Section 67(2) clearly says:

“Except as otherwise stated in other legislation, the person responsible for the administration of a Constitutional Commission or institution or Independent Office shall be the accounting officer responsible for managing the finances of that Commission, institution or Independent Office.”

The PFM Act allows for another introduction of accounting officers. That is why *Mhe.* Wamalwa has not disputed the presence of two accounting officers – the Clerk, National Assembly and the Clerk, Senate. The PFM law under Section 67(2) says “except as otherwise stated in other legislation...” The other legislation is what we are doing now to introduce a

possible third one. So, the PFM law allows for more than one. If you do not introduce, it is construed to be the one who is responsible for administration of the commission.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): As I said, this is pretty straightforward. Hon. Wanga, do you want to speak to miscellaneous amendment or this one? Is it on what Hon. Wamalwa mentioned? You can speak to that. You will be the last person so that we make progress.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. Having served in the commission in the last Parliament, the reason that arose for creation of more than one accounting officer is the unique nature of Parliament. Previously, we had a unicameral Parliament, in which case an accounting officer could be in charge of everybody and there was no problem. When we got to a bicameral Parliament, we saw the need for the National Assembly to be managed on its own, with an accounting officer, and the Senate to be managed on its own, with an accounting officer.

I think there is another Service which Hon. Wamalwa also referred to. It is the Joint Services. It has services that serve both the National Assembly and the Senate. For example, accounting services and cleaning services. Currently, it is a bit difficult to say who will pay half for this and another half for the other. So, when the Commission seeks to have authority to create another accounting officer or other accounting officers, it is just for ease of management.

Therefore, I do not see that there will be any mischief in that.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wamalwa, on the face of it, without even having a considered further perspective on what you have raised on Article 127 which is about the PSC, especially the Secretary to the Commission who is the Clerk of the Senate, whom you referred to... There is absolutely nothing unconstitutional. This Bill does not seek to change the Secretary to the Commission.

The PFM Act gives the Commission power to designate accounting officers, even within one institution. That is why, as we speak, there are two accounting officers. But if you go to the memorandum of objects and reasons of this Bill, you will find that the Commission in its 256<sup>th</sup> meeting held on 14<sup>th</sup> February 2019 - from an internal and administrative point, and just to have the institution function well - put it that there needs to be additional accounting officers within the PSC. So, there is absolutely nothing unconstitutional. We will rest at that.

Hon. Wamalwa, it is okay for you to be opposed to what is in the law. It is within your rights.

Shall we have Hon. Mutai Kiplangat?

**Hon. Japheth Mutai** (Bureti, JP): Thank you, Hon. Temporary Deputy Speaker. Thank you for making clarity on that.

Just to add on one line, that issue, under the Parliamentary Service Act, the same person is accountable to the PSC. The person under the Joint Service is administratively accountable to Clerks of both Houses. In that sense, it is not creating another centre of power or usurping somebody else's power.

Let me come to the current issues. We should say thanks to this House for rising up to the occasion when it came to the amendments of this Bill. First, I look at the Companies Act which is the amendment under Section 93. In the Bill, there is need to have a register or file of beneficial owners in companies. As it stands, there is no clarity when it comes to other general

members of companies and the beneficial owners. This Bill will give clarity to that, and I say “thank you for that”.

Secondly, there was an amendment which was rejected in the Bill. I thank Parliament for doing that. It was an amendment under Section 275(a) of the Companies Act to create a new section. There was an amendment that required a private company to convene an AGM every year. That would have been onerous. That was settled when the Companies Act came into place in 2015 - only public companies have to convene an AGM every year.

Section 310 of the Act makes it mandatory that there must be an AGM every year. To sneak something in and call for private companies to call an AGM every year would have been very onerous. These are companies which need to work independently. They do not need many red tapes. In fact, if anything, it would have been very difficult because these companies have mandated the directors to make decisions. Under the article of association and memorandum, the directors have that leeway to make decisions on behalf of shareholders. There is no need for private companies to call AGMs every year.

There was also another amendment that was rejected. It was on Section 329 of the Companies Act. In it, there was attempt to have the directors to only allot shares of a company when there is a resolution made by all the members. Can you imagine a scenario where somebody sits in an office and cannot make decisions, and has to wait for a resolution of shareholders? Parliament rose to the occasion and safeguarded the interest of companies that are growing; companies that are trying to do business in this country. This is a step in the right direction.

I also look at an amendment which is brought under the Court of Appeal Organisation and Administration Act. It wanted to increase the number of holidays the Court of Appeal judges have or increase the number of days they go on vacation from the current 45 to 90 days. That was rejected.

Currently, we are crying that there is a lot of backlog. We are crying for more judges and more hearing days and yet we have somebody sneaking in an amendment requiring the same magistrates and judges of the Court of Appeal to go on vacation for 90 days. That was uncalled for, and I want to say that I support this Bill because it ensures that the numbers of days on vacation are retained as they were. If necessary, we can reduce the number of days the Court of Appeal judges are going on vacation.

There was an amendment on Section 311 of the Companies Act which was flatly rejected. Somebody was trying to sneak in the percentage in which somebody can take over, from 90 per cent to 50 per cent. This would have meant that the minority shareholder can be forced to ensure rise of shares in an event of a takeover. That was oppressing the rights of the minority shareholders and ensuring that the majority always oppress the minority. I want to say thank for that.

Lastly, I want to support Hon. Limo on his sentiments on the amendments on the VAT by saying, the amendments done were in the right direction. I only have a reservation. Next time we are doing an amendment let us bring them through the normal legislations. The amendments that we are dealing with in an omnibus way, through statutory amendments, are not good for this country. We require serious time to transact and interrogate fully the legislations that are coming. Sometimes you find that when an amendment is brought in, the office of the Attorney General are called in, they come and deny part of that amendment and they do not know the

origin of that amendment. We, therefore, have a scenario where certain quotas want to use this Parliament for their own selfish interest to sneak in amendments. I want to urge the necessary institution that next time we deal with amendments of this nature such as Insolvency of Companies Act, let us transact them as a major amendment of that legislation and not through an omnibus Bill.

Thank you very much, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Tonui, you have the Floor.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker for this opportunity to also comment on this Miscellaneous (Amendment) Bill. First, on the issue of VAT Act, I support some amendments. On the VAT Act, the Chair is explaining that a taxpayer can offset a tax directly at their own level. I believe this needs to be interrogated further otherwise I can see loopholes where we may lose revenue because of fake cases of offsetting tax within companies.

Secondly, on the issue of the PFM Act, the separation of the roles of the accounting officers for the Senate and the National Assembly is welcome. This is a different House from the Senate. I believe this is in order and I support it strongly. On the issue of tourism Act, we are introducing the word ‘university’. I believe this is a small introduction. It is good to introduce the word “university” in the world of tourism so that we know that we can offer courses in tourism up to PhD level. I believe this is welcome. We are used to the very many mushrooming colleges offering even substandard courses on tourism. I believe it is welcome to include university level.

On the Companies Act, I support the issue of introducing the requirement that if additional members are to be introduced into a company, then the consent of those other members of the Company must be solved. This is quite welcome so that we do not have fake members of a company. What I am not so clear about it is when we have a section in the Companies Act which says “delete information” including information relating to the beneficial owners. I do not know if this is meant for cover up because I believe the freedom to access information is very critical. We should be able to go to the Registrar of Companies and get information on any company. This should not just be information on Kenyan companies. We should be able to get information on foreign companies once they are doing business with this country.

When we are talking, for example, of KQ, I was in the 11<sup>th</sup> Parliament, where we approved about Kshs20 billion to KQ and we were assured it would revive the company. It did not, possibly because KQ does not own planes. The planes are owned by other people and the company leases from them. So when we released the Kshs20 billion, they paid it to companies offshores like in Cayman Islands. When you have Kenyan companies registered offshores owning planes which KQ is using, I believe it is a conduit to loot this country. So, information even on those companies which are doing business in this country but registered offshores in Cayman Islands should be available so that when we spend Kshs20 billion of taxpayers’ money to assist KQ, we know who the beneficiaries are. When we guarantee Kshs75 billion loans which has been borrowed by KQ, it means taxpayers are losing money. We need to know the beneficiaries of such loans. I believe the Companies Act should provide that information for any member of the public to access.

On the issue of the Districts and Provinces Act, 1992, where we are giving power to the CS to make regulations, this is only making adjustments to clean the Act so that it conforms to current times, because there are real complications. I even have a very big problem in my constituency, where one of the wards is considered to belong to another constituency in terms of provincial administration yet I also have other wards in other constituencies included in Bomet Central District. So there are such issues which need to be corrected and I believe if we empower the CS to do that it will be taken care of.

In the morning I saw the Leader of the Majority Party accusing Members that they have a lot of conflict of interest; that when there is a particular Act being dealt with they come in numbers to support it and once it goes through they disappear. And he alluded to the issue of betting and gaming laws which he said Members come to support and they leave. Surely, Members cannot be accused to have been favouring betting companies. In the 11<sup>th</sup> Parliament, we adjusted the tax on betting to 50 per cent, but a presidential memorandum reversed it to 35 per cent. In this same Parliament, we retained that 35 per cent. The presidential memorandum on the Finance Bill reduced it further to 15 per cent. So where is the conflict of interest? Is it within Parliament or outside in the Executive? It must be very clear where the conflict of interest is. I believe fixing the interest rate at 50 per cent was very good. But the Executive's reducing it from 50 per cent to the current 15 per cent was quite unfair. There must be conflict of interest outside there, not within this House. Currently we have so many youths engaging in betting. They think that they can become rich through betting. That is all they engage in. They borrow money from M-Shwari, friends or sell their items to engage in betting. This ensures that the rich become richer while the poor continue languishing in poverty. So it should be clarified very well that some of these issues were not done by this Parliament but by the Executive. It was only an issue of this Parliament failing to raise the two-thirds requirement.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Tonui, I have a feeling that you are concluding because it is 1.00 p.m. In that case, because you have not finished, we shall push your remaining two minutes to the next time this Order comes up for debate – the time already being 1.00 p.m. – so that you enjoy your full space and time.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 1.00 p.m., the House stands adjourned until this afternoon, at 2.30 p.m.

The House rose at 1.00 p.m.